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AGENCY FOR PREVENTION OF CORRUPTION



METHODOLOGY FOR ANTI-CORRUPTION ASSESSMENT OF LEGAL ACTS

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I. PURPOSE AND LEGAL BASIS

1. Purpose of methodology

The Corruption Assessment Methodology in Legislation (the Methodology) aims to provide a structured and systematic approach to detect and eliminate the risks of corruption in legislation. The methodology provides concrete instructions, establishes principles, establishes a checklist, and determines the procedures to be followed step by step by the officials of the Agency for Prevention of Corruption (the Agency), during the evaluation process of draft normative acts and normative acts in force to detect and avoid the risks of corruption in legislation.

The methodology aims to assist the Agency in achieving its goals in preventing corruption in legislation more effectively and efficiently, offering a structured approach to identifying and avoiding such risks. At the same time, the Methodology aims to ensure that the draft normative act and/or legislation in force are in accordance with international anti-corruption standards.

2. Legal basis for the preparation of the methodology and assessment of the risks of corruption in the legislation

The legal basis for the preparation and approval of this methodology is defined in Article 27, Paragraph 7 of Law No. 08/L-018 on the Agency for Prevention of Corruption in Kosovo¹. The methodology is approved by the Director of the Agency and shall be applicable from its publication.

Article 5 paragraph 1 point 1.2.6 and article 27 of Law No. 08/L-018 on the Agency for Prevention of Corruption in Kosovo has given full competence to the Agency to give opinions and to evaluate any draft normative act that is in the process of being drafted to assess the risks and loopholes that could potentially increase corruption, and whether the draft normative act is in accordance with international anti-corruption standards.

The evaluation of draft normative acts can be done at the request of the proposing body, or on the Agency's own initiative, according to a priority determined by this methodology.

The agency on its own initiative can assess the potential risks of corruption in legislation and compliance with international anti-corruption standards for normative acts in implementation, according to the procedure and criteria of this methodology.

¹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591>

3. Scope

This methodology is applicable in the exercise of the Agency's function in the evaluation of draft normative acts and normative acts in force, to identify potential risks of corruption in legislation and ensure the compatibility of these acts with international anti-corruption standards.

4. Definitions

For the purposes of this methodology the following definitions have the following meanings:

- **Normative acts** - contain the general rules of conduct for a legal relationship or for a complex of relationships, which apply to an indefinite and unlimited number of individuals, for certain areas and have multiple effects and are approved or issued by the competent authority. In terms of this methodology, normative acts include: Laws and by-laws that are issued in implementation of laws or for the regulation of certain areas based on the constitutional and legal powers of the bearers of state and public institutions².
- **Conflict of interest** – as defined in the Law on the Prevention of Conflict of Interest.
- **Corruption** - includes all criminal offenses foreseen for in the Criminal Code of the Republic of Kosovo in the chapter of criminal offenses/Official corruption and criminal offenses against official duty ³ (Misuse of official position or authority, Misuse and fraud in public procurement, Misuse of official information, Conflict of interest Embezzlement in office, Fraud in office, Unauthorized use of property, Taking a bribe, Giving a bribe, Giving a bribe to a public official foreigners or foreign official persons, Exercising influence, Illegal issuance of court decisions, Disclosure of official secrecy, Forgery of official document, Illegal collection and payment, Illegal acquisition of property in the case of raid or execution of court decision, Do not false reporting or reporting of wealth, income, gifts, other material benefit or financial obligations).
- **Proposing body** - means the body which is responsible for the drafting procedures of the initial project in accordance with the principles and standards of drafting legislation

² <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8696>

³ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

determined by the Government of the Republic of Kosovo and the Office of the Prime Minister⁴.

- **Assessment against - corruption of legal acts** – review of the form and substance of the legal acts drafted or approved in order to discover and minimize the risks of corruption in the legislation ⁵.

⁴ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3259>

⁵ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=60591>

II. ASSESSMENT PROCEDURE OF CORRUPTION RISKS IN THE LEGISLATION

1. Responsible entities

Each proposing body, in the capacity of drafter, must ensure that normative acts are drawn up in accordance with the rules in force for the drafting of legislation, as well as be drawn up in such a way that they do not create space and minimize the risks of corruption during the implementation of theirs, also to be in line with international anti-corruption standards.

Proposing bodies during the drafting phase of normative acts, depending on their competences, should minimize the risk of corruption in the drafting and approval phase.

The Agency, as a subject authorized by the aforementioned Law on the Agency for Prevention of Corruption in Kosovo, carried out independent monitoring of draft normative acts in accordance with the requirements of the law and according to this methodology.

This methodology, including the checklist is public, therefore, any subject can use the standards defined by this methodology to provide comments to the proposing bodies during the public consultation phase of the draft normative acts.

