



**Republika e Kosovës**  
**Republika Kosova - Republic of Kosovo**  
*Qeveria - Vlada – Government*

*Ministria e Drejtësisë - Ministarstvo Pravde - Ministry of Justice*

---

**Guidance<sup>1</sup>**  
**for the Manner of Conducting the Administrative Investigation**

---

<sup>1</sup> Guideline is approved by the Decision No.128/2023 of the Minister of Justice dated 18.07.2023



**Republika e Kosovës**  
**Republika Kosova - Republic of Kosovo**  
*Qeveria - Vlada - Government*

*Ministria e Drejtësisë - Ministarstvo Prade - Ministry of Justice*

---

No.158/2023

Date:18.07.2023

Pursuant to Article 9, Article 10 (paragraphs 1 and 2), and Article 11 of Law No. 06/L-113 on the Organization and Functioning of the State Administration and Independent Agencies, (Official Gazette no. 7/01, March 2019), and Article 11 (paragraph 1, sub-paragraph 1.5) of Law No. 08/L-117 on the Government of the Republic of Kosovo, in accordance with Article 8 (paragraph 1, sub-paragraph 1.4) of the Regulation (GRK) - No. 02/2021 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries (30.03.2021), amended by Regulation (GRK) No. 04/2021 and Regulation (GRK) No. 03/2022, as well as based on Article 17 of the Regulation (GRK) - No. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing, dated 04.30.2021, the Minister of Justice hereby issues the following:

**DECISION**

1. The Instruction on the Manner of Conducting Administrative Investigation is approved.
2. The Instruction on the Manner of Conducting Administrative Investigation is attached herewith.
3. The Decision enters into force on the day of its signature.

**Albulena Haxhiu**

---

**Minister of Justice**

The Decision to be circulated to:

- *Cabinet of the Prime Minister;*
- *General Secretary of OPM;*

- *General Secretaries of all Ministries;*
- *Agency for the Prevention of Corruption;*
- *Archive of the Ministry of Justice.*

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>INTRODUCTION.....</b>	<b>4</b>
<b>1. WHO DOES THIS GUIDE APPLY TO? .....</b>	<b>5</b>
<b>2. PRINCIPLES OF ADMINISTRATIVE INVESTIGATION PROCEDURE .....</b>	<b>5</b>
2.1. Confidentiality.....	5
2.2. Avoidance of conflict of interest .....	6
2.3. Protection of personal data.....	7
<b>3. STEPS FOR TREATMENT OF WHISTLEBLOWING CASES .....</b>	<b>8</b>
<b>3.1. INITIAL TREATMENT.....</b>	<b>9</b>
<b>3.2. PUBLIC INTEREST REPORTING INVESTIGATION.....</b>	<b>11</b>
3.2.1. Meaning of administrative investigation .....	11
3.2.2. Administrative investigation planning .....	12
3.2.3. The duration of the administrative investigation .....	12
3.2.4. What should the responsible official investigate and verify?.....	13
3.2.5. The rights of the participating parties .....	13
3.2.6. Evidence that can be used .....	14
1) Official data.....	15
2) Interviews .....	16
3) Public information.....	16
4) Consultation with experts.....	16
5) Inspection .....	17
3.2.7. Completion of the administrative investigation .....	18
<b>3.3. ACTIONS AFTER THE ADMINISTRATIVE INVESTIGATION .....</b>	<b>18</b>
<b>4. WHISTLEBLOWING FILE.....</b>	<b>20</b>
<b>5. CONCLUSIONS AND FOLLOW UP.....</b>	<b>21</b>
<b>6. THE NECESSARY FORMS DURING THE ADMINISTRATIVE INVESTIGATION PROCESS .....</b>	<b>22</b>

## **EXECUTIVE SUMMARY**

The first address for whistleblowers is reporting within the institution. Whistleblowing is done to the responsible official for handling whistleblower's report. In order to examine and assess the claims raised by a whistleblower in public interest, the responsible officials conduct an administrative investigation.

The Guidance on how to conduct the administrative investigation contains practical clarifications on the path to be followed by the responsible official when conducting administrative investigation.

During the administrative investigation phase, it must be determined objectively and fairly whether the allegations in the public interest reporting are grounded and based on the evidence collected. This guide, in addition to the detailed procedure, aims to clarify in a practical way the tools that the responsible official has at his disposal to examine and evaluate the claims raised in a public interest report (whistleblowing).

Law No. 06/L -085 on Protection of Whistleblowers (hereinafter: LPW) and Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing (hereinafter: Regulation) have determined that the internal administrative investigation is carried out by the responsible official.

During the administrative investigation, in order to review and objectively evaluate the claims raised, the responsible official has the right to use official data, interviews, publicly available information, consultations with experts or even order certain inspections.

Being the most frequent address of whistleblowers, responsible officials must have sufficient instructions on how to act, so that whistleblowing cases are carried out efficiently and professionally. In order to increase efficiency in the handling of whistleblowing cases, this guidance aims to provide responsible officials with practical guidance on the path to follow in handling whistleblowing cases and the tools available to responsible officials to review and evaluate claims during the procedure of the administrative investigation.

## **INTRODUCTION**

Law No. 06/L -085 on Protection of Whistleblowers entered into force in January 2019. This law defines the rules for whistleblowing, the whistleblowing procedure, the rights and protection of whistleblowers and the obligations of public institutions and private entities in relation to whistleblowing. In addition to the Law, the Government of the Republic of Kosovo has also approved Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing.

The LPW has determined that whistleblowing to the employer is considered internal whistleblowing. One of the employer's obligations is the appointment of the responsible official. Public institutions have already appointed these responsible officials.

The responsible official is obliged to handle all whistleblowing cases within the institution. This treatment implies the obligation of the responsible official to, by conducting an administrative investigation, examine and assess the claims raised in a public interest report. If, in accordance with article 17(4) of the LPW, a case of whistleblowing is required to be handled by the employer, then the administrative investigation by the employer is conducted according to the same obligations of the responsible official.

The responsible official (or the employer if they are handling a case of whistleblowing) must protect the confidentiality and personal data of the whistleblower at all times, including after the matter has concluded unless disclosure of identity is required for the fulfilment of a legal obligation.

