

CONCEPT DOCUMENT FOR THE AREA OF ANTI-CORRUPTION AGENCY AND FOR DECLARATION AND THE ORIGIN OF PROPERTY

Chapter 1: Introduction

In the framework of 2017 Government's Annual Plan, the part of the Ministry of Justice (Table B, Objective Nr. 1, 1.2) is envisioned development of the Concept Document about the work of the Anti-Corruption Agency and for declaration and origin of assets. This is also envisioned in the National Program for Implementation of the Stabilization and Association Agreement.

Corruption is one of the main obstacles to the path of sustainable political, economic and social development of a state. In the global index rankings, regarding the perception of corruption in the countries of Europe and the Western Balkans, Kosovo is ranked in an unfavourable position with 36 points and is now ranked 95th out of 176 countries. Therefore, it is in the interest of Kosovo to improve its image in the fight against corruption and the prevention of corruption.

The prevention and combating corruption is an obligation deriving from Kosovo's membership in international organizations for the fight against corruption, as stipulated by the United Nations Conventions against Corruption, Council of Europe's Criminal Law Convention Against Corruption, Council of Europe's Civil Law Convention Against Corruption, and other standards against corruption.

In addition to the legal basis, in February 2013 Kosovo Parliament adopted the Anti-Corruption Strategy as well as the Action Plan 2013-2017. Currently, the Agency is working on drafting the new National Anti-Corruption Strategy and Action Plan for the period 2018-2022. Although the current legal framework is considered good in bringing tangible results in this area, there are issues that require better adjustment in order to prevent and combat corruption.

The Strategy for Assistance in the Section of Rule of Law in Kosovo 2016-2019, Objective 10.2. (Strategic Objective) defines the improvement of the prevention and combating organized crime and corruption, including trafficking in humans and narcotics, economic crime and money laundering, arms smuggling, cybercrime and terrorism. Prevention and fight against organized crime, corruption and other serious crimes is also foreseen on page 85 of this strategy.

Chapter 2: Description and definition of the main issue/problem

Since its functionalization, all the cases that the ACA has investigated, found evidence beyond reasonable suspicious ground and has acted according to its competences. So far has brought forward to the competent authorities the total of 718 cases. ACA has addressed the largest number of criminal charges compared to previous years. This is why the Criminal Code of Kosovo (entered into force in early 2013) foresaw as a criminal offense the "non declaration of the property" and "false declaration of assets".

The legal framework under which the Agency has fulfilled its mandate is: Law no. 03/L-159 on the Anti-Corruption Agency, Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons, Law no. 04/L-228 on Amending and Supplementing the Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons, (which entered into force in 2014); Law no. 04/L-051 on the Prevention of Conflict of Interest in Discharge of Public Function. The existing secondary legislation is not supplemented and amended.

Currently, most of ACA's work is based and functions through monitoring and reporting system that is not developed sufficiently. Without gathering and systematically handling information, it would be impossible for ACA to identify, understand and act on corruption risks and to know if the set rules and standards are adequate and sufficient, and whether their compliance is effective. For this reason, this amendment of the law emphasizes the necessity that the collection of information and production of analysis on trends and areas of risk to be at the centre of the ACA's mission.

ACA has established a network of contact persons in various administrations to collect declarations of property of officials from these institutions, bodies, offices and agencies. Although this integrity network can be useful to the Agency and its preventive work (if these individuals have the necessary financial and legal conditions to act as ethics officers in their services), the general collection procedure, processing and analyzing the content of these declarations is still in its beginnings and not stable, as it is required.

Despite the achieved progress so far, Kosovo, like other countries in the region, continues to face difficulties in the Rule of Law section, respectively with significant shortcomings in the judicial system, internal affairs and access to justice.

Various international reports (Kosovo Technical Documents of the Project against Economic Crime in Kosovo (PECK II) and Kosovo Progress Reports from the European Commission) and national strategic documents highlight the need for

state proactive commitment to improve the efficiency of the police, prosecution and judiciary in general, particularly in preventing and combating corruption and organized crime.

Bearing in mind that socio-political and economic development, relations with the EU and Kosovo's international image are fundamentally influenced by progress in the area of Rule of Law. The Government of the Republic of Kosovo, with the assistance of the EU and other international partners has engaged important steps in reforming and strengthening the Rule of Law section in its entirety.

Although, in general, Kosovo has sufficient elements set in the legal framework for preventing and combating corruption, as there are relevant institutions, in the practical aspect the fight against corruption and organized crime of all kinds continues to be a challenge for the authorities of Kosovo. This issue needs to be viewed from two aspects, as far as internal combat of institutions is concerned, the internal mechanisms of the respective institutions needs to be strengthened. On the other hand, by assuming responsibilities exercised by EULEX, there is an increased need among other things, for the further professionalisation of judges and prosecutors. Poor results in preventing and combating corruption have three main reasons: First, because this strategy lacks the mandatory mechanism that would force the institutions to assume their responsibilities; second, because the institutional organization remains complex to address this complex domain; and third, because there has been lack of ownership by all actors responsible for implementing this strategy.

Based on the annual report data, it is noticed that joint efforts of the justice system and other mechanisms for combating corruption are needed in order to build a strong institutional system that produces concrete results in the fight against corruption and ultimately establishes and increases confidence among citizens.