2. Prioritization of the evaluation of draft normative acts as well as normative acts

The agency on its own initiative selects draft normative acts and normative acts for assessment of risks and loopholes that could potentially increase corruption if any of the following criteria are met:

- General criteria:
 - a) Legislation from sectors that are usually exposed to corruption, including the procurement and financing of political parties and other sectors such as law enforcement, health and education;
 - b) Legislation from sectors that include mechanisms exposed to corruption, such as the granting of financial benefits or licenses and permits, or the collection of fees and taxes;

- c) Legislation in the sectors for which the level of corruption is higher according to local and international perception; and
 - d) Legislation from the sectors that the national anti-corruption action plans prioritize for reform.
- Specific criteria (cases):
- a) Legislation which, according to media or civil society reports, have identified corruption risks;
 - b) Legislation which, according to notifications from other implementing authorities, presents a risk of corruption;
 - c) Legislation from the sector where there are large political financial donations from an interest group related to the law, the sector (such as energy companies donating money to governing parties before the law is passed);
 - d) a draft normative act that is subject to heavy lobbying by interest groups;
 - e) In the legislation in which the responsible interested parties have a conflict of interest;
 - f) In legislation where law enforcement bodies or media reports provide information that the same has been misused by suspects.

The Agency documents the prioritization of draft normative acts and normative acts for assessment in the annual plan.

Even in the case of requests from the proposing body for evaluation of draft normative acts, when the number of requests is greater than the capacities of the Agency to evaluate such documents at the same time, the Agency will prioritize the review of requests and the evaluation of draft acts normative based on the criteria defined in points 1 and 2 above.

3. Assessment timeline

The agency, on its own initiative, can evaluate draft normative acts and normative acts at any stage of the legislative process:

- a) In the drafting process by the government, ministries, municipalities or other state bodies;
- b) In the phase of approval by the ministry, government, municipalities or other state bodies;
- c) In the process of approval in the Assembly of Kosovo;
- d) At any time during the implementation of normative acts.

For draft normative acts, the assessment of which has been started at the request of the proposing body, the Agency will make the assessment within 15 working days from the date of acceptance of the request for assessment of the draft act. In the event that the Agency, acting

on the basis of the methodology, comes to the conclusion that the draft normative act cannot be handled within this time period, due to priorities in the evaluation of other acts, it informs the proposing body of such a decision. However, the Agency on its own initiative, based on the aforementioned criteria for prioritizing the assessment of draft normative acts and normative acts, can carry out the assessment of the draft act in the later stages of its drafting and approval.

4. Sources of information

The Agency in all situations of starting the procedure of assessing the risk of corruption in the legislation will use all possible resources available to start the assessment procedure.

- Legal information includes the following sources:
 - a) Draft normative act or normative act;
 - b) Concept document;
 - c) Explanatory Memorandum;
 - d) Other normative acts related to the act in question;
 - e) Practical cases;
 - f) International standards and guidelines or foreign examples as a valid reference point if a normative act is proof of corruption.
 - g) Normative acts as well as relevant guidelines in force regarding the standards of drafting legislation;
 - h) Normative acts related to the public consultation process;

- Functional analysis includes the following sources:
 - b) Reports from various evaluations by anti-corruption bodies;
 - c) Reports from the National Audit Office on misuse of public funds;
 - d) Results from mechanisms for notifying citizens (telephone lines, etc.);
 - e) Media reports;
 - f) Internet searches;
 - g) Analysis;
 - h) Interview with experts;
 - i) Interview with the interested parties who implement the normative act, either as a public official or a private citizen.

Functional analysis primarily aims to identify answers to the following question:

- How can public officials and/or citizens misuse the normative act and what can be done to prevent such misuses?

5. Assessment

1. Assessment of the corruption risk in the legislation will be based on the steps listed below.

- a) Research and processing of material (see the above section on sources of information).
- b) Identification of the risks of corruption in legislation (ambiguity/ambiguity and lack of preventive mechanisms) ; - (sees in the following section).
- c) Formulation of recommendations on how to avoid or reduce the risk of corruption,
- d) Drafting and distribution of opinion,
- e) Monitoring the inclusion of recommendations.

6. Preparation and content of the evaluation Opinion

The evaluation opinion prepared by the Agency mainly consists of three parts.

- **The main data** – include the draft normative act, the normative act and its objectives. This part can also include information on how the assessment of this draft normative act or normative act was started, and the factors that prompted the Agency to make such an assessment. In this part, it should be specified which body is responsible for the drafting of the draft normative act and its approval and the body responsible for its implementation. This would further assist in the recommendations section and ensure compliance with the recommendations.
- **Analysis** – The analysis of the assessment of corruption is mainly structured by two main categories: "ambiguity/ambiguity" and "lack of preventive mechanisms". The analysis should provide a brief explanation wherever it is not clear how the error in regulation could potentially lead to corruption. Attached to this methodology is a checklist of specific questions that will be taken into consideration during the Agency's evaluation of any draft normative act or normative act.
- **Recommendations** – Recommendations should include alternative wording for the act in question in order to illustrate how the risk of corruption can be reduced. This would also facilitate the acceptance of recommendations, since the criticism would be constructive and in function of improving the draft normative act or normative act. In the recommendations section, the Agency should be careful not to use general terminology such as "*increasing the accountability of public officials*" or "*including provisions for a more concretely defined procedure*" which are insufficient. In principle, neither the alternative wording nor any other part of the recommendation is binding. It should be taken into account that the role of the Agency is not to draft normative acts, however, the role of the agency is to help as a professional body in the prevention of corruption. In addition, it should be borne in mind that the risks of corruption do not originate only from regulation, but also from causes outside the regulatory aspect. Conversely, we cannot and should not try to fight corruption only through regulatory recommendations, but also consider other components that prevent corruption (e.g. fostering an ethical culture, encouraging public officials to respect the rules in force, raising public awareness, etc.).