The LPW requires the whistleblower to have a reasonable belief that a violation has occurred, is occurring, or is likely to occur for the information reported. "Reasonable belief" is not the same as "evidence," a legal term that means facts beyond doubt that something has happened. Evidence in this sense is not expected from the reporting person.<sup>2</sup>

This guidance contains information on the procedure to be followed and the tools that the responsible official has at his disposal when conducting an administrative investigation procedure. The approval of this guide is based on the obligation defined in article 17, paragraph 1, sub-paragraph 1.2, of the Regulation.

This guide is intended to serve responsible officials in handling whistleblowing cases.

---

<sup>2</sup> Whistleblower Protection, Project Against Economic Crime (PECK II), European Union and the Council of Europe, p.9.

## **1. WHO DOES THIS GUIDE APPLY TO?**

This guide applies to responsible officials who are appointed to handle whistleblowing cases. According to article 17 of the LPW and Article 5(6) of the Regulation, a whistleblower may directly address the employer manager if:

1. The institution has not appointed a responsible official.
2. The responsible official is absent.
3. The reporting is submitted by, or against the responsible official.
4. The responsible official has a conflict of interest.

If a whistleblower makes a report to the Employer Manager, the Employer Manager is then responsible for handling the concrete case of whistleblowing in accordance with the LPW and Regulation. This guide applies to the Employer Manager when handling whistleblowing cases and conducting administrative investigations.

## **2. PRINCIPLES OF ADMINISTRATIVE INVESTIGATION PROCEDURE**

The LPW (article 4) has defined some principles that the responsible official must apply during his work. According to the Law, the responsible official:

1. Acts honestly, impartially and effectively, considering the legitimate interests of reporting;
2. Maintains the confidentiality of information;
3. Acts independently of political attitudes or any other unfair influence that may hinder the exercise of his/her duties under this law;
4. Avoids any kind of potential conflict of interest, and immediately discloses to the Competent Authority, any kind of conflict of interest before the start of the administrative investigation of the whistleblowing;
5. Undertakes all necessary measures in order to defend the documentations and evidences regarding the notification of disappearance, hiding, change, falsification and other actions the purpose of which is their destruction.

In more detail, some of the relevant principles for the procedure of administrative investigation of reports of public interest are treated below.

### **2.1. Confidentiality**

The principle of confidentiality must be maintained throughout the whistleblowing process, this includes during the administrative investigation phase and after completion of the

investigation. The responsible official must protect both the confidentiality of the person who made the report and any information related to the whistleblowing.<sup>3</sup>

The responsible official should enable the whistleblower to report the information confidentially, without being identified by others. Any communications or meetings must be conducted confidentially. Institutions are required to ensure that special procedures are put in place to protect the confidentiality of the whistleblower.<sup>4</sup>

Responsible officials should be particularly aware that the information contained in the report could be used to identify the whistleblower. The responsible official has no right to discuss with anyone aspects related to the reported case and the administrative investigation related to a specific case. This discussion should not even happen amicably. In particular, accused persons identified in the whistleblowing report should not be notified. Exceptions to this are situations where this is necessarily required by law.

If the responsible official is required to provide information that might reveal the identity of the whistleblower to any competent authority for actions that cannot be undertaken without revealing their identity, the responsible official must obtain written consent of the whistleblower prior to disclosing the information to the authority.<sup>5</sup>

If disclosure of the whistleblower's identity is required by law, the responsible official must notify the person of the fact before revealing his/her identity.<sup>6</sup>

## **2.2. Avoidance of conflict of interest**

The responsible official must take care in each case not to act on a conflict of interest. The conflict of interest arises from a circumstance in which the official has a private interest that affects, may affect or appears to affect the impartial and objective performance of his official duty.<sup>7</sup> When the private interest can affect the way the official fulfills his duties, there is a conflict of interest.<sup>8</sup>

---

<sup>3</sup> Law No. 06/L -085 on Protection of Whistleblowers, article 11.

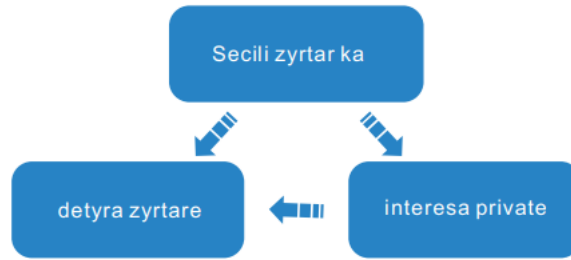
<sup>4</sup> Regulation (QRK) - NO. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing, article 7.

<sup>5</sup> Law No. 06/L -085 on Protection of Whistleblowers, article 11(3).

<sup>6</sup> Ibid, article 11, paragraph 3 and 4.

<sup>7</sup> Law No. 06/L-011 on the Prevention of Conflict of Interest in the Exercise of Public Function, Article 6.

<sup>8</sup> See also Valts Kalnins "Administration of the conflict of interest in the public service", Council of Europe, PECK II, 2019, p.7.



Thus, in any situation where the responsible official finds he has a potential conflict of interest in any whistleblowing report presented to him, he must suspend all actions and immediately notify his employer. He must not disclose the identity of the whistleblower or the contents of the whistleblowing report.<sup>9</sup> If the employer finds that the responsible official has a conflict of interest, then the case will be handled by the employer, in which case the employer replaces the responsible official.<sup>10</sup>

### 2.3. Protection of personal data

Throughout the development of the administrative investigation process, the responsible official must process the data in accordance with the law.<sup>11</sup>

According to Law No. 06/L-082 on the Protection of Personal Data, personal data is considered "any information related to an identified or identifiable natural person ("data subject");"

An identifiable natural person is one who can be identified directly or indirectly, in particular by reference to an identifier based on a name, an identification number, location data, an online identifier, or one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person" while processing is considered any action on these data.

Thus, during the development of the administrative investigation, the responsible official must take care to process data only as much as is necessary for the administrative investigation. The protection of personal data is not an obstacle for administrative investigation, but that data should not be requested more than the data that are necessary for the administrative investigation.

The responsible official is required to protect personal data in accordance with the law. The responsible official should exercise special care in the processing of data of the whistleblower, subjects of the report and persons involved in the alleged wrongdoing, together with any witnesses who may assist the investigation. At all stages in the whistleblowing process and after the process has ended, the responsible official should exercise special care in the case of

<sup>9</sup> Law No. 06/L-011 on the Prevention of Conflict of Interest in the Exercise of Public Function, Article 8.2.