Despite this political and social awareness, with the ultimate goal of modernizing governance in the country, Kosovo is committed to engage in uncompromising fight and zero tolerance against corruption by giving this public policy the deserved priority.

Although some progress has been made in the area of the fight against corruption, it continues to be a concern for all institutions of the Republic of Kosovo. Despite the commitment to greater engagement to create a social environment free from the impact of corruption, however, yet the results cannot be considered satisfactory. Kosovo authorities have set clear priorities for the implementation of legislation aimed at combating and preventing corruption, promoting transparency and strengthening institutional integrity.

Procedures for collecting, processing and reviewing asset declarations have been analyzed and implementation deficiencies have been observed. ACA has established a network of contact persons in various administrations to collect assets

declarations of officials of these institutions, bodies, offices and agencies. Although this integrity network can be useful to the Agency and its preventive work, the overall procedure for collecting, processing and analyzing the content of these declarations is still in its stride. In this regard, there is a lack of internal acts related to the work of the contacting officers and the proper distribution of instructions for filling the declaration of assets by the contacting officers and the distribution of these forms to senior officials. In addition, currently, convictions for non-declaration are criminal and pose a challenge to practical enforcement.

According to the Criminal Code of the Republic of Kosovo, which entered into force in January 2013, the failure to declare the assets or false declarations in ACA and conflict of interest are qualified as criminal acts.

ACA can control changes and patterns in the reported of senior public officials; but it cannot investigate the probable criminal origin of unjustified assets (this is the State Prosecutor's competency) or property-related issues with respect to certain assets (this falls under the mandate of the Financial Intelligence Unit). However, while controlling the validity of the declaration of assets, the Agency may compare assets and assets reported, taking into account the evidence from complaints, news, and inheritance information made available to the ACA by other ongoing investigations.

The same happens with the monitoring of gifts. Majority of its inefficiency results from legal gaps in law. ACA should not monitor the lists of gifts received from various public institutions, bodies, offices and agencies. Instead, the ACA should help their top managers to set up public compliance systems and clear procedures for reporting and handling public officials' gifts. By acting like this, the ACA can offer a gift management model (to be tailored to the specifics of each body), a handbook on how to design and apply a gift-handling register, and provide training on why it is important to establish these internal compliance procedures and how things should be done.

Failure to impose proportional sanctions on the declaration of assets of senior public officials has been a challenge during this period. Therefore, it is recommended to change the form and way of sanctioning. In this regard, there should be scaling of convictions or finding other methods of sanctioning of senior public officials and other officials. The draft law also focuses on the definition of senior public officials. Lack of clear provisions regulating the treatment of the origin of property of senior public officials.

In this context, the drafting of the new law or amending and supplementing the Law no. 03/L-159 on the Anti-Corruption Agency and drafting of the new law or amending and supplementing the Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons, and Law no. Law no. 04/L-228 on Amending and Supplementing the Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all

Official Persons is seen as an urgent task because it has as a fundamental objective the progressive and sustainable reduction of corruption, Strengthening institutional integrity and promoting good governance values.

- Law No. 03/L-159 on the Anti-Corruption Agency was approved by the Assembly on 29.12.2009, and was promulgated by the Decree of the President of the Republic of Kosovo No. DL-006-2010, dated 19.01.2010.
- Law No. 04/L-050 Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons - The Law was approved in the Assembly on 31.08.2011 and was promulgated by Decree of the President of the Republic of Kosovo No. DL-028-2011, date 31.08.2011
- Law No. 04/L-228 on Amending and Supplementing the Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons - The Law was approved by the Assembly on 20.03.2014 and was promulgated by the Decree of the President of the Republic Of Kosovo No. DL-013-2014, dated 07.04.2014.

During the implementation of the Laws concerned, it has been noted that there are some legal gaps and the law is not drafted in full harmony with the relevant national legislation and European and international standards.

Current policy

The Anti-Corruption Agency (ACA) is an independent institution established in July 2006 and started functioning on 12 February 2007. The Agency is an independent and specialized body for implementing state policies for combating and preventing corruption in Kosovo.

The current anti-corruption legislation, on the basis of which ACA also carries out its activities, envisages anti-corruption measures within the scope of the Anti-Corruption Strategy and Action Plan, particularly in the area of preliminary investigation of corruption, analysis and elimination of causes of corruption, the incompatibility between holding public positions and performing profit activities for official persons, restrictions on the acceptance of gifts related to the performance of official duty, the oversight of their assets as well as of persons related to them and the restrictions related with contracting entities that participate in public tenders.

By amending and supplementing this law, it is required to strengthen the role of the Agency in criminal and administrative investigations. In addition, the level of cooperation will be increased and the manner of communication with local institutions will be regulated, such as: Prosecution, Police, TAK, KBRA, MoF, Kosovo Customs, Auditor's Office, Banks, Cadastral Agency, FIU, ACR etc. The agency through law-amendments seeks to engage more in the area of education, cooperation and media relations and civil society and engagement in the area of international cooperation. As a result, the Agency seeks to obtain additional powers in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and the prevention of corruption in public procurement activities.

In institutional aspect, Kosovo has established the Anti-Corruption Agency (ACA) in 2006. ACA is an independent and specialized body for implementing state policies for combating and preventing corruption in Kosovo. In the framework of efforts to prevent and combat corruption, in February 2012, the Kosovo President established the National Anti-Corruption Council. The purpose of the establishment of this Council is to improve coordination and raise awareness among all bodies and institutions involved in the fight against corruption.