7. Share of report/opinion

Evaluation reports are made available to the following entities:

- a) Proposing body that requested the evaluation of the draft normative act;
- b) State body that is or was in charge of drafting the normative act that is in force;
- c) Government of the Republic of Kosovo;
- d) Assembly of the Republic of Kosovo;
- e) Municipal Assembly for the cases of normative acts that are approved at the level of the municipality;
- f) Responsible implementing authority;

8. Compliance

Since recommendations from corruption assessment reports are not binding, mechanisms to ensure compliance are important. Therefore, to ensure compliance and to monitor the implementation of the recommendations is important:

- a) Clear identification in the opinion of the **relevant Authority**, (which is mainly the drafter of the draft normative act, the approver of the draft normative act and the implementer of the normative act) for the implementation of the recommendations. Naturally, any of bodies dealing with a draft before it reaches parliament or the other body should try to take into account the recommendations.
- b) Relevant authority has the duty to consider the recommendations. If you do not want to incorporate (include) the recommendations, you must state this explicitly and provide a brief explanation as to why. Therefore, the Agency must be (notified) about the incorporation (inclusion) or not of its recommendations in the draft normative act.
- c) In all cases, the relevant authority must provide comments to the Agency regarding compliance or otherwise with each recommendation. The assessment report will have a standardized comment sheet attached to record compliance comments from the responsible body.
- d) Agency will set a deadline for the drafting body of the draft normative act to provide comments. For draft acts, comments should be given no later than after the approval of the law. Of course, for approved laws the time frame will be longer, but still set in order to ensure that the approved law is being reviewed.
- e) Agency will consider whether it agrees with the self-assessment of the relevant authority.

9. Publication

The Agency makes available on its website the following documents:

- a) Methodology: The publication of the methodology enables third parties to understand what is involved in the assessment of corruption in the legislation.
- b) Selection of laws: The public must know which laws have been selected or not for evaluation; this will enable civil society stakeholders to intervene in relation to any normative act, in addition to those already evaluated by state bodies, it may wish to evaluate.
- c) In cases where the Agency's Recommendations are not taken as a basis, the Agency will publish the evaluation opinions. These enable the general public to know what the recommendations contain. In this case, the comments on compliance forwarded by the responsible body will also be published.
- d) Agency shall include an annual summary of corruption assessment activities in the annual report including statistical information on performance.

III: EXPLANATION OF POTENTIAL RISKS OF CORRUPTION IN LEGISLATION

1. Understanding the risks

Potential risks of corruption are defined for the purpose of this methodology, existing or missing features in a normative act that may contribute to corruption, regardless of whether the risk was intended or not.

There are two categories of potential risks of corruption in legislation:

- a) Ambiguity/ uncertainty and
- b) Lack of preventive mechanisms;

The very notion of ambiguity/ambiguity implies the possibility of interpreting a given provision in two or more ways. This type of ambiguity can be the result of inappropriately worded and unclear language or lack of legal harmonization. In both cases, the lack of clarity leads to inaccuracy and confusion of legal provisions, which allows different interpretation of the law.

The law in question can be very clear and direct and again the lack of preventive mechanisms allows the possibility of violating the regulations with a lower risk of liability, due to the lack of sanctions or due to ineffective and minimal sanctions.

Regarding the language used, special attention should be paid to the choice of words and the construction of sentences. Legal harmonization concerns the logical and adequate relationship between different provisions of the same law or between different laws. When the link is not clear, such ambiguity can create a risk of corruption.

Two or more legal provisions may be in conflict, more precisely, contradict each other. Conflict can occur within a single law (internal conflict) or between different laws (external conflict).

Legal loopholes may be new or existing at the time of the adoption of the relevant legal norms, which the lawmaker simply did not include, and, in addition, appear even after the adoption of the norms due to new relationships that the lawmaker did not foresee.

Vague language or legal technicalities on the one hand, and legal loopholes related to prevention mechanisms on the other, are often interrelated.

During the assessment, emphasis will be placed on checking provisions that are not clear enough, provisions that leave room for discretionary powers, provisions that leave room for certain issues to be regulated or further specified by other normative acts.

Admittedly, it is quite difficult to comprehensively include all the legal risks of corruption because they are so diverse and constantly changing as laws change.