<sup>10</sup> Law No. 06/L-085 on Protection of Whistleblowers, article 17.4.

<sup>11</sup> Ibid, article 11.



inter-institutional communications and any other communications necessary for handling the whistleblowing report.

### 3. STEPS FOR TREATMENT OF WHISTLEBLOWING CASES

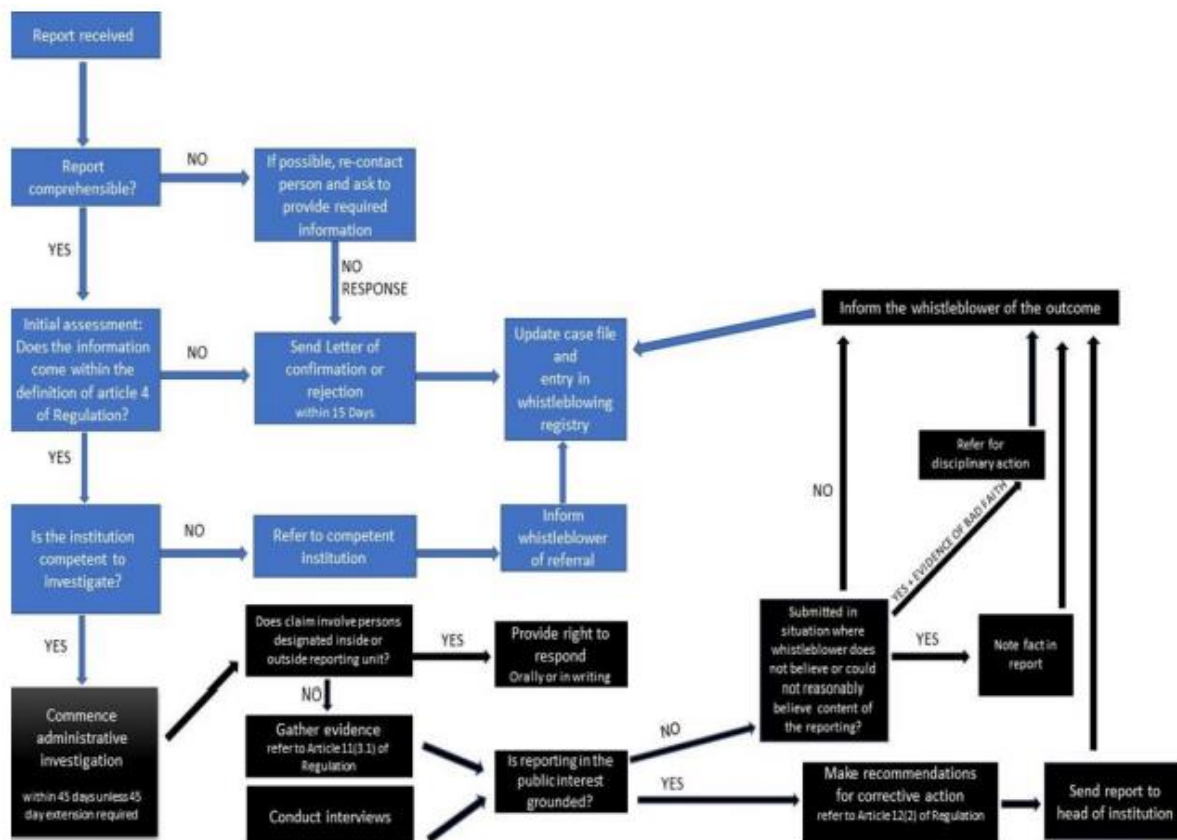
In the case of receiving a public interest report, before starting the treatment of the case, the responsible official must inform the whistleblower about the acceptance of the public interest report (see form 1).

There are three stages that must be followed when conducting an administrative investigation in cases of whistleblowing:

- 1) Initial treatment of the case;
- 2) Administrative investigation;
- 3) Actions after the completion of the administrative investigation.

These three phases are reflected further in this guide.

Figure 1 shows the map of the procedure to be followed when dealing with reports of public interest:



### 3.1. INITIAL TREATMENT

Upon receiving a report in the public interest, the responsible official does not immediately start the administrative investigation. Initially, the responsible official must decide on the acceptance or rejection of a report in the public interest. This phase is known as the phase of initial handling of reports in the public interest.<sup>12</sup>

According to the Law, the responsible official records the received report and creates a register, which must contain:

- 1) Date of acceptance;
- 2) The whistleblower's name and surname;
- 3) Whistleblower contact details;
- 4) The institution of the whistleblower, and
- 5) Brief content of information.

In cases where a report in the public interest does not contain these data, then the responsible official must again ask the whistleblower to complete his report, giving him the necessary instructions. If even after the notification the whistleblower does not complete his report, then the responsible official rejects the report.

Whereas, if the responsible official finds that the notification is complete, then he starts the initial treatment of the case.

In the case of the initial treatment of reporting in the public interest, the responsible official has before him four (4) questions that must be answered. All four (4) of these questions present criteria for the admissibility of a whistleblowing case. Thus, if one of these four (4) criteria is not met, then the report is rejected. These four (4) questions/criteria are:

- 1) Does the object of the report pose a threat/infringement to the public interest?
- 2) Was the whistleblowing done in the context of the employment relationship?
- 3) Did the reported issue fall within the competences of responsible officer and the institution where the public interest report was submitted?
- 4) Does the report contain information that is classified according to the Law on Information Classification and Security Verification?

As for the first question, the answer is found in Article 5 of the LPW and Article 4 of the Regulation. Thus, in each case, the responsible official must analyze whether the issue reported by the whistleblower is an issue that falls within the domain of at least one of the points defined in these articles of the LPW and the Regulation. If the reported matter falls under one of these points, then it is considered that the reporting is in accordance with this criterion and the assessment of the other criteria is continued. If the reported case does not fall into any of these

---

<sup>12</sup> Ibid, article 16.2.; Regulation (QRK) - NO. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing, article 10.

cases, then the responsible official issues a decision to reject the report (see form 2) and notifies the whistleblower accordingly (see form 3).

As for the second question, the responsible official must assess whether the reporting in the public interest was made in the context of the employment relationship. According to the Law, a person in the context of a work relationship means a natural person who is or has been in employment relationship with a public institution or private entity, regardless of the nature of the relationship, its duration or payment, an external or occasional associate, volunteer, in professional internship or training relationship, a candidate for employment, volunteering activities, professional internship or training or in contractual relationship for works, services or other types of cooperation or use of services of public institution or private entity, including contracting or subcontracting.

