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## IMPLEMENTATION OF ANTI-CORRUPTION PLANS IN SOUTH-EASTERN EUROPE (PACO IMPACT)

# SUGGESTED PROCEDURAL RULES AND WORK METHOD OF KOSOVO ANTI CORRUPTION AGENCY

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## **KOSOVO ANTI CORRUPTION AGENCY**

Pursuant to article 13 of UNMIK Regulation 2005/26, the Council of the Kosovo  
Anti-Corruption Agency,  
decided:

### **PROCEDURAL RULES AND WORK METHOD OF THE KOSOVO ANTI-CORRUPTION AGENCY**

#### **CHAPTER I General provisions**

##### **Article 1 *Scope***

This act defines the procedural rules and the work method of the Kosovo Anti-Corruption Agency (hereinafter “Agency”) as well as its internal organization and functioning.

##### **Article 2 *Working principles of the Agency***

Civil servants and other officials of the Agency undertake their activity in compliance with the legislation in force and shall provide their own good example at work and outside. Rules defined in UNMIK Regulation 2005/26 shall be also applied for the civil servants and other officials of the Agency. During the exercise of their duties they have to be guided by:

- principle of legality;
- principle of balancing public and private interests;
- principle of equality before the law;
- principle of proportionality;
- principle of objectivity and impartiality;
- principle of consistency and predictability;
- principle of openness;
- principle of subsidiarity.

#### **CHAPTER II Functioning of the Agency’s Council**

##### **Article 3 *Competencies of the Council***

The Council exercises its competencies according to the UNMIK Regulation 2005/26 and within the limits of supervision of the Agency's activity. Within these limits, the Council:

- Defines each year the main policies of work of the Agency aiming at the fulfilment of its objectives and also monitors the accomplishment of these policies;
- Decides with at least half of its members on the approval and/or amendment of this act;
- Upon the proposal of the Agency's Director approves the organizational chart of the Agency;
- Decides with at least half of its members on a proposal to the Assembly for the dismissal of the Director;
- Approves the Government Anti-Corruption strategy.

The Head of the Council presents the Agency's annual anti-corruption report in front of the Kosovo's Assembly.

#### **Article 4**

##### *First meeting of the Council*

The inaugural (first) meeting of the Council is chaired by the eldest member. This meeting elects the Chairperson of the Council and its Deputy. The Chairperson of the Council and its Deputy are elected with the majority of all the members of the Council.

#### **Article 5**

##### *Duties of the Chairperson of the Council during its meetings*

The Chairperson of the Council calls and chairs the meeting, presides over the discussions and ensures the implementation of the law and the making of fair decisions.

The Chairperson may adjourn or close a meeting, when the situation legitimates this action. In these cases, a reasoned decision, which shall be registered in the meeting minutes, should be taken.

The Chairperson or any member of a Council is entitled to file a lawsuit in the court against the decisions issued by the Council and as well to request suspension of its implementation when he/she deems the decision is unlawful.

In absence of the Chairperson or when he/she has a conflict of interest, the above competencies are handled by his/her Deputy.

#### **Article 6**

##### *Other duties of the Chairperson*

The Chairperson of the Council coordinates his/her work with that unit of the Agency which serves as the Secretariat of the Council.

The Chairperson of the Council coordinates the work of the other members of the Council and on its behalf requests the Director of the Agency to report accordingly.

## **Article 7**

### *Rights and duties of the Council members*

The member of the Council is entitled that through the Director of the Agency to request any information on the Agency's activity. This information shall be provided not later than 10 days from the day the request was made.

The member of the Council is obliged to:

- receive the consent of the Council for participation in his/her capacity as member in different activities outside of the Council and subsequently report to the Council on such activities;
- take positions in conformity with the acts of the Council when represents it in relations with third parties;
- apply and comply with well known and accepted ethical norms of communication and behaviours.

## **Article 8**

### *Ordinary Meetings*

The Chairperson decides on the date and time of ordinary meetings, unless otherwise decided by the Council.

The announcement for the conveyance of the meeting shall be sent at least 7 days before the meeting.

Any change on the date and time fixed for the ordinary meetings of the Council shall be announced to all its members in order for them to be acquainted with the details and reasons of those changes.

## **Article 9**

### *Extraordinary meeting*

Extraordinary meetings are convened by the Chairperson, unless this is requested in written by at least 1/3 of the Council members.

In the announcement of the extraordinary meeting are written the issues for which this meeting is called.

The announcement for calling extraordinary meetings shall be issued not later than 48 hours before the meeting

## **Article 10**

### *Agenda of the meeting*

The Chairperson decides on the agenda of all meetings. The agenda shall include the issues proposed by the members and those falling under the jurisdiction of the Council. The request for adding an issue to the agenda shall be made in writing, at least 5 days before the date fixed for the meeting.