Therefore, it is necessary to include a concrete and detailed structure (list) of risks for corruption, as foreseen by the regional methodology.

1.1. Ambiguity/uncertainty

Ambiguity/uncertainty may be the result of unclear language or legal inconsistency; in both cases, the lack of clarity gives each user of the normative act the opportunity to make the interpretation for personal corruptive gain.

Roughly, there are two different types of ambiguous language: word choice and sentence construction.

There are countless schemes to make language ambiguous; however, in terms of corruption risks, the main common principles described below apply.

1.1.1.1 Expressions

General and legal expressions can have more than one meaning. Therefore, each word must represent either a common meaning or a clear legal definition.

Example: Article X: Competence will be determined by the residence of citizens.

Problem: What exactly does residence mean - domicile or residence?

Solution: Competence will be determined according to the residence of the citizen.

*The competence will be determined by the residence of the citizen, which means the registered **legal residence**.*

*Jurisdiction will be determined by the residence of the citizen. Residence is determined according to the **Law on Residence and Dwelling**.*

1.1.1.2. Sentence construction

The main forms of ambiguity related to the construction of a sentence are described below.

It is unclear to which part of a sentence a word is attached (ambiguity of attachment).

Example: Article: The applicant submits the application with confirmation from the director.

Problem: "Submits with confirmation from the director" or "application accompanied by confirmation from the director"?

Solution: Upon confirmation by the director, the applicant submits the application

1.1.2. Contradictory provisions

Two or more legal provisions may conflict with each other. Conflicts can appear within the same normative act (internal conflict) or between different acts (external conflict). External conflicts can occur in the hierarchy of norms at the same level or between different levels (decision or by-law versus law, constitution or international law). In theory, the rate at the higher level supersedes the rates at the lower level; however, a conflict can create ambiguity.

Example: Article X: Law on Asylum: "Once all the legal requirements for the refugee's political status are met, the Department for Citizenship, Asylum and Migration within the Ministry of Internal Affairs can recognize the refugee's status".

Article X: Constitution: "Political refugees have the right to asylum".

Problem: The Law on Asylum states that the Department for Citizenship, Asylum and Migration within the Ministry of Internal Affairs has discretion, contrary to the right provided

by the Constitution.

Solution: Law on Asylum: "Once all the legal requirements for the refugee's political status are met, the Department for Citizenship, Asylum and Migration within the Ministry of Internal Affairs must recognize the refugee's status".

1.1.3. Inconsistent terminology

Terminology should not only be consistent within an act (see section 2.1 above), but also between different acts. A word should have only one meaning not only in an act but also in the entire legal framework of a country.

Example: Article X: The applicant is responsible for submitting the following documents.

Problem: "Responsible" is an expression used in administrative and criminal law, denoting different legal consequences.

Solution: The applicant is obliged to submit the following documents.

1.1.4. Unclear references

Provisions that refer to other provisions of the same act or other acts must have a clear and reasonable meaning. Examples of bad practices are: "in accordance with the legislation in force", "according to the law", "in the prescribed manner", "according to the legal provisions", "following the rules/procedures/deadlines set by the Ministry/other authority" , "exceptions/conditions/other acts defined by law", etc.

Example: Article x: The Agency issues the decision within the time limits established by law.

Problem: It is unclear whether the time limits are defined by this law or another (which) law?

*Solution: The Agency issues the decision within the time limits defined in **Article NN of the Law on General Administrative Procedure.***

1.1.5. Legal Gaps

Legal gaps are defined as follows: *"Situation in which existing legal rules lack sufficient grounds to provide a definitive answer to a legal issue [...]. No right answer available guides the decision."*

A gap may occur if there are conflicting provisions (for this alternative, see 1.1.2 Conflicting Provisions above) or because the normative act contains generalized language which can be interpreted in different and contradictory ways.

Example: Article X - "Invalidity of local elections" - Law on Elections: Elections are invalid if any of the following conditions are met: ...

Problem: There is no provision to regulate the exercise of local government and what happens after local elections are annulled.

Solutions: The elections are invalid, and the municipality goes to new elections, if any of the following conditions are met:

1.2. Deficiencies in the prevention of corruption

A preventive deficiency is the absence of a mechanism in an act that would stimulate or prevent the occurrence of corruption.

Example: Article X: Law on the Prevention of Conflict of Interest: In case of violation of the conflict of interest provisions provided for in Articles NN, the disciplinary commission may impose the following sanction: written warning.

The problem: The absence of any sanction other than a written warning probably won't deter dishonest public officials from breaking the rules.

Solution: Article X: The Law on the Prevention of Conflict of Interest: In case of violation of the conflict of interest provided for in the provisions of Articles NN, the disciplinary commission must impose one of the following sanctions: written warning, salary reduction, reduction in office or dismissal.

Certainly, ambiguity can make any deterrent mechanism weak. Therefore, vague language or legal technicalities on the one hand and lack of preventive mechanisms on the other are often interrelated.