As for the third question, the responsible official assesses whether the reported issue, which constitutes public interest according to article 4 of the LPW or article 5 of the Regulation, belongs to the institution where he exercises his duties or not. So, the responsible official must assess whether the reported violation is alleged to have been committed by the institution where he exercises his duties or if this matter falls under the jurisdiction of another institution. If the responsible official assesses that the reported case falls under the jurisdiction of the institution where the responsible official exercises his duty, then it is considered that this criterion has been met. If the responsible official assesses that the reported case falls under the jurisdiction of another institution, then the responsible official rejects the report and in the final report recommends the employer to proceed with the public interest reporting to the competent institution. The employer transfers the case to the competent institution (see form 4), after receiving the whistleblower's consent. For this course of action, the responsible official notifies the whistleblower (see form 5).

As for the fourth question, if the responsible official during the initial handling of the case notices that the report contains secret information, classified according to Law No. 08/L-175 on the Protection of Classified Information, then the responsible official issues a decision to reject the case and in the final report recommends to the employer that, after obtaining consent from the whistleblower, to proceed to public interest reporting to the competent institution. If this is not the case, then it is considered that this criterion has also been met.

If these four (4) criteria are met, then the responsible official decides to accept the whistleblowing and notifies the whistleblower accordingly (see form 6).

Thus, the initial treatment of reporting in the public interest does not aim to assess whether or not there is a violation in the specific case, but only to ensure if, based on these four (4) criteria, the report in the public interest is appropriate to be investigated or not.

This initial treatment of reporting in the public interest and notification of the whistleblower on the decision made during this treatment must be completed within fifteen (15) days.

During the initial treatment phase, the responsible official shall communicate with the whistleblower in order to assess and prevent the risk of detrimental acts. In conducting the assessment, it is recommended that the responsible official request the following information:

- The size and nature of the office environment where wrongdoing is alleged to have taken place. Particular aspects of the environment which may increase the risk of identifying the whistleblower or cause issues for accessing information during the course of the investigation.
- Whether the report details an incident or incidents witnessed only by the whistleblower or by other persons (and the identities of those persons).
- Whether the report details information which is only accessible by the whistleblower or by a small group of persons (and the identity of those persons).
- Whether the whistleblower has suffered from detrimental treatment or is anxious that detrimental treatment may take place, whether there is an immediate threat of detriment.
- The whistleblower's relationship to the subject of the report and the organization.
- Whether the whistleblower has sought to address the wrongdoing, either by confronting the alleged wrongdoer, by reporting the alleged misconduct to a manager or by discussing the issue with colleagues.

## **3.2. PUBLIC INTEREST REPORTING INVESTIGATION**

### **3.2.1. Meaning of administrative investigation**

Administrative investigation is defined as an administrative procedure during which allegations of violations are examined. Thus, unlike other forms of investigation, this investigation conforms to the rules of administrative procedure. During the administrative investigation phase, based on the collected evidence, it should be determined objectively and fairly if the claims in the public interest reporting are founded.

The administrative investigation phase refers to the procedure that the responsible official conducts from the moment of receiving the report of public interest until the moment of the end of the investigation regarding this case. This is the stage in which the responsible official examines and evaluates the allegations raised by the whistleblower.

The responsible official should maintain communication with the whistleblower and will keep him/her informed of developments where appropriate to do so.

During the administrative investigation phase, the employer, according to the Law, must make available to the investigation the data, documentation and evidence in his possession, which are relevant to the specific case.

### **3.2.2. Administrative investigation planning**

In order for the investigation to be as efficient as possible, it is important that at the beginning of the examination of a case, the responsible official lists the actions that should be taken in a given case. After that, immediately take initial action on each relevant issue.

Example, after the responsible official decides to accept a whistleblowing case, he must identify the needs he has for the administrative investigation of the specific case. He should list the documents he needs, the parties he will interview, etc. Immediately, the responsible official should forward the letters for access to documents, invitations for interviews, etc. This course of action avoids situations where various technical aspects take up unnecessary time in the administrative investigation.

During the planning phase, the responsible official should take into account the risk assessment previously conducted during the initial treatment phase. Without exercising special care, requests for certain information or particular documents, for example, could result in the whistleblower's identity being revealed. Responsible officials should assess the particular needs of the investigation and the different forms of evidence available (discussed further in the section: evidence that can be used) on a case-by-basis and exercise special care to ensure that the whistleblower's identity is not revealed during the investigation process.

### **3.2.3. The duration of the administrative investigation**

According to the Law, if the whistleblowing is accepted, the entire administrative investigation procedure must be completed within forty-five (45) days from the date of receipt of the public interest report. So, this deadline begins to flow from the moment of submission of the public interest report and not from the date when the whistleblower was notified of the acceptance of his whistleblowing.

Despite the fact that the Law allows a deadline of forty-five (45) days, the responsible official must make efforts to complete the administrative investigation in each case as soon as possible and not necessarily expire this term.

When the completion of the administrative investigation is not possible within forty-five (45) days, then according to the Law, it is allowed to extend the deadline for another forty-five (45) days.<sup>13</sup>

Postponing the investigation deadline for another forty-five (45) days cannot be arbitrary. This postponement must be justified by the specific circumstances that have influenced the impossibility of completing the administrative investigation within forty-five (45) days. For this extension and the reasons for extending, the responsible official must notify the whistleblower (see form 7).

---

<sup>13</sup> Law No. 06/L -085 on Protection of Whistleblowers, article 16.3.; Regulation (QRK) - NO. 03/2021 on Determining the Procedure for Receiving and Handling the Cases of Whistleblowing, article 11.2.

### **3.2.4. What should the responsible official investigate and verify?**

According to the LPW, in the administrative investigation phase, the responsible official examines and evaluates the allegations raised by the whistleblower. Thus, during the administrative investigation phase, the responsible official focuses on the allegations raised in the public interest reporting. The regulation states that the investigation must be conducted in such a way as to determine objectively and fairly whether the claims in the reporting in the public interest are grounded and based on the evidence collected.