In order to increase the efforts to prevent and combat corruption, on 26 February 2010, with the decision of the Government, within the Special Prosecution Office of Kosovo, an Anti-Corruption Task Force was established, consisting of prosecutors (from Kosovo and EULEX) and Police investigators. The purpose of establishing this Task Force is to investigate economic and financial crime. Meanwhile, within this mechanism, Kosovo Police has also established a Directorate against Economic Crime and Corruption.

Within the Kosovo Police, the Directorate for Investigation of Economic Crimes and Corruption (DIECC), that is in charge of dealing with economic, financial and corruption crimes.

The Kosovo Prosecution conducts the criminal investigation procedure for cases that ACA proceeds to the Prosecutor for further prosecution.

The Court examines and decides on charges for corruption filed by the Prosecution.

While other institutions assist the ACA in providing information regarding the conduct of the pre-trial investigation procedure and realization of full control of the declaration of assets of senior public officials.

The amendment and supplement of the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons is necessary in order to further align this law with the relevant national legislation and best European Union and international practices. Furthermore, this amendment is in full harmony with the fulfilment of the obligations of Kosovo institutions in relation to the Stabilization and Association Agreement signed between Kosovo and the EU.

LEGAL FRAMEWORK:

APPROVED LAWS

The basic legal framework under which the Agency exercises its legal mandate are the following acts but not limited to:

Law No. 03/L-159 on Anti-Corruption Agency.

This law defines the status and responsibilities of the ACA in the area of combating and preventing corruption, particularly in the area of reporting, detection and investigation of corruption, implementation of the Strategy and Action Plan against Corruption.

Law no. 04/L-050 on the Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Officials and Law no. 04/L-228 on Amending and Supplementing the Law no. 04/L-050

This law defines the obligations of senior public officials to declare their property, income and origin, the duty of the ACA to control the declaration and control of assets as well as the obligations of all officials to declare the gifts and their origin.

Law no. 04 / L-051 on the Prevention of Conflict of Interest in Exercising Public Function

The purpose of this law is to prevent the conflict of interest between the public interest and private interest of senior officials in exercising public function.

INSTRUCTIONS/REGULATIONS APPROVED BY ACA ARE:

Regulation no. 01/2014 on Rules and Procedures of Anti-Corruption Agency

This Regulation defines the conduct of work, the rules for the organization and functioning of the work in the Anti-Corruption Agency (hereinafter: the Agency)

Regulation No. 01/2013 on Internal Organization and Systematization of Jobs in the Anti-Corruption Agency

This regulation sets out the principles and rules for the organization, functioning, and management of the ACA archive

Regulation No. 02/2014 on the Organization, Functioning and Management of the Archive of the Anti-Corruption Agency

This Regulation sets out the procedures and principles for internal organization and systematization of jobs in the Anti-Corruption Agency, organizational structure and division of work within the organizational structure between workplaces.

Code No. 03/2013 on Ethics for the employees of the Anti-Corruption Agency

This code is aimed to establish rules of conduct for the employees of the Agency, in the exercising their duties in the Agency and externally, the promotion and protection of their status as well as the regulation of rights and obligations in relation to institutions and the public in accordance with the legislation in force.

Current Expenditures:

Amendment and Supplement of the Law no. 04/L-050 on the Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Officials does not have additional financial **costs** and as a result it may be concluded that there are no financial implications.

Expense category	Factual expenses in the previous year	Budget of this year	MTEF for next year
Agency Budget: (mark each type of expenditure)	503,074.00	503,074.00	503,074.00
Other Budgets: (mark each type of expenditure)	-	-	-
Funding from donors	-	-	-
Direct Expenditures by the Ministry of Finance	-	-	-

Below are presented the financing and evaluation trends in the last 3 years. It is also foreseen for 2018.

Anti-Corruption Agency	2014 current	2015 budget	2016 Evaluation	2017 Evaluation	2018 Evaluation
Total	453,079.07	503,074.00	503,074.00	503,074.00	503,074.00
Nr. of employees	40	40	40	40	40
Wages and salaries	340,202.41	340,477.00	340,477.00	340,477.00	340,477.00
Goods and Services	109,288.42	154,097.00	154,097.00	154,097.00	154,097.00
Utility expenses	3,588.24	8,500.00	8,500.00	8,500.00	8,500.00
Funding Resources:	453,079.07	503,074.00	503,074.00	503,074.00	503,074.00
Government grants	453,079.07	503,074.00	503,074.00	503,074.00	503,074.00
Financing from loans	-	-	-	-	-
Donor grants	101,994.01	70,641.00	-	-	-
Own Source Revenues	-	-	-	-	-

Table: Financing Trends 2014-2015 and evaluations 2016-2018

Experience in other countries

At European level, the Council of Europe, through Recommendation Nr. R (2000) 10 of the Committee of Ministers on the Code of Conduct of Public Officials (Article 14) and the mechanisms and practice developed by the Group of States Against Corruption (GRECO) set a standard that has been developed since 2000. At EU level there is no proper act or *acquis communautaire* for the declaration of assets. However, in more general terms and with reference to Copenhagen criteria, the EU has asked candidate states and others that benefit assistance to take into consideration international standards and practices for combating corruption, including declarations of assets. Declaration of assets has become *de facto* standard primarily for the EU and more against the candidate countries.