Example: Article X: Law on the Prevention of Conflict of Interest: In case of violation of the conflict of interest provisions provided for in Articles NN, the disciplinary commission may impose the sanctions defined by law: written warning.

Issue: If, for example, the Law on Minor Offences provides for further sanctions, the law above would be unclear - is a written warning the only sanction, or are there "other sanctions as provided" by the Law on Minor Offences?

Solution: Article X: Law on the Prevention of Conflict of Interest: In case of violation of the conflict of interest provisions provided for in Articles NN, the disciplinary commission may impose the sanctions provided for in Article NN of the Law on Minor Offences.

1.2.1. Competences

1.2.1.1. Unidentified competency

This deficiency in the prevention of corruption often occurs when the drafters of a normative act want to show actions, but without really understanding it: a complete set of rules has been established, but there is no authority to implement the act. This preventive deficiency often coincides with vague legal language or technicality, only vaguely hinting at the agency responsible for enforcing the law.

Example: Article X: This law is implemented by the competent ministry/agency.

Problem: Is there another rule that clearly defines which ministry is competent? Would all users know⁶ of the law for this rule?

Solution: Article X: This law is implemented by the competent ministry/agency, as defined in annex N of law no. NN for the government.

Article X: This law is enforced by the environmental protection agency. [more concrete and thus a better solution]

1.2.1.2. Unidentified scope

Competence requires definition in such a way as to include all aspects of a normative act.

⁶ The term user in this case means law enforcement institutions and subjects to which the law applies.

Example: Article X: Law on Minor Offences: Disciplinary Commissions are responsible for investigating all disciplinary violations.

Problem: Who is responsible for administering sanctions?

Solution: Article X: Law on Minor Offences: Disciplinary Commissions are responsible for investigating all disciplinary violations and administering sanctions.

1.2.1.3. Delayed identification

The legislature may delegate identification to an executive body; however, the risk of this approach is that identification of the competent enforcement body may never occur.

Example: Article X: Law on Energy: The Ministry of Economy determines the competent body by decision.

Problem: Why can't the legislator define the competent body himself? Until when would the Ministry make a decision? What are the criteria for this decision?

Solution: Article X: Law on Energy: The competent body for the implementation of this law is the Environmental Protection Agency.

1.2.1.4. Delayed decision-making

The competent body for implementation may not exist at the time of approval of the normative act. This brings the risk that delays in implementing the law may prompt the legislature to delegate identification to an executive body.

The risk of this approach is that the identification of the competent body for implementation may never happen.

Example: Article X: Energy Law: The Environmental Protection Agency is the competent body for the implementation of this law.

Problem: In case the Agency does not exist yet and for a longer time, which body will be competent?

Solution: Article X: Law on Energy: The competent body for the implementation of this law is the Environmental Protection Agency; until its establishment and operationalization, the Ministry of Energy is the competent body.

1.2.1.5. Authority of further regulation

Normative acts often delegate the power to regulate further details of a procedure or criteria for a decision to an executive body. The executive body can either intentionally use this power to facilitate opportunities for corruption or inadvertently draft erroneous normative acts.

Example: Article X: Public Procurement Law: The Public Procurement Regulatory Commission regulates further details of the tender procedure.

The problem: The law doesn't provide any guidance on what those details are. The legislator himself must determine the main parameters.

Solution: Article X: Public Procurement Law: The Public Procurement Regulatory Commission determines the forms for submitting tenders.

1.2.1.6. Overlapping authority

There may be more than one body competent for the implementation of the same task. This may lead to lack of enforcement or abuse of citizens through repeated (overlapping) administrative inspections. Such regulatory error is a case of ambiguity (see section 1.1.4. unclear references above).

1.2.1.7. Segregation of authority

Sometimes, several bodies are competent in different aspects of a normative act. Such separated powers may bring the risk of lack of enforcement.

For example, GRECO noted in one of its evaluations: "The multiplicity of bodies has negative effects insofar as it prevents a single body from taking effective responsibility for the process. As a result, each body depends on the others and waits for their reports or findings. The result is that none of the bodies seem to have a comprehensive global overview [...]."

1.2.1.8. 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. Likewise, when the official person personally participates in an official matter in which he/she, or any member of his/her family, or any legal entity related to him/her, has a financial interest.

Example: Article X: Procurement Law: Bidders with a criminal record and family members of public officials working in procurement offices are excluded from bidding.

Problem: Family members are only part of those persons with whom a conflict of interest may arise. One can think of the public officials themselves, their close friends or their business partners.

Solution: Article X: Procurement Law: Bidders with a criminal record and those with Conflict of Interest, as defined in Article NN of the Law on Prevention of Conflict of Interest, are excluded from bidding.

1.2.2. Authority and Resources

It is important that a public body has all the necessary powers and resources to carry out its duties.