Initially, the responsible official must investigate the factual situation regarding the raised claims. Thus, the responsible official must prove through various evidence whether the allegations raised are fully or partially true or false. After clarifying the factual situation, the responsible official must assess whether, what happened in the specific case, constitutes or may constitute a violation, failure to fulfill any legal obligation, miscarriage of justice, endangering the health or safety of the individual, damage to environment, misuse of official office or authority of public money or resources of a public institution, discrimination, oppression or serious mismanagement. Also, the responsible official must assess whether the information proving one of these potential violations is or is likely to have been concealed or destroyed. The verification of these issues represents the basic object of the administrative investigation procedure in whistleblowing cases.

### **3.2.5. The rights of the participating parties**

According to the LPW “The whistleblower and any other third person may participate in the administrative investigation, when it is believed that he/she is aware of the reported circumstances or possess relevant documents.”<sup>14</sup>

During the administrative investigation phase, the responsible official must respect the rights of all parties involved in the whistleblowing procedure. According to the LPW, during this phase, each person involved in a whistleblowing case:

- 1) can provide a written statement;
- 2) can present evidence or opinions;
- 3) can consult the investigation file;
- 4) has the right to be heard regarding his claims.

In accordance with Law No. 05/L-031 on General Administrative Procedure, the exercise of these rights should not only be formal but practical. Thus, in order for the party involved in a whistle-blowing case to have the opportunity to give statements, present evidence or be heard in a meritorious manner, he must be informed about the issues that are relevant to him.

---

<sup>14</sup> Ibid, article 16.6.

According to the Regulation, when allegations involve certain persons inside or outside the alleged reporting unit, those persons are given the opportunity to respond to those allegations, either in writing or orally.

The detailed elaboration of these rights can be found in Chapter III of Law No. 05/L-031 on the General Administrative Procedure.

### **3.2.6. Evidence that can be used**

In order to prove the claims contained in a public interest report, the responsible official may use different evidence. Accordingly, during the conduct of an administrative investigation, the responsible official may use as evidence:

- 1) Official data;
- 2) Interviews;
- 3) Public information;
- 4) Consultation with experts;
- 5) Inspections.<sup>15</sup>

There is no restriction on which of the types of evidence the responsible official can use during a given administrative investigation. It is up to the responsible official to determine what the relevant evidence is, namely what is the evidence that he needs to assess in order to assess the allegations raised in a whistleblowing.

For all the evidence that the responsible official needs during the conduct of an administrative investigation, the employer must make the data, documentation and evidence in his possession available to the investigation.<sup>16</sup>

When examining the evidence, the responsible official must make the connection between the evidence, whether different evidence within the same type (e.g. different official documents) or evidence of different types (e.g. official documents and interviews). For example, the responsible official can use publicly available information (e.g. a media report) as evidence. The truth of the same evidence, for example in the case of media reporting, the responsible official can prove with the official data, which he also has the right to use during the administrative investigation phase.

The types of evidence that the responsible official can use during the development of an administrative investigation procedure are reflected below.

---

<sup>15</sup> Law No. 06/L -085 for the Protection of Whistleblowers, Article 16.5 and Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, article 11.3.

<sup>16</sup> Law No. 06/L -085 on Protection of Whistleblowers, Article 16.8

## 1) *Official data*

According to the Regulation, when examining and evaluating the claims of a public interest report, the responsible official may use all relevant official data as evidence.

Thus, not being limited to this list, the regulation determines that the responsible official can use as evidence:

- 1) Administrative decisions or any other decision and their implementation;
- 2) Internal rules;
- 3) Records of internal procedures related to relevant decisions such as minutes of meetings;
- 4) Copies of any communication between officials regarding decisions or procedures that are the subject of reporting in the public interest.<sup>17</sup>

Upon the initiation of the administrative investigation, the responsible official must make a request for access to the documents relevant to the case (see form 8) to which request the employer and/or other institutions must respond.<sup>18</sup>

The request for official documents is preferably specific, so that the employer has the opportunity to identify exactly the document that the responsible official needs. However, if the responsible official does not have enough information to do so, then a request that is not sufficiently specified can suffice. Circumstances may arise where non-specific request for a broader range of official documents is required in order to reduce the risk of the whistleblower being identified by requesting a specific document (or documents).

In addition to official documents in the institution where the responsible official exercises his function, there may be cases where official documents are required from another institution. Even in this case, the responsible official addresses the relevant institution with a request for information (see form 8) and the relevant institution is obliged to give access to the responsible official. According to the Regulation, public institutions or relevant institutions must respond to requests for information as soon as possible, and at the latest within seven (7) days.<sup>19</sup>

In each case, in order to economize the administrative investigation procedure, it is preferable for the official to see if the documents he needs are public on the official pages of the relevant institution.

When submitting requests for official documents, it is important that in the request, the official draws the attention of the official who accepts the request that the latter must protect the

---

<sup>17</sup> Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, article 11.3.1.

<sup>18</sup> Law No. 06/L -085 on Protection of Whistleblowers, Article 16.8.

<sup>19</sup> Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling of Reporting the Cases of Whistleblowing, article 11.5.



confidentiality of the case and the consequences for non-respect of confidentiality (see form 8).

## **2) Interviews**

During the development of the administrative investigation, the Regulation allows the responsible official to conduct interviews, in order to review and evaluate the claims raised in the public interest reporting.<sup>20</sup>

During the development of the administrative investigation, interviews can be conducted both with the subjects involved in a whistleblowing case and with other relevant persons. Thus, during the development of the administrative investigation, the responsible official has the right to invite for interview any person who in one form or another can help in the examination and evaluation of the claims raised in a public interest report.

Interviews must be conducted in a manner and environment which maintains the confidentiality of the whistleblower, subjects of the whistleblowing report and any other persons involved in the process.

According to the Regulation, if certain officials do not cooperate with the responsible official during the administrative investigation phase, disciplinary proceedings will be initiated against them in accordance with the Law.<sup>21</sup>

During the conduct of each interview, the responsible official keeps minutes of the interviews (see form 9).

## **3) Public information**

During the development of the administrative investigation related to the review and assessment of the raised claims, the responsible official has the right to use the information that is publicly available.<sup>22</sup>

Thus, during the administrative investigation, the responsible official has the opportunity to use as evidence various documents, acts, or news that have been published on the official pages of various institutions or even certain media articles, which are related to the issue that the responsible official is examining it.