The United Nations Convention against Corruption (adopted in 2003 and ratified by 181 parties) develops this standard in Article 8.

Currently, 161 countries have established a system of declaration of assets of public officials.

Croatia

Croatia has made considerable efforts to improve the anti-corruption framework, although implementation has still to demonstrate sustainable results. In the field of law enforcement Croatia has centralized the fight against corruption under one organization, the Office for the Suppression of Corruption and Organized Crime, with a broad political mandate to investigate, prosecute and prevent corruption based on its establishing legislation.

The competencies for investigating corruption in Croatia are shared by the Office for the Suppression of Corruption and Organized Crime (USKOK) and a specialized unit within the police, the National Police Office for Suppression of Corruption and Organized Crime (PNUSKOK). The two law enforcement bodies are well equipped to carry out effective investigations, and have developed a good track record of investigations into allegations of high-level corruption. The Office for the Suppression of Corruption and Organized Crime enjoys a broad mandate to investigate, prosecute and prevent corruption and organized crime. It is also responsible for international cooperation and exchange of information in complex investigations. USKOK's focus is on middle and high-level corruption cases, with petty corruption cases being investigated and prosecuted by regular prosecutors.

Other anti-corruption bodies include the Anti-Money Laundering Department; the State Audit Office; the Tax Administration and the Customs Department within the Ministry of Finance; Office for Public Procurements; the Commission for Prevention

of Conflict of Interest in Performing Public Duties; and the Independent Anti-Corruption Sector in the Ministry of Justice.

The National Council for Monitoring the Anti-Corruption Strategy is a special parliamentary committee with the purpose of coordinating the implementation of the Anti-Corruption Strategy and Action Plan. This Council is charged with evaluating corruption risks and proposing and designing preventative measures. Special court departments were established in four county courts. These courts have subject matter and territorial jurisdiction of criminal cases under USKOK's competence. These special courts only deal with middle and high-level corruption and organized crime related cases.

Montenegro

Following the establishment of Agency for Prevention of Corruption in January 2016, the institutional anti-corruption framework unified and strengthened anti-corruption efforts in Montenegro. The Agency took over the responsibilities of the Directorate for Anti-Corruption Initiative and Commission for Prevention of Conflict of Interest.

The Agency is responsible for implementation of measures for prevention of conflict of public and private interest, restrictions in the exercise of public functions, collecting and checking the reports on assets and income of public officials, receiving and acting upon whistleblower reports, protecting whistleblowers, and other issues of importance to the prevention and suppression of corruption, in accordance with the Law on Prevention of Corruption. The Agency is also responsible for implementation of the Law on financing of political entities and election campaigns and the Law on Lobbying. It also gives opinion on draft laws and conducts research in the field of anti-corruption. The Agency is an independent and autonomous body.

The main investigative anti-corruption bodies are the Department for the Fight against Organized Crime and Corruption within the Criminal Police Sector of the Police Directorate and the Administration for Prevention of Money Laundering and Terrorism Financing.

Albania

In Albania, there is no centralized main agency responsible for anti-corruption, however the institution of the National Coordinator for Anti-corruption was established to coordinate the anti-corruption activities of the Government and independent institutions at the central and local level. Furthermore a network of focal points was established in all line ministries and independent institutions, which will monitor and guide the relevant officials in the implementation of the Anti-Corruption Strategy and report to the National Anti-Corruption Coordinator.

The main preventive anti-corruption bodies in Albania are the Anti-Corruption Task Force and the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests. The Anti-Corruption Task Force was created as a political body at ministerial level and it is mainly responsible for defining strategic objectives, priorities and measures in the fight against corruption and also for ensuring consistency between anti-corruption entities and policies within the different ministries. HIDAA has been established as an independent body in charge of collecting assets declaration and identifying cases of conflict of interest regarding public officials.

Regarding the investigation attributions, these activities are performed by the Prosecutor's Office for Serious Crimes and the General Directorate of the State Police within Ministry of Internal Affairs. As part of the country's anti-corruption efforts, on September 2014 it was created a new body called the Section on Corruption and Assets Investigation at Serious Crime Prosecution Office which aims to investigate the cases of corruption of judges, prosecutors and senior officials.

Bosnia

Several agencies in Bosnia and Herzegovina specifically work on anti-corruption, and responsibilities are divided among various ministries, agencies and offices.

The competencies for investigating and prosecuting corruption are shared by the State Investigation and Protection Agency (SIPA) and the Special Department for Organized Crime, Economic Crime and Corruption within the Prosecutor's Office of Bosnia and Herzegovina. The Ministry of Security and in particular the State Investigation and Protection Agency may be considered the strongest mechanisms available to coordinate anti-corruption efforts in Bosnia and Herzegovina.

SIPA is a state-level, internationally supported anti-corruption agency in charge of collecting and processing information of interest for the implementation of international laws and BiH criminal codes. SIPA's Criminal Investigation Department and its Financial Intelligence Department are responsible for the prevention, detection and investigation of criminal offences that fall under the jurisdiction of the Court of BiH.

Prevention, education and coordination of anti-corruption activities, including the analysis of corruption trends, development of anti-corruption policies and monitoring of their implementation are the main responsibilities of the Agency for the Prevention of Corruption and Coordination of the Fight against Corruption, which is an independent body that reports to parliament.