Example: Article X: Law on Public Enterprises: The Ministry of Economy has the following powers for exercising the supervision of public enterprises: 1) reviewing annual reports, 2) participating in board meetings and 3) requesting the calling of extraordinary board meetings.

Problem: The Ministry has no right to request any information other than that contained in the annual reports.

*Solution: Article X: Law on Public Enterprises: The Ministry of Economy has the following powers for exercising supervision over public enterprises: 1) the right to review annual reports, 2) participation in board meetings, 3) to request the convening of board meetings emergency of the board, **4) to request any information about the company from the board of directors, 5) to perform special audits and 6) to appoint or dismiss the members of the board.***

Resources also include funding. Whenever a draft normative act or normative act involves financial costs, in this case it must verify whether there are sufficient funds, as foreseen for its implementation.

1.2.3. Procedures

Certain procedures apply to any decision under public law. Whenever a public authority can exercise too much discretion, risks of corruption occur.

1.2.3.1. Undefined steps

The steps of each procedure should be clear.

Example: Article X: Law on Construction: The Municipal Department of Urbanism issues a decision on the construction permit after examining the request.

Problem: What does "reviewed" mean? Can the Municipal Directorate of Urbanism ask for more documentation? Does the Municipal Directorate of Urbanism consult with other state bodies? etc.

Solution: Article X: Law on Construction: The Municipal Department of Urbanism issues a decision on the construction permit after examining the request, including one or all of the following steps: [...]

1.2.3.2. Undefined timelines

There must be clear timelines, otherwise public officials may delay procedures and citizens may be encouraged to pay bribes in order to speed up the procedure.

Example: Article X: Law on Construction: The Municipal Department of Urbanism issues a decision on the construction permit after examining the request.

Problem: Is there a maximum time for the process?

*Solution: Article X: Law on Construction: The Municipal Department of Urbanism issues a decision on the object of permission after examining the request **within a maximum period of three months.***

1.2.3.3. Undefined/identified fees

There should be a clear set of fees.

Example: Article X: Law on travel documents: The Ministry of Internal Affairs issues the passport for a fee between €10 and €100 depending on the urgency of the issue.

Problem: It is unclear which charge corresponds to which case.

Solution: Article X Law on travel documents: The Ministry of Internal Affairs issues the passport with a fee of €10 in regular cases, €50 in case of issuance within 3 days and €100 for issuance within 24 hours.

1.2.3.4. Recurrence of inspections

The threat of abusive repeated inspections is a common tool for extorting bribes from citizens. Conversely, citizens can also pay bribes to avoid inspection. Thus, there should be a clear set of criteria for how often, who and how often a business or person is inspected.

Example: Article X: Law on Tax Administration and Procedures: The Tax Administration can carry out regular checks.

Issue: Is there a maximum number of inspections per period? How are the objectives of these inspections selected?

Solution: Article X: Law on Tax Administration and Procedures: Tax Administration can carry out regular checks. A regular inspection can only be done once every three years. The inspected tax entities were selected as follows: [...]

1.2.3.5. Procedures with many breaks

Citizens often have to interact with several agencies and this makes the procedures not only difficult, but also multiplies the risks of corruption.

Example: Article X Law on Business Organisations: The applicant must submit documentation from the following registers: civil status register, tax register, criminal offenses register and bankruptcy register.

Problem: For every procedure, there is a risk of corruption.

Solution: Article X Law on Business Organisations: The applicant for business registration will receive all documentation from the following authorities: Civil Registration Agency - civil status, Tax Administration - possible tax debts, Kosovo Police - possible criminal files, and the Basic Court – eventual bankruptcy procedure.

1.2.3.6. Vacancies/ competitions for limited state resources

This concerns the procurement of services, vacancies, public auctions, permits, licenses, or subsidies. In such cases, it is important to have transparent procedures with objective criteria.

1.2.4. Decisions

The criteria for rights and obligations should be clearly formulated in order to limit discretion.

Example: Article X: Building Law: A building that does not comply with this law may be demolished.

Problem: Does any violation of the law, even a minor formality, bring this risk?

Solution: Article X: Construction Law: A building may be demolished if it does not comply with the following provisions of this law: [...]

1.2.5. Oversight

Every public body should be supervised by a body of higher authority, even by the general public. Therefore, any draft normative act or normative act must ensure that there is sufficient executive, parliamentary, other or civil society oversight. Judicial supervision is an additional preventive mechanism.

1.2.5.1. Transparency and oversight of civil society

Oversight by civil society is often subject to separate normative acts, in particular normative acts on public consultation and normative acts on freedom of information.

Example: Article X: Law on Electronic Communications: The Regulatory Authority of Electronic and Postal Communications is an independent legal entity.

Problem: What does "independent" mean? Is there no oversight by a public body? What is the relationship with the public?

Solution: Article X Law on Electronic Communications: The Regulatory Authority of Electronic and Postal Communications is a legal body independent from other executive bodies, but reports to the Assembly as follows: [...] on Electronic Communications also reports twice a year including the following information: [...]. All its decisions are public according to the Law on Access to Public Documents.