## **4) Consultation with experts**

During the administrative investigation phase, LPW has empowered the responsible official to consult with experts in the relevant fields, in addition to using various evidence.<sup>23</sup> This is in

---

<sup>20</sup> There, article 11.3.2.

<sup>21</sup> There, article 11.7

<sup>22</sup> There, article 11.3.3.

<sup>23</sup> Law No. 06/L -085 for the Protection of Whistleblowers, article 16.5.

order to clarify some more specific areas, for which the responsible official may not have knowledge.

The opinions of experts in the relevant fields are very important to review and evaluate the claims raised in the public interest reports. In many cases, expert opinions can be crucial to resolve a particular issue. Thus, the application of this possibility by the responsible official in the case of examination and evaluation of the raised claims is of great importance.

For example, we can take situations where a report raises allegations of wrongdoing in the field of financial management. In this situation, the responsible official may not have adequate knowledge in the field of financial management. Thus, hearing a financial expert in this case helps the responsible official to assess the validity of the claims raised in a particular report.

There are no limitations regarding the time period when the responsible official can request the opinion of a particular expert. He can do this during the entire phase of the administrative investigation. In principle, it is preferable that the opinion from the relevant expert is obtained at the later stages, since the responsible official has managed to clarify to some extent the situation related to a certain case. However, there may be cases when the expert's opinion is necessary for the official at the very beginning of the administrative investigation, so that the official knows how to approach a certain issue. In each case, this is assessed by the responsible official based on the specifics of the case.

When consulting with experts the responsible official must use special care not to reveal the whistleblower's identity or to discuss information which could lead to the disclosure of their identity. The principle of confidentiality must be observed at all times.

## **5) *Inspection***

The LPW has provided that during the administrative investigation phase in relation to a public interest report, in order to examine and evaluate as fairly as possible the claims raised in a public interest report, the responsible official has the right to order inspections.<sup>24</sup>

The inspection enables the responsible official to directly observe certain spaces, including all the documents found in that space. In addition to the documents, during the conduct of an inspection, the responsible official has the right to interview certain persons whose testimony is relevant in the administrative investigation process.

In certain cases, it is not possible for the administrative investigation to be carried out effectively with other evidence, but a closer inspection is required. An example of this can be if, in a case of a public interest reporting for wrongdoing in relation to the inventory of assets within a public institution. In this case, if the responsible official finds it impossible through official documents, interviews, etc. examine and fairly assess the claims raised in a public interest report, then the same may order an inspection to be carried out. Through the inspection,

---

<sup>24</sup> There.

the responsible official directly accesses the relevant spaces, looks at the relevant documents, interviews certain persons, etc.

For conducting an inspection during the administrative investigation phase, the responsible official issues an order and notifies the head of the office or unit where the inspection will take place (see form 10).

The responsible official must exercise special care to ensure that any actions during the investigation process do not lead to the identification of the whistleblower. In certain circumstances it may be necessary for the responsible official to conduct a wider inspection of certain spaces and documents in order to reduce the risk of the whistleblowing being identified. At all times, the responsible official must observe the principle of confidentiality.

### **3.2.7 Completion of the administrative investigation**

After receiving all evidence, the responsible official analyzes all findings in order to adequately examine and evaluate all claims raised in a public interest report. Thus, at this stage of the administrative investigation procedure, based on the facts and evidence that the responsible official has collected during this stage, he also builds his conclusions on whether the claims raised in a public interest report are founded or not.

Based on these findings, the responsible official compiles a report showing the process, actions taken, findings, conclusions and recommendations (see form 11). Formally, this report also means the end of the administrative investigation procedure regarding a report in the public interest.

The responsible official must exercise special care when drafting the report to ensure that the confidentiality of the whistleblower and witnesses is maintained.

### **3.3. ACTIONS AFTER THE ADMINISTRATIVE INVESTIGATION**

During the development of the administrative investigation procedure, namely the review and assessment of the claims raised in a public interest report, the responsible official concludes whether the claims raised in a public interest report constitute a violation of the law, may constitute a violation or not.

If the responsible official concludes that in a certain case we are not dealing with a wrongdoing, the responsible official notes this in the final report (see form 11) and notifies the whistleblower about this (see form 12).

If at the end of an administrative investigation procedure the official notices that the whistleblower did not believe or could not reasonably believe in the content of the report, then

this is evidenced in the report. This is because this fact means that the whistleblower acted in bad faith and according to the law, he does not enjoy protection as a whistleblower.<sup>25</sup>

On the other hand, if after the completion of the administrative investigation procedure, the responsible official concludes that the claims raised are grounded, therefore we are dealing with a violation, then the responsible official issues a report with the finding of violations and sent this report to the employer (see form 11). Regarding the final result of the administrative investigation procedure, the responsible official notifies the whistleblower (see form 12).

In cases where the administrative investigation results that reporting in the public interest is grounded, the report must include the measures that are recommended to be taken.<sup>26</sup> In this case, the report should mention the responsible person or institution from which the measures are requested to be taken.

According to the Regulation, the proposed measures may include, but are not limited to: 1) stopping an administrative procedure; 2) reinstatement or annulment of an administrative decision or 3) initiation of disciplinary procedure or other relevant procedures for officials. A report with findings of violations may contain more than one recommendation.

After accepting the report with recommendations, depending on the findings, the employer can take measures within his competences or he can refer to the competent bodies.

The head of the institution who accepts the report with recommendations is not bound by the recommendations given by the responsible official. Thus, in the direction of remedying the identified violation, the head of the institution can take other measures that have not been proposed or modify the measures that the responsible official has recommended to be taken.

Also, if in certain cases, the report concludes that there is a reasonable suspicion of the commission of a certain criminal offense, the employer informs the State Prosecutor about this (see form 13) and for this he notifies the whistleblower. In this case, it should be emphasized that the responsible official is not required, in report, to prove the commission of a criminal offense, but that in order to forward the case to the competent prosecutor's office, it is sufficient to have a reasonable suspicion that a criminal offense has been committed. According to the Law, reasonable suspicion is defined as “knowledge of information which would satisfy an objective observer that a criminal offense has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned may or may have committed the offense. What may be regarded as “reasonable” will depend on all the circumstances.”<sup>27</sup>

For all decisions taken by the employer, according to the report of the responsible official, the employer notifies the whistleblower.

---

<sup>25</sup> Law No. 06/L-085 for the Protection of Whistle-blowers, Article 10.