The agenda shall be delivered to all members, at least 48 hours before the date and time fixed for the meeting.

### **Article 11**

#### *The taking/making of decisions in the Council*

The Council takes decisions only on issues that are included in the daily agenda of the meeting, with the exception of the cases when at least the 2/3 of the members decide to review and decide over those issues which are not included in the daily agenda.

### **Article 12**

#### *Public participation in the meetings*

The meetings of the Council are not open to the public except when requested by 2/3 of all the members of the Council.

As a rule, the Director of the Agency is always present in the meetings of the Council, except when 1/2 of the members decide otherwise.

When the meetings are openly held, the date, hour and place of the meeting shall be notified, in order that the notification of the interested parties is guaranteed. This notification shall be made at least 48 hours prior to the meeting's date.

### **Article 13**

#### *Quorum*

The meeting of the Council shall be valid when more than half of its members are present.

When at the opening of the meeting half of the members are not present, the Chairperson decides to call the meeting on another day, at least 48 hours after the first.

### **Article 14**

#### *Conflict of interests*

Members of the Council that have any legal impediment in relation with an issue of the meeting's agenda shall not be present during discussions and voting on that issue.

The Chairperson, his/her Deputy or any member of the Council shall not participate during the review of any issue on which they have a conflict of interest.

In general, conflict of interests shall mean a conflict between the duties as Council member and his/her own private interests that might wrongly influence during the accomplishment of his/her duties and responsibilities as a Council member.

### **Article 15**

#### *Form of voting*

Decisions of the Council are taken through open ballot.

The members of the Council present in the meeting and who do not have any legal impediment for voting, may not abstain from voting.

The Chairperson of the Council is the last to vote.

Decisions, which contain evaluations on the behaviour or qualities of an individual, are taken through secret ballot.

### **Article 16**

#### *The necessary majority to take decisions*

Decisions of the Council shall be taken by a majority of votes of the members, who are present at the meeting.

### **Article 17**

#### *Equality of votes*

When votes are equally divided and there was not a secret ballot, the vote of the Chairperson of the Council is decisive.

In case of a secret ballot in which the votes are equally divided, a second voting will take place. In the event, the second voting results in equality of votes, the decision will be postponed until the subsequent meeting. If even in the first voting of the subsequent meeting there is an equality of votes, then it shall be open ballot, except in those cases foreseen in the forth paragraph of article 15 of this act.

### **Article 18**

#### *The minutes of the meeting*

During every meeting, the minutes of everything that was said are kept, the date and the place of the meeting, the members that participated, the issues discussed, the decisions taken, as well as the form and the results of the voting.

The minutes are kept by an official of the unit assigned to be the Secretariat of the Council and are presented for approval to all members at the end of the meeting or in the beginning of the following meeting. After the approval the minutes are signed by the Chairperson and the official of the above unit.

In those cases when the Council itself deems it reasonable and the meeting is split in sessions, the minutes are approved immediately after the termination of the respective session.

Decisions of the Council enter into force only after the respective minutes are approved.

### **Article 19**

#### *Inclusion of "contra" votes in the minutes*

The members of the Council may request that the fact and the reasons of the contra vote over the decision issued by the Council be included in the minutes.

In cases when decisions shall be sent to the Kosovo Assembly, these decisions shall be accompanied with declarations of all members' votes.

## **CHAPTER III**

### **The Director and the administration of the Agency**

### **Article 20**

#### *Competencies of the Director*

The Agency operates as a unitary organ of the administration under the leadership of the Director. The Director of the Agency exercises his/her competencies according to

the UNMIK Regulation 2005/26 and within the limits of an executive chief of the Agency's activity.

The Director exercises all of the above competencies apart of those belonging to the Council based on the UNMIK Regulation 2005/26 and this act.

The Director leads and directs all the day to day activity of the Agency and the implementation of the main policies of work of the Agency as assigned by the Council.

Any administrative act or decisions of the Agency, except those of the Council are issued by the Director.

The Director has *mutatis mutandis* the competencies of a Chief Executive Officer.

### **Article 21**

#### *Employees of the Agency's administration*

Employees of the Agency's administration are civil servants. All rules pertaining to the rights and duties of the civil servants in Kosovo also apply to the employees of the Agency.

### **Article 22**

#### *Structure of the Agency's administration*

Structure of the Agency's administration (organizational chart) is prepared by the Director of the Agency within two months from the day the Agency starts its work.

This structure shall be approved by the Council of the Agency.