1.2.5.2. Segregation of duties

If all decision-making power is concentrated in one country, then there are no horizontal checks or balances between public officials.

Example: Article X: Public Procurement Law: Planning, awarding and management of a public contract must be carried out by the same public official.

Problem: The rule makes it relatively easy for a public official to rig the tender to favour a particular party and to hide any procurement fraud.

Solution: Article X: Law on Public Procurement: When public contracts are awarded, the planning and specification of requirements shall be kept separate from the organizational aspect of both the implementation of the contract award process and the management of the contract.

1.2.5.3. Rotation

An effective tool to deal with the risk of corruption is staff rotation. This personnel management tool should be widely used in areas particularly vulnerable to corruption.

To do this requires staff to be willing to take on different functions at regular intervals. As a rule, the period of duty should not exceed several years - even if this usually results in more work (time needed to familiarize with new tasks).

Example: Article X: Public Procurement Law: The planning, awarding and management of a public contract must be implemented by a procurement unit in each state body.

Problem: The rule lacks any provision for job rotation, thus allowing potentially corrupt relationships to develop.

Solution: Article X: Public Procurement Law: The planning, awarding and management of a public contract must be implemented by a procurement unit in each state body. Staff in this unit must move to a new function outside the unit at least every five years.

1.2.6. Sanctions

Sanctions can be a problem in different directions:

- Undefined or excessive sanctions may help public officials to bribe citizens;
- Soft sanctions or no sanctions (for citizens) can facilitate corruption by citizens;
- Soft or no sanctions (for public officials) can facilitate corruption by public officials.

Example: Article X: Law on Commercial Companies: Running a business contrary to the registered requirements is punishable by a fee of up to 0.5 of the annual turnover of the business.

Problem: What does "infringement of registered claims" mean - any formal infringement?

What "annual turnover" is meant - current, past or projected? 0.5 annual turnover as a fee would normally bankrupt any business.

*Solution: Article X: Law on Commercial Companies: Running a business in violation of the requirements registered in Article NN is punished with a fee of up to **0.5** of the annual turnover of **the year in which the criminal offense occurred, determined by the following factors : [...]***

1.2.7. Legal advice

Legal advice is important as a safeguard against the arbitrariness of power authorities. Protection is intended to encourage, support and facilitate the use of effective legal remedies necessary to address certain violations. This requires a greater focus on the very remedy necessary to address the breach and provide redress for that breach. Such tools prevent injustice and abuse of power by providing a remedy or review for wrongs caused by authorities.

Example: Article X: Construction Law: Refusal to issue a construction permit is subject to full legal review.

Problem: What if the Municipal Directorate of Urbanism issues a building permit that is insufficient? What if the Municipal Directorate of Urbanism fails to take any action? What if the Municipal Department of Urbanism issues other decisions, such as for the demolition of an "illegal" building? What does "legal review" mean and, in particular, which court is competent?

Solution: Article X: Construction Law: Violation of any right under this law is subject to legal appeal through administrative courts.

Article X: Law on Construction: All decisions according to articles NN are subject to legal appeal in administrative courts.

1.2.8. Sector-specific safeguards

The above list of preventive deficiencies indicates some of the main categories, but is not an exhaustive list. Each sector works with different rules and practices. For example, for a teacher and a doctor, some corruption risks are similar and some different. Similarly, public financial management and public procurement each require a host of specific safeguards against corrupt practices.

Annex I: Assessment list of potential risks of corruption in legislation

1. Uncertainty/ambiguity		
1.1	Language	
1.1.1.	Word choice. Are correct and correct wordings used in the project normative act or normative act	
1.1.2.	Construction of sentences. Are the sentences and words related in a way that does not allow for ambiguity or ambiguity?	
1.2		Legal harmonization
1.2.1.	Conflicting Provisions. Are there provisions in other laws that may be in conflict with the draft normative act or normative act?	
1.2.2.	Inconsistent Terminology. Does the draft normative act or normative act enable a different meaning for a certain term or a meaning that is contrary to another law?	
1.2.3.	Ambiguous References. Is it unclear to the reader when the law makes a reference to another law or example?	
1.2.4.	Legal Gaps. Are all the necessary aspects to be fixed included?	
1.2.5.	Unique structure of laws	
2. Lack of Preventive Mechanisms		
2.1	Authority	
2.1.1.	Unidentified Powers. Is the normative act defined in the draft normative act and any of the body responsible for all the competences and duties foreseen?	
2.1.2.	Unidentified Extent. Has a normative act or normative act been "forgotten" in the project to give the competent organ/body the appropriate powers to perform its duties?	
2.1.3.	Delayed Identification. If the draft normative act or normative act foresees the establishment of a new body or the granting of new powers - is it clear which	