<sup>26</sup> Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, article 12.1.

<sup>27</sup> Code No. 08/L-032 of Criminal Procedure, article 19, paragraph 1, sub-paragraph 1.8.

#### **4. WHISTLEBLOWING FILE**

From the moment of receiving a report of public interest, the responsible official must keep a special file for the case. All relevant documents that have been received and drafted since the initiation of a whistleblowing case must be kept in this file until the moment when the administrative investigation ends.<sup>28</sup> According to the Regulation, "employer creates a special protocol code for whistle-blowing cases and provides a separate and secure drawer for archiving files of whistle-blowing cases within the institution's archive, with access only by the responsible official."

On the other hand, in addition to the individual file for each case, the responsible official must also keep the alert register. The manner of keeping and the content of this register is regulated by article 15 of the Regulation.

---

<sup>28</sup> Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, article 14.

## **5. CONCLUSIONS AND FOLLOW UP**

1. Law No. 06/L -085 for the Protection of Whistleblowers has determined that each institution must appoint officials responsible for handling whistleblower cases. Public institutions have already implemented this obligation.
2. According to Law and Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, the responsible official is responsible for handling whistleblowing cases, in order to review and evaluate the claims raised in a public interest report.
3. The administrative investigation must be completed within 45 days. If there are well-founded reasons for the impossibility of completing the administrative investigation within this deadline, then this deadline can be extended for another 45 days.
4. Upon receiving a notification, the responsible official must make an initial review on the admissibility of the case. For the decision made during this phase, the responsible official must notify the whistleblower.
5. If the report of public interest is accepted by the responsible official, then the responsible official starts the administrative investigation procedure.
6. In the administrative investigation procedure, in order to review and objectively assess the claims raised in a public interest report, the responsible official may use official data, conduct interviews, use publicly available information, consult with experts relevant or even carry out certain inspections.
7. After the completion of the administrative investigation, if a violation of the law is found, the responsible official must inform the responsible officials/institutions and give certain recommendations.

## **6. THE NECESSARY FORMS DURING THE ADMINISTRATIVE INVESTIGATION PROCESS**

### **1. Notification of acceptance of whistleblowing information**

Dear \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_\_, as the official responsible for whistleblowing of (name of institution or regulator), in the terms of article 16 paragraph 2 of Law no. 06/L-085 on the Protection of Whistleblowers, we

#### **I N F O R M you that:**

The disclosed information will be subject to an initial evaluation to determine the fulfillment of the criteria to be handled in the framework of internal/external whistleblowing, based on Law no. 06/L-085 for the Protection of Whistleblowers.

For any action regarding the handling of this case, you will be informed in time.

## **2. Decision on the rejection of report in public interest**

In support of article 5, in connection with article 3 paragraph 1, sub-paragraph 1.1 and 1.2, article 16, paragraph 2 (if the letter is prepared by the regulators in the framework of external whistleblowing, article 19 is also added) of Law no. 06/L- 085 for the Protection of Whistleblowers, as well as article 97, paragraph 1 of Law no. 05/L-031 on General Administrative Procedure, as the official responsible for whistleblowing of (name of institution or regulator) on \_\_. \_\_. \_\_\_\_, issued:

### **DECISION**

The accepted case, with no. \_\_/\_\_\_\_, and the case is closed because the suspected whistleblowing action or practice does not constitute a violation of the law.

### **REASONING**

With the decision dated \_\_. \_\_. \_\_\_\_, the whistleblowing procedure has been started, after the acceptance of the case dated \_\_. \_\_. \_\_\_\_, by \_\_\_\_\_ (specify the data and the information provider), with the claim:

"Describe the full claim"

Regarding the handling of this case according to the provisions of Law no. 06-L/085 on the Protection of Whistleblowers, we estimate that the information does not constitute reporting of a threat or violation of the public interest, which is protected in terms of article 5 of Law no. 06/L-085 on the Protection of Whistleblowers, in connection with article 3, paragraph 1, sub-paragraph 1.1 and 1.2 of this Law.

Based on what was said above, the case is closed and the whistleblowing procedure is terminated, based on article 16 paragraph 11 of Law no. 06/L-085 on the Protection of Whistleblowers, in conjunction with article 97 paragraph 1 of Law no. 05/ L-031 for the General Administrative Procedure.

Therefore, it was decided as in the dispositive of this decision.



### **3. Notification of the whistleblower on the rejection of the whistleblowing**

Dear Mr. \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_, as the official responsible for the notification of (name of the institution or regulator), in the term of article 16 paragraph 2, (if the letter is prepared by the regulators within the framework of external whistleblowing, article 19 shall be added) of Law no. 06/L-085 on the Protection of Whistleblowers we:

#### **I N F O R M you that:**

Your information containing the claim is rejected:

"To add the full claim" ... on the grounds that:

Regarding the handling of your report according to the provisions of Law no. 06-L/085 on the Protection of Whistleblowers, it is estimated that your information does not constitute reporting of a threat or violation of the public interest, which is protected in the terms of the article 5 of Law no. 06/L-085 on the Protection of Whistleblowers, in connection with article 3 paragraph 1, sub-paragraph 1.1 and 1.2., of this Law.

With respect!

#### 4. Letter from the employer addressed to the competent body

Dear \_\_\_\_\_,

The official responsible for whistleblowing \_\_\_\_\_ (name of the institution or regulator), dated \_\_. \_\_. \_\_\_\_\_, has received information, with allegations of illegal actions on the part of \_\_\_\_\_, where, among other things, the received information states:

"Add claim or complete statement"

After the evaluation of the provided documentation, by the official responsible for whistleblowing who developed the relevant procedure, it was confirmed \_\_\_\_\_ (findings should be noted).

Taking this into account, in the terms of article 16, paragraph 9 (if the letter is prepared by the regulators in the framework of external whistleblowing, article 19 is also added) of Law no. 06/L-085 on the Protection of Whistleblowers, \_\_\_\_\_, in the capacity of the employer, (the legal basis is added as necessary for the competence of the competent body regarding the violation) conveys to you:

#### **Request**

Within your competencies, you can assess whether you can proceed further and take the appropriate measures against \_\_\_\_\_.

We request that within \_\_\_ days (the legal deadline will be assessed by the working group) from the day the decision was received, you inform us about the further proceedings and the final decision regarding the case.

Thank you for your cooperation.