Bulgaria

Bulgaria has a broad framework of institutions specialized in fighting corruption. As part of the country's efforts to curb corruption and enhance public confidence in

public institutions in general and in the judiciary in particular the government established the State Agency for Public Security. It is the main specialized unit which investigates and prosecutes corruption-related crimes committed in the country involving senior public officials.

The competencies for investigating and prosecuting corruption are shared by the State Agency for National Security, the Internal Security Directorate within the Ministry of Interior and the Prosecutor's Office. Low-level corruption is investigated by the ordinary police under the supervision of the Ministry of Interior.

Bulgaria established a specialized court to deal with crimes committed by organized criminal groups, including corruption related crimes. However, the country still does not have a dedicated court to deal specifically with corruption offences. The Center for Prevention and Countering Corruption and Organized Crime is an anti-corruption body assigned to support all institutions dealing with actions vulnerable to corruption in Bulgaria. It collects and registers information from all domains sensitive to corruption, evaluates the data and elaborates Weak Points of Corruption and Organized Crime using complex analyses. It has an analytic and a consultative function developing System Secure Solution Models on demand.

The main institution responsible for implementation and coordination of anti-corruption policies is the Commission on Prevention and Combating of Corruption.

Serbia

Several agencies in Serbia specifically work on anti-corruption; however, the main responsibilities in fighting and preventing corruption are shared by Serbia's Anti-corruption Agency, the Anti-corruption Council and the Prosecutor's Office for Organized Crime.

Serbia's Anti-corruption Agency is a dedicated corruption prevention body established as an autonomous and independent body. It coordinates national anti-corruption strategy and has a range of other preventive functions, including integrity plans in public administration and control of financing of political parties. The Anti-corruption Agency is accountable to the Serbian National Assembly, to which it reports annually on the operations of the Agency, as well as on the status of the implementation of the National Anti-corruption Strategy and the Action Plans.

The main investigative and prosecutorial body dealing with corruption cases is the Prosecutor's Office for Organized Crime. The Anti-corruption Council acts as an advisory body to the government. Its mission is to propose measures to be taken in order to fight corruption effectively, to monitor their implementation, and to make proposals for regulations and programs in this area.

The Republic Commission for Protection of Right in the Public Procurement Procedure provides checks and balances over the regularity of the public procurement process. The Special Department for Organized Crime within High Court in Belgrade has been established to deal with crimes committed by organized criminal groups, including corruption-related crimes.

When drafting new laws, special attention will be paid to the following articles:

- United Nations Convention against Corruption (Articles 7, 8, 10, 21, 30)
- European convention on human rights (article 8),
- Council of Europe convention for the protection of individuals with regard to automatic processing of personal data
- Criminal law convention on corruption (ets 173)
- Civil law convention on corruption (ets 174)
- Resolution (97) 24 concerning twenty guiding principles on the combat against corruption
- Resolution (2000)10e 11 may 2000 on codes of conduct for public officials
- Resolution (2003)4 of the committee of ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns
- Resolution (2014)7 of the committee of ministers to member states on the protection of whistleblowers

Chapter 3: Goals and Objectives

Goal

The overall goal of this concept paper is to strengthen the role of the Agency in combating and preventing corruption.

In addition, it is aimed at:

- development of "zero tolerance" approach to corruption;
- building integrity, accountability and transparency in the work of the public administration bodies and strengthening the trust of citizens in public institutions;
- improving legislation and strengthening institutional capacities for preventing and combating corruption;
- awareness and education of the general public in the area of anti-corruption;
- development of a five-year Strategy and Strategic Plan for the needs of the Agency in the area of Human Resources related to: the establishment and development of professional capacities of the Agency staff;

- advancement of staff in relation to the conduct of preliminary investigation procedure, handling of conflict of interest cases, declaration of assets, acceptance of gifts, especially after their incrimination in the Criminal Code.

This policy aims to increase cooperation with the institutional mechanisms responsible for preventing and combating corruption in Kosovo, and developing a Communication and Public Relations Strategy. The Agency, through the amendment of these laws, seeks to engage more in the area of education, cooperation with media and civil society organizations and in the area of international cooperation. As a result, the Agency requests that it obtain additional powers in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and the prevention of corruption in the public procurement activities.

Chapter 4: Options

Option 1: Status quo option (no change)

Non-change of policy/law would enable the continuation of the challenges already identified in this concept paper. The Law on the Anti-Corruption Agency and the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons will continue to cover all legal gaps identified so far during the implementation of them. ACA will continue to have difficulties in realizing its mission in combating and preventing corruption in Kosovo.

Option 2: Changing existing policy

Existing policy can be changed with the adoption of the Law on the Anti-Corruption Agency and the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons.

The amendment of these laws enables the ACA to acquire additional competencies in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and the prevention of corruption in activities of public procurement, as well as any additional competencies that have been discussed in the roundtables and are presented in various technical documents.

By changing this policy, among other things, it will be specified the verification and origin of assets of senior public officials; the list of senior public officials will be

better defined; the declaration of assets will be regulated digitally - online (e-declarations); the value of declared assets will be adjusted, etc. In addition, the Agency, through the change of existing policy, will further engage in the area of education, cooperation with media and civil society organizations and in the area of international cooperation.

Also, it will be arranged the sanctioning policies and finding additional ways of sanctioning senior public officials - suspension of salary for several months, fine with the possibility of sanctioning with imprisonment, dismissal from duty, etc. .