	body will perform the tasks until the new body is formed or until the new body takes over the execution of the tasks in practice?	
2.1.4.	Delayed decision. If the draft normative act or the normative act foresees a competent body for implementation that may not exist at the time of the adoption of the draft law.	
2.1.5.	Power for further regulation. If the draft normative act or the normative act provides for the establishment of a new body for powers that were previously exercised by another body, is it clear who will exercise the powers until the new body is established or until it starts work?	
2.1.6.	Overlapping powers. Does the draft normative act or normative act provide powers for a state body, which are already exercised by another body?	
2.1.7.	Division of powers. If the draft normative act or the normative act foresees that the act be implemented by several bodies, are all the powers that each body must exercise defined?	
2.1.8.	Conflict of interest. Do provisions for conflict of interest contain draft normative act or normative act?	
2.2	<p>Authority and resources: It is important that a public body has all the authority and resources necessary for the performance of its duties.</p> <ul style="list-style-type: none"> i. Do the provisions clearly define the legal basis and requirements for providing financial support? ii. Does the method of financial support correspond to its characteristics? iii. Is financial support necessary? iv. Is there already available support provided for in other legal acts for the same objectives? Is there already support secured (e.g. projects or direct budget support) from international development organizations or foreign countries for the same objectives? v. Is the financial support adequate or excessive? vi. Are there mechanisms for gathering stakeholder and expert opinions when establishing beneficiary 	

	<p>selection criteria?</p> <p>vii. Are these criteria open to the public and will they be published?</p> <p>viii. Is there a clear selection mechanism and criteria and is it open to the public?</p> <p>ix. Is there an evaluation mechanism for the selection of beneficiaries? Is it fair?</p> <p>x. Are there oversight and monitoring mechanisms that require evidence to prove that support is being used for the reasons for which it was provided?</p> <p>xi. Are there mechanisms to prevent illegal receipt and illegal spending of financial support?</p> <p>xii. Are there sanctions and mechanisms for the implementation of sanctions?</p>	
2.3	Procedures	
	2.3.1. Undefined steps. Are all stages of the procedure identified?	
	2.3.2. Unidentified Time Limits. Are the deadlines in the proceedings clearly defined, for example when natural or legal persons can request the realization of a certain right, within which deadline should the request be decided)?	
	2.3.3. Unidentified Fees. Are the pending fees identified?	
	2.3.4. Repeat inspection. Are the criteria included in the procedure clear, objective and transparent?	
	2.3.5. Multi-stop procedures. Are there clear criteria for fulfilling a certain right or imposing a certain obligation?	
	2.3.6 Competitions for limited state resources. Have clear criteria been established for the allocation of limited state resources (tasks, subsidies) and are the procedures transparent?	
2.4	Decisions (excessive discretion) Do they foresee certain discrete rights that exceed the purpose for which the draft normative act or normative act was given?	
2.5	Are all decisions expected to contain reasons?	
2.6	Is there a legal remedy for contesting a decision and which one is the competent body to decide on the legal remedy?	

2.7	Are there provisions that allow for discretionary decision and are they adequate and based on the law?	
2.8	Oversight	
	2.8.1. Transparency and supervision of civil society. Are procedures and results foreseen that ensure transparency and enable oversight by civil society or the media?	
	2.8.2. Division of duties. Has excessive concentration of powers in a state body, sector, unit or a single official been avoided?	
	2.8.3 Rotation. Is the rotation of officials in high-risk units foreseen (for example, public procurement, police, customs, tax etc.)?	
2.9	Sanctions: the availability of effective, proportionate and convincing sanctions. Are reasonable, proportionate and adequate sanctions foreseen?	
2.10	Legal advice: Legal advice is important as a safeguard against the arbitrary power of the authorities. Such tools prevent injustice and abuse of power by providing a correction or review for mistakes made by authorities. Are a regular legal remedy (complaint/submission) and a clear procedure in two instances provided for?	
2.11	Sector-specific safeguards: as needed from sector-specific corruption risks Is the right to judicial protection provided for?	

Annex II. Format of Implementation of Criteria for assessment of corruption in legislation

Category 1			
Question	Relevant provision	Corruption risk	Recommendation
International standards	Relevant provision	Relevant international standard	Recommendation
Additional comments			
References			

Annex III. Sample of Given Opinion

Name of the normative act			
Assessor(s)		Post	
Contracted expert		Place of work, registration number of the Independent Entity	
Corruption assessment requested		Non-requested assessment of corruption	
Date (receipt of documentation)		Date (decision to conduct the Corruption Assessment)	
Date (start of Corruption Assessment)			
Date of giving the opinion			
Discovered criteria	Relevant provision	Risk of corruption (explanation)	Recommendation

International standards	Relevant provision	Relevant international standard	

Annex IV. Request from the Proposing Body for evaluation of corruption

Title of the normative act					
Category	Approval		Amendment/supplement		
Type of normative act	Law	Decree	Regulation	Decision	Adm. Instruction
Related normative acts					
Interested agency		Contact point		Contact details	
Legislative timeline		Date requested for giving the opinion			
Annexes					
Applicant's name, title, contact details					
Signatures				Date	