### **Article 23**

#### *Composition of the Agency's structure*

The Structure of the Agency shall contain:

- a) Division in units such as departments, divisions, sectors according to the standard structure approved for all the PISGs;
- b) Terms of reference for each unit described above;
- c) Number of civil servants for each unit;
- d) Job descriptions for each civil servant.

### **Article 24**

#### *Basic structure of the Agency*

The Agency is divided into the following departments:

- a) Department of General Administration;
- b) Department of Administrative Investigations, Cooperation with the Prosecutors Office and other institutions;
- c) Department for the Relations with the Public and Media;
- d) Department for the Supervision of Assets, Conflicts of Interest and Acceptance of Gifts.

Division into smaller units shall be done based on the competencies of each department and their workload. This division shall be made by a decision of the Director of the Agency after consultations with the Council.

One year after the establishment of this structure, the Agency shall undertake a functional review of it and reorganize if necessary.

#### **Article 25**

##### *Competencies of the Department of General Administration*

The Department of General Administration is responsible for:

- Budget preparation and formulation as well as implementation of the Agency's budget plan;
- Offering general administrative support to all the department of the Agency;
- Supporting the Agency with translation and secretarial services;
- Offering secretariat services to the Council of the Agency;
- Information and signature on the obligation to preserve official secrets according to article 44.2 of the UNMIK Regulation 2005/26;
- Creating a system for the protection of personal data according to the best European practices and preparing an internal regulation for this purpose which shall be approved by the Council;
- Creating an archive and preservation system according to article 46 of the UNMIK Regulation 2005/26;
- Offering logistics support including transport, storehouse, archive, mail services, inventory and manages the assets of the Agency;
- Management of human resources including management of personnel and planning of trainings;
- Provision and coordination of information technology services.
- Accomplishment of any other duties assigned by the Director of the Agency.

#### **Article 26**

##### *Competencies of the Department of Administrative Investigations, Cooperation with the Prosecutors Office and other institutions*

Department of Administrative Investigations, Cooperation with the Prosecutors Office and other institutions shall be responsible for:

- Undertaking administrative investigations;
- Collection of necessary information for the administrative investigations;
- Compiling a list of experts and their engagement on a case by case basis;
- Preparing the part on administrative investigations of the 6 months report for the Council;
- Preparing the part on administrative investigations of the annual report for the Assembly;
- Offering of legal services within the Agency and of legal advice for the elimination of the corruption causes in the public and private sector;
- Drafting of contracts and other legal advice;
- Representation of the Agency in relations with third parties and in the courts;
- Reviewing the Kosovan legislation from the point of view of the struggle against corruption;



- Accomplishment of any other duties assigned by the Director of the Agency.

#### **Article 27**

##### *Competencies of the Department for the Relations with the Public and Media*

The Department for the Relations with the Public and Media is responsible for:

- Serving as spokespersons of the Agency;
- Organizing media campaigns against corruption;
- Coordinating external (foreign) relations of the Agency;
- Cooperating with the Good Governance Office and the Government Working Group Against Corruption;
- Coordinating the preparation of the Government's anti-corruption strategy;
- Cooperation and interaction with the public, media and civil society in the promotion and prevention of corruption;
- Organizing national and international activities aiming at the prevention of corruption;
- Organization of training activities, related to the increase of the anti-corruption awareness, primarily for the public administration but also for the private parties;
- Compiling, editing and publishing of the reports that shall be prepared by the Agency;
- Accomplishment of any other duties assigned by the Director of the Agency.

#### **Article 28**

##### *Competencies of the Department for the Supervision of Assets, Conflicts of Interest and Acceptance of Gifts*

The Department for the Supervision of Assets, Conflicts of Interest and Acceptance of Gifts is responsible for:

- Implementing the competencies of the Agency in the area of conflicts of interest, acceptance of gifts and supervision of assets;
- Preparation of warnings to the official persons according to article 29.1 of the UNMIK Regulation 2005/26;
- Proposing the beginning of the dismissal procedure for the official persons by the competent body according to the article 29.2 of the UNMIK Regulation 2005/26;
- Publishing in the Official Gazette of Kosovo of those commercial entities, which because of their violations of UNMIK Regulation 2005/26 are excluded for a given period from the participation in public tenders within the territory of Kosovo;
- Preparing the format and content of standard gifts catalogue which are kept by the organs of public administration;
- Preparing the list of gifts that shall be under the preservation of the organs of public administration;
- Preparing the apposite module for the declaration of assets and which shall contain the information foreseen in articles 40 and 41 of the UNMIK Regulation 2005/26;

- Preparing the list and the type of evidence, which according to the article 41.3 of the UNMIK Regulation 2005/26, an official person has to put at the Agency's disposal;
- Preparing the warning for official persons in accordance with article 43.1 of the UNMIK Regulation 2005/26;
- Proposals for the beginning of the dismissal procedure of the official persons by the competent body in accordance with article 43.4 of the UNMIK Regulation 2005/26;
- Preparing the part on supervision of assets, conflicts of interest and acceptance of gifts of the 6 months report for the Council;
- Preparing the part on supervision of assets, conflicts of interest and acceptance of gifts of the annual report which shall be approved by the Assembly;
- Accomplishment of any other duties assigned by the Director of the Agency

## **CHAPTER IV**

### **Administrative investigations of the Agency**

#### **Article 29**

##### *Principle of objectivity*

In the course of an administrative investigation the Agency's officer that undertakes the investigation shall take into account all factors that are relevant to a particular case while giving each factor its proper weight.