The ACA will further develop its preventive capacity, while retaining the powers of preliminary administrative investigations to the minimum that requires clear separation and clarification. Some investigative capacities are needed to verify the content of property declarations of senior officials and to gather evidence supporting risk analysis in some sectors sensitive to corruption and activities such as public procurement, privatization, licensing, etc.

With the change of existing policy, the laws in question will be harmonized with the applicable legal provisions in force in the country and with EU practices, European Conventions and International Standards.

Also, Kosovo would provide the same protection to other countries in the region and the EU in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and preventing corruption in public procurement activities, as well as any other additional competencies. Moreover, it would facilitate the process of the Stabilization and Association Agreement between Kosovo and the EU and would have a positive impact on the fulfilment of requirements regarding law enforcement and legal order in Kosovo.

Responsible for enforcement of policy/law will be the Anti-Corruption Agency. In this context, this will require more training and staffing. Trainings are needed to build the capacity of professional staff and support staff in implementing this policy. To perform the jobs in a qualitative manner and to be effective and efficient, sufficient staff should be available.

Citizens' awareness of ACA responsibilities and activities is done through the applicable information tools (ACA web site, brochures, and electronic, written and other means).

Option 3: Changing the existing implementation approach

Changing the existing implementation approach as an alternative does not coincide with the goal of strengthening the role of the Agency. Changing the existing approach is very difficult to do considering that existing laws have not clearly

defined the regulation and definition of the functions, duties and responsibilities of the ACA.

Therefore, the third option would be significantly more complicated and would not provide a solution.

Chapter 5: Summary of options

Key features	Option 1	Option 2	Option 3
Main features of the option.	Status quo	New special laws	Changing the existing approach
Segment of population/Sector/Targeted region	All official persons	All official persons	All official persons
Characteristics of implementation - who is responsible - a government resource (which one), private sector, citizens.	ACA and all relevant institutions	ACA and all relevant institutions	ACA and all relevant institutions
Administration or implementation of the program or service	N/A	N/A	N/A
Laws, sub-legal acts, amendments to existing laws as well as enforcement and convictions.	<ul style="list-style-type: none"> • Law no. 03/L-159 on the Anti-Corruption Agency, • Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons Law no. 04 / L-228 for <ol style="list-style-type: none"> 1. Regulation no. 01/2014 of Rules and Procedure of the Anti-Corruption Agency 2. Regulation No. 01/2013 on Internal Organization and Systematization of Jobs in the Anti- 	<ul style="list-style-type: none"> Law on the Anti-Corruption Agency, and Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons 	<ul style="list-style-type: none"> • Law no. 03/L-159 on the Anti-Corruption Agency, • Law no. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Officials, Law no. 04 / L-228 for <ol style="list-style-type: none"> 1. Regulation no. 01/2014 of Rules and Procedure of the Anti-Corruption Agency 2. Regulation No. 01/2013 on Internal Organization and Systematization of Jobs in the Anti-

	Corruption Agency 3. Regulation No.02 / 2014 on the Organization, Functioning and Management of the Archive of the Anti- Corruption Agency		Corruption Agency 3. Regulation No.02 / 2014 on the Organization, Functioning and Management of the Archive of the Anti- Corruption Agency
Economic stimulations or non-stimulations - subsidies or taxes.	N/A	N/A	N/A
Education and communication campaigns.	-	There will be a need for awareness campaign	-
Instructions and Codes.	-	After adoption of the law, there will be a need for drafting sub-legal acts	-
Timelines - when the option enters into force.	-	2018	-

Chapter 6: Analysis of Options

Benefits

Option (1) one

Change of existing policy would enable overcoming the challenges already identified in this concept paper. The adoption of the Law on the Anti-Corruption Agency and the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons will cover all legal gaps identified so far during the implementation of them. ACA will have easier the implementation of its mission in combating and preventing corruption in Kosovo.

Option (2) two

Amending the Law on the Anti-Corruption Agency and the Law on Declaration, Origin and Control of Assets of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons enables the ACA to acquire additional competencies in the areas related to the investigation and preventing corruption, origin and control of property and gifts, preventing the conflict of interest of senior public officials and preventing corruption in public procurement activities, as well as any additional competencies that have been discussed in the round tables and are presented in different technical documents.

Through the amendment of these laws, the verification and the origin of the assets of senior public officials are specified; the list of senior public officials will be better

defined; the declaration of assets will be regulated digitally - online (e-declarations); the value of declared property will be adjusted, etc. In addition, the Agency, through the change of existing policy, will further engage in the area of education, cooperation with media and civil society organizations and engagement in the area of international cooperation.

Also, it will be regulated the sanctioning politics and the finding of additional ways of sanctioning senior public officials - suspension of salary for several months, fine with the possibility of sanctioning with imprisonment, dismissal from duty, etc. .

ACA will further develop its preventive capacity, while retaining the powers of preliminary administrative investigations to the minimum that requires clear separation and clarification. Some investigative capacities are needed to verify the content of declaration of assets of senior officials and to gather evidence supporting risk analyzes in some sectors sensitive to corruption and activities such as public procurement, privatization, licensing, etc.

With the change of existing policy, the laws in question will be harmonized with the applicable legal provisions in force in the country and with EU practices, European Conventions and International Standards.