With respect!

## **5. Notification of the whistleblower on transferring the case to the competent institution**

Dear \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_, as the official responsible for whistleblowing of (name of institution or regulator), in the terms of article 16, paragraph 2, of Law no. 06/L-085 on the Protection of Whistleblowers, we:

### **I N F O R M you that:**

After ascertaining the lack of competence and receiving your consent, the public interest report submitted by you has been sent to the *name of the institution*.

For any action related to the handling of this case, you will be informed in time by *the name of the institution to which the public interest report was sent*.

## **6. Notification of acceptance of whistleblowing**

Dear \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_, as the official responsible for whistleblowing of (name of institution or regulator), in the terms of article 16, paragraph 2 of Law no. 06/L-085 on the Protection of Whistleblowers, we:

### **I N F O R M you that:**

The whistleblowing information, after the initial review, has been accepted. In this case, the administrative investigation procedure will be initiated to examine and evaluate your claims.

For any action regarding the handling of this case, you will be informed in time.

## **7. Notification of the whistleblower regarding the reasons for the continuation of the whistleblowing administrative investigation procedure (notification after 45 days)**

Dear \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_\_, as the official responsible for alerting (name of the institution or regulator), in the terms of article 11, paragraph 2, of Regulation No. 03/2021 for Determining the Procedure for Acceptance and Handling the Cases of Whistleblowing, we:

### **I N F O R M you that:**

Based on article 16, paragraph 3 of Law no. 06/L-085 on the Protection of Whistleblowers "*The procedure of the administrative investigation of the whistleblower is completed as soon as possible, but in any case, not later than forty-five (45) days from the moment of reporting the whistleblowing information, except when the circumstances of the case require the postponement of the deadline, which cannot be longer than forty-five (45) days*", however, given that the procedure started and the actions are taken until now, regarding the case, it could not be completed within the legal deadline of 45 days, we consider it necessary to postpone this deadline.

## **8. Request for access to information-documentation**

Dear \_\_\_\_\_,

In accordance with article 16, paragraph 4 of Law no. 06/L-085 on the Protection of Whistleblowers,

### **R E Q U E S T**

- Information and documentation related to \_\_\_\_\_.
- Attach any relevant documentation or information related to these issues.

(Other points are added as necessary, in order to prove the claim of whistleblowing)

In accordance with the law, we expect a response from you as soon as possible, and at the latest within seven (7) days from the day of receipt of this request.

You are informed of your obligation to treat as confidential the data contained in this request - articles 11 (paragraphs 1 and 2) and 12 of Law no. 06/L-085 on the Protection of Whistleblowers. For any action contrary to this obligation, the official is responsible according to the relevant provisions of the Criminal Code of Kosovo.

## 9. Minutes of the interview

Conducting the interview during the development of the administrative investigation

Date:

Time:

Country:

Responsible officer:

Interviewee:

The contents of the minutes: \_\_\_\_\_

Signature of the responsible official

\_\_\_\_\_

Interviewee's signature:

\_\_\_\_\_

## 10. Order for inspection

Dear \_\_\_\_\_,

On the basis of article 16, paragraph 5, of Law No. 06/L-085 on the Protection of Whistleblowers, as the official responsible for whistleblowing of (name of institution or regulator), we:

### **I N F O R M you that:**

Based on Article 16 paragraph 5 of Law no. 06/L-085 on the Protection of Whistleblowers, we have made a decision to inspect (place and nature of the inspection), which inspection will take place on \_\_. \_\_. \_\_\_\_.

Please let me know if you need any additional clarification.

With respect!

## 11. Final report

In the case accepted with no. \_\_\_\_, legal violations were found (or not found), regarding which through this report, within the legal powers, I inform the employer as follows.

On \_\_. \_\_. \_\_\_\_, the public interest report No. \_\_ was received.

Elaborate on the actions taken in this case...

Reflect the findings...

List the recommendations:

If you need additional information regarding the handling of this case, please let me know.

This report is sent to:

The name of the head of the institution

## 12. Notification of the whistleblower regarding the final result of the procedure

Dear \_\_\_\_\_,

On the basis of your information dated \_\_. \_\_. \_\_\_\_, as the official responsible for whistleblowing of (name of the institution or regulator), in the terms of article 16 of Law no. 06/L-085 on the Protection of Whistleblowers and Regulation No. 03/2021 on the Determination of the Procedure for the Acceptance and Handling the Cases of Whistleblowing, after the development of the administrative investigation procedure, we:

### **I N F O R M you that:**

After the development of the administrative investigation process, we found that in the specific case (*Indicate whether violations were found or not*), and for this, through a final report, the head of the institution was also informed.

Thank you for the report.

With respect!

## Information for the Office of the Chief State Prosecutor

Dear \_\_\_\_\_,

In accordance with article 16, paragraph 9, (if the letter is prepared by the regulators in the framework of external whistleblowing, article 19 shall be added) of Law No. 06/L-085 on the Protection of Whistleblowers, we send the file of the following case to the authorities as information, because we consider that the evaluation of the Prosecutor's Office is required if the elements of the relevant criminal offense exist.

On \_\_. \_\_. \_\_\_\_, (state the name of the deputy or regulator) through the e-mail address, we have received a case of notification with the claim that:

*"Add claim or complete statement"*

In order to prove the aforementioned claim, through the request dated \_\_. \_\_. \_\_\_\_ we have requested the relevant information and documentation, in ... (name the department, division, unit, or institution, where the relevant information and documentation is requested).

On \_\_. \_\_. \_\_\_\_, a response was received from \_\_\_\_\_ (specify exactly where the response/documentation was obtained) as follows: " ".

*To mention the actions undertaken within the administrative investigation procedure developed.*

After evaluating the documentation provided in the absence of competence for other investigative actions, it was not possible to prove the claim of the informant regarding the case... (provide details for which part or claim of the information).

On the basis of the above-mentioned conclusions, and due to the existence of reasonable suspicion that the case may constitute a criminal offense with corrupt elements, we:

### **PROPOSE**

- within your competencies to provide the relevant documentation related to this case and assess whether or not a criminal investigation should be initiated in relation to this claim for reasonable suspicion that any of the criminal offenses incriminated by the Criminal Code of Kosovo have been committed or not, respectively with any special law.

At once we ask you to inform us about the final result of the investigations.

Thank you for your cooperation.