#### **Article 30**

##### *Administrative investigation against a civil servant*

The Agency notifies the employer when receives information for any alleged violation from its civil servants.

As a rule, the administrative investigations with respect to disciplinary measures against a civil servant are undertaken by the employer.

When the employer does not start an administrative or when this investigation does not satisfy the Agency, the last may start its own independent investigation applying *mutatis mutandis* the rules set forward by the Administrative Direction 2003/2 and the Administrative Instruction No. MPS/DCSA 2003/4.

#### **Article 31**

##### *Verification of evidence*

In conformity with article 15 of the UNMIK Regulation 2005/26, the Agency requests and reviews all necessary facts for taking the final decision, using for this purpose all types of evidence allowed by law.

Subjects mentioned in article 15 of the UNMIK Regulation 2005/26 as well as interested parties in this administrative investigation may submit information and/or documents also in a verbal form in any phase during period of the administrative investigation.

Subjects mentioned in article 15 of the UNMIK Regulation 2005/26 may refuse the collaboration contemplated in this article, if it causes violation of professional secrecy or divulcation of data, the knowledge of which is prohibited by law.

**Article 32**  
*Onus of Proof*

The onus of proof for the facts claimed rests on the Agency and other organs of public administration included or interested in this administrative investigation.  
The Agency may also request the competent organ of public administration to take the necessary measures for ensuring the use in of evidence possessed by the organ itself in the course of administrative investigations.

**Article 34**  
*Expenses of securing evidence*

Expenses resulting as a consequence of actions undertaken by the administration for securing evidence other than that possessed by it shall be covered by the budget of the Agency.

**Article 35**  
*Engagement of experts*

In the course of administrative investigations, examinations, reports, evaluations and other similar measures shall be undertaken only by specialised experts (one of more) or the specialised organs of administration themselves.  
Experts are persons that because of their professional knowledge are called upon by the Agency to undertake acts of expertise on events or documents related to the administrative investigation.  
Whenever the Agency appoints experts, the party under investigation may also appoint its experts in the same number as those of the Agency.  
Modalities of experts' selection and remuneration shall be carried out in conformity with Administrative Instruction .....

**Article 36**  
*Right to be heard*

During and after the termination of the administrative investigation, parties under investigation shall have the right to express themselves  
The Agency decides case by case if the parties under investigation shall express themselves in writing or verbally, granting them a reasonable deadline. .

**Article 37**  
*Report of the Agency on the administrative investigation*

After the completion of the administrative investigation, the Agency prepares a report including the claims of the parties under investigation and interested parties, summarizing the history of the proceeding and formulating a preliminary opinion about the final decision, summarizing legal and factual reasons, which, according to its assessment, justify the decision.

**Article 38**  
*Final decision*

In the final decision, the Agency decides regarding all issues raised during the development of the administrative investigation.

The final decision takes the form of the implementation of one or more of the competencies put forward by article 23 of the UNMIK Regulation 2005/26.

**Article 39**  
*General time limits for the termination of the administrative investigation*

Regardless of the origin of the motion starting the administrative investigation, the investigation terminates within a time period of three months, except in cases when its postponement is imposed by extraordinary circumstances.

In cases of an extraordinary circumstance, the administrative investigation terminates within three months after the end of the extraordinary circumstance.

The failure to respect time limits given in paragraph 1 of this article shall be justified by the Director of the Agency to the Council, within 10 days from the end of the three-month time limit or the end of the extraordinary circumstance.

**CHAPTER V**  
**Final provisions**

**Article 40**  
*Amendment of this act*

The amendment of this act may be proposed by any member of the Council or by the Director of the Agency.

The proposed amendments shall be deposited in written, including an explanatory note, at least 1 month before their review in the Council.

**Article 41**  
*Application of general legal and secondary provisions*

On matters that are not specifically regulated by this act and that are related to the activity of the Agency shall be applied *mutatis mutandis* general legal and secondary provisions in force in Kosovo.

**Article 42**  
*Entering into force*

This act enters into force 15 days after its publication in the Official Gazette.