Also, Kosovo would provide the same protection to other countries in the region and the EU in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and preventing corruption in public procurement activities, as well as any other additional competencies. Moreover, it would facilitate the process of the Stabilization and Association Agreement between Kosovo and the EU and would have a positive impact on the fulfilment of requirements regarding law enforcement and legal order in Kosovo.

Responsible for enforcement of policy/law will be the Anti-Corruption Agency. In this context, this will require more training and staffing. Trainings are needed to build the capacity of professional staff and support staff in implementing this policy. To perform the jobs in a qualitative manner and to be effective and efficient, sufficient staff should be available.

Citizens' awareness of ACA responsibilities and activities is done through the applicable information tools (ACA web site, brochures, and electronic, written and other means).

Option (3) three

The benefits of this option are approximately the same as the benefits of Option 2 but the ways and procedures of execution are longer and more complicated. Changing the existing implementation approach as an alternative does not coincide with the goal of strengthening the role of the Agency. Changing the existing approach is very difficult to do, considering that existing laws have not clearly define the regulation and definition of the functions, duties and responsibilities of the ACA.

Therefore, the third option would be significantly more complicated and would not provide a solution.

Negative consequences:

Option (1) one

Failure to amend and supplement the law would maintain the status quo. With the non-amendment of the law there will not be harmonization with the applicable legal provisions in force in the country and with EU practices, European Conventions and International Standards.

Failure to adopt a new law means not clearly defining the role of ACA in relation to the Initiative of Monitoring Integrity Plan of all institutions that are obliged to adopt such a plan.

Moreover, it would leave aside empowering the role of the Agency in criminal and administrative investigations. In addition, it would further reduce the level of cooperation and the way of communication with local institutions such as Prosecution, Police, TAK, MoF, Kosovo Customs, Auditor's Office, Banks, etc. Therefore, this law is a fundamental legal framework for issuing other sub-legal acts related to the Organizational Structure - Internal Regulation on the Organization and Systematization of Jobs in the Anti-Corruption Agency

Sanctioning/punitive measures will continue to be unclear, just as the term 'senior public official' does not include all senior public officials and will continue to include some that should not be qualified as senior public officials.

Furthermore, Kosovo would not provide the same protection to other countries in the region and the EU in the area of Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons and it would hinder the process of the Stabilization and Association Agreement between Kosovo and the EU.

Option (2) two

Failure to adopt this law means abandoning the additional competencies required by the ACA in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of conflicts of interest of senior public officials and the prevention of corruption in public procurement activities.

Failure to approve the amendment of Law no. 03/L-159 on Anti-Corruption Agency means leaving the Agency's focus in the area of education, cooperation with media and civil society organizations and engagement in the area of international co-operation.

Failure to adopt amendments to the Law on Declaration, Origin and Control of Property of Senior Public Officials and for all Officials, means that Kosovo does not harmonize its legislation with the practices of EU countries and with International conventions as well as it means that it does not properly regulate the ways and forms of adequate and accurate sanctioning regarding the verification and origin of property of senior public officials;

Also, the disapproval of this law means not defining the list of senior public officials and leaving aside many officials who are not involved so far and will not remove those who do not need to be declared. Then, the bureaucratic procedures would not be eliminated, as it would not regulate property declaration in the digital form - online.

Option (3) three

ACA wants to further develop its preventive capacity, while retaining the powers of preliminary administrative investigations to the minimum that requires clear separation and clarification. Some investigative capacities are needed to verify the content of declarations of assets of senior officials and to gather evidence supporting risk analyzes in some sectors, sensitive to corruption and activities such as public procurement, privatization, licensing, etc. Failure to adopt this new law means not realizing these goals.

Bearing in mind that most of the ACA's work is based and functions through the monitoring and reporting system that is not developed sufficiently, without gathering and systematically handling information, it would be impossible for ACA to identify, understand and act on corruption risks and to know if the established rules and standards are adequate and sufficient and whether their compliance is effective. For this reason, this amendment of the law emphasizes the necessity that the collection of information and the production of analysis on trends and risk areas be at the centre of the ACA's mission and its non-adoption means non-realization of the mission and vision of the ACA.

The current law on the Declaration, Origin and Control of Property of Senior Public Officials and for all Officials is foreseen by law enforcement institutions. However, there are some existing specific competences that need to be specified in relation to administrative measures and sanctions imposed by law enforcement institutions - measures and sanctions that are not foreseen in this law. As a result, non-adoption of amendments and additions means that we will not have more adequate and precise sanctions regarding the verification and origin of the property of senior public officials.

Cost

Option 1 (status quo) and Option 3 (changing the existing implementation approach) will not have additional financial costs. As a result no assessment of the financial impact of these options has been made. While Option 2 will have financial implications, the Financial Impact Assessment Concept Document is attached to it, which includes detailed financial impact tables.

In order to regulate the area of the Anti-Corruption Agency and for the declaration, the origin of assets, consultations have started earlier and as a result of consultations came the conclusion that it is necessary that this area to be regulated by drafting of new laws, which will cover this area and will replace the *Law on the Anti-Corruption Agency and the Law on the Declaration, Origin and Control of the Property of Senior Public Officials and the Declaration, Origin and Control of Gifts for all Officials*, that are still in force.

In the process of drafting this document, inter alia, were consulted reports and analysis of two experts from the PECK II project and two experts supported by the UNDP SAEK II project, which have recommended material, procedural and structural – organizational changes. The draft of this concept paper was analyzed in a series of workshops in which besides the Ministry of Justice and Anti-Corruption Agency, experts from the two above mentioned projects were also engaged.

The Ministry of Justice is committed in creating the necessary and sufficient space for public consultation, in any case, at different periods, depending on the stage of the process. Therefore, the MoJ, in cooperation with the ACA, will ensure that there is inclusiveness of relevant stakeholders throughout the process.

The consultation will be conducted with these institutions:

- Public Communication Office,
- Anti-Corruption Agency,
- Ministry of Internal Affairs,
- Government Coordination Secretariat - OPM,
- State Agency for the Protection of Personal Data,
- Office for Strategic Planning - OPM,
- Legal Office - OPM,
- Office for Good Governance - OPM,
- Ministry of Finance,
- Financial Intelligence Unit,
- Kosovo Customs;
- Ministry of European Integration,
- Prosecution
- Courts.

Consultation in the framework of public consultation and civil society will be conducted with:

- Jeta në Kosovë,
- Kallxo.com
- Movement "FOL"
- Movement "QOHU"

- Kosovo Democratic Institute KDI
- Insider,
- etc.

1. Assessment the consequences for each option

Option 1, the *status quo* (no change) according to the assessment would enable the continuation of the challenges already identified in this concept paper. The Law on the Anti-Corruption Agency and the Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons will continue to cover all legal gaps identified so far during the implementation of them. ACA will continue to have difficulties in realizing its mission in combating and preventing corruption in Kosovo, the implementation of these laws that does not fit to social and political circumstances and inefficient administration in combating and preventing corruption.

Option 2, the change of the existing policy can be achieved by adopting the new Law on the Anti-Corruption Agency and the new Law on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Officials .

The amendment of these laws, enables the ACA to acquire additional competencies in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and the prevention of corruption in activities of public procurement, as well as any additional competencies that have been discussed in the roundtables and are presented in various technical documents.

By changing this policy, among other things, it will be specified the verification and origin of assets of senior public officials; the list of senior public officials will be better defined; the property declaration will be regulated digitally - online (e-declarations); the value of declared property will be adjusted, etc. In addition, the Agency, through the change of existing policy, will regulate further engagement in the area of education, cooperation with media and civil society organizations and engagement in the area of international cooperation.

Also, it will be regulated the politics of sanctioning and finding of other methods of sanctioning of senior public officials - the suspension of the salary for several months, the fine with the possibility of additional sanctioning with imprisonment, dismissal from duty, etc. .

The ACA will further develop its preventive capacity, while retaining the powers of preliminary administrative investigations to the minimum that requires clear separation and clarification. Certain investigative capacities are needed to verify the content of declarations of property of senior officials and to gather evidence supporting risk analysis in some sectors sensitive to corruption and activities such as public procurement, privatization, licensing, etc.

Responsible for policy/law enforcement will be the Anti-Corruption Agency. In this context, this will require more training and staffing. Trainings are needed to build the capacity of professional staff and support staff in implementing this policy. To perform the jobs in a qualitative manner and to be effective and efficient, sufficient staff should be available.

Citizens' awareness of ACA responsibilities and activities is done through the applicable information tools (ACA web site, brochures, electronic, written and other means).

Option 3, changing the existing implementation approach as an alternative does not coincide with the goal of strengthening the role of the Agency. Changing the existing approach is very difficult to do considering that existing laws have not clearly defined the regulation and definition of the functions, duties and responsibilities of the ACA.

Chapter 10: Recommendation

Option 2 is considered as the most favourable option for drafting the new Law on Anti-Corruption Agency and the new Law on Declaration, Origin and Control of the Property of Senior Public Officials and the Declaration, Origin and Control of Gifts for all Officials.

The amendment of these laws enables the ACA to acquire additional competencies in areas related to the investigation and prevention of corruption, the origin and control of property and gifts, the prevention of the conflict of interest of senior public officials and the prevention of corruption in activities of public procurement, as well as any additional competencies that have been discussed in the roundtables and are presented in various technical documents.

By changing this policy, among other things, it will be specified the verification and origin of assets of senior public officials; the list of senior public officials will be better defined; the property declaration will be regulated digitally - online (e-declarations); the value of declared property will be adjusted, etc. In addition, the Agency, through the change of existing policy, will regulate further engagement in the area of education, cooperation with media and civil society organizations and engagement in the area of international cooperation.

Chapter 11: Communication

The Ministry of Justice and the Anti-Corruption Agency will provide information on the drafting process of the Draft Laws, which will consider the proposals after consultations with experts, relevant institutions, civil society and other stakeholders working in the area of anti-corruption.

The forms of communication will be different, starting from meetings, workshops, working groups and publications on the official website of MoJ, ACA, and OPM. Communication will be active, straightforward and constructive.

For MoJ initiatives and activities, each and every time there was great interest from the community of journalists, civil society and the public, where a full willingness to cooperate in the fight against corruption has been demonstrated. MoJ and ACA officials have always been willing to offer professional assistance as well as co-operation to all interested parties in cases where there have been grounded suspicions of corruption cases.

Therefore, the communication will be conducted according to the procedures set out in the regulation of rules and procedures of government, initially proceeding with the Preliminary Consultations, and then with the public consultation.

In the end, a press conference is foreseen to be held in which will be presented all the new amendments and supplements to these laws.