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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Investigation into the fraudulent diversion of $4.3 million by a senior staff member of the reconstruction pillar of the United Nations Interim Administration Mission in Kosovo (UNMIK)

Note by the Secretary-General

1. Pursuant to General Assembly resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the attached report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the investigation into the fraudulent diversion of $4.3 million by a senior staff member of the reconstruction pillar of the United Nations Interim Administration Mission in Kosovo (UNMIK).

2. The Secretary-General takes note of its findings and concurs with its recommendations. The Secretary-General also notes that measures are being taken or initiated to correct many of the issues contained in the present report.

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Report of the Office of Internal Oversight Services on the investigation into the fraudulent diversion of $4.3 million by a senior staff member of the reconstruction pillar of the United Nations Interim Administration Mission in Kosovo (UNMIK)

Summary

In May 2002, the Office of Internal Oversight Services (OIOS) received a report alleging significant acts of fraud in excess of $4.3 million by a former senior staff member of the United Nations Interim Administration Mission in Kosovo (UNMIK), Jo Hans Dieter Trutschler, who had been assigned to the UNMIK reconstruction pillar administered by the European Union. After starting the investigation into this matter, OIOS learned that the European Anti-Fraud Office (OLAF) of the European Commission had also commenced an investigation based on a similar complaint. The two offices coordinated their ensuing investigative responsibilities.

The investigation revealed that Mr. Trutschler had committed several criminal offences to the financial disadvantage of UNMIK: OIOS and OLAF established that he had caused the public electricity provider in Serbia to transfer an amount due to the Kosovo Energy Company (KEK) — $4.3 million — derived from the sale of electricity on the power grid of the former Yugoslavia, to a bank account under his control in Gibraltar. After it was discovered that the funds were missing, Mr. Trutschler transferred the remaining funds to his offshore account in Belize to evade recovery of the funds.

OIOS also confirmed that Mr. Trutschler had unlawfully obtained a further amount of €220,000 of UNMIK funds through the submission of false invoices. In addition, the investigation revealed that he had fraudulently made use of an academic title and had lied about his academic, professional and personal achievements in his recruitment. However, the management of the UNMIK reconstruction pillar hired Mr. Trutschler without verifying his qualifications.

In July 2002, the case was referred to the authorities in Germany, the country of Mr. Trutschler's citizenship. He was tried and convicted for "breach of trust", "forgery" and "misuse of an academic title", and was sentenced to a prison term of three years and six months.

Most of the funds unlawfully obtained by Mr. Trutschler have been recovered by the investigation. Although Mr. Trutschler spent part of the funds on luxury items and lost a further portion in the stock market, as a result of the appreciation of the euro against the United States dollar, the full amount lost by UNMIK in United States dollars has been recovered and remitted to the relevant UNMIK account at the Commerzbank in Frankfurt, Germany.

I. Introduction

1. In May 2002, the Investigations Division of the Office of Internal Oversight Services (OIOS) received a report alleging that a senior staff member of the United Nations Interim Administration Mission in Kosovo (UNMIK) reconstruction pillar, Jo Hans Dieter Trutschler, had unlawfully obtained Kosovo Energy Company (KEK, the acronym commonly used in the Albanian and Serbian languages) funds totalling $4,287,392 from a client of KEK in a deal involving the sale by KEK of supposedly excess electricity. Subsequent to the initiation of an investigation into this matter by OIOS, the OIOS investigators were informed that the European Anti-Fraud Office (OLAF) of the European Commission in Brussels had also commenced an investigation. OLAF confirmed its own jurisdiction in this matter based on the consideration that the reconstruction function of UNMIK, including significant parts of its funding and management, is executed by the European Union under the overall responsibility of the United Nations and the Special Representative of the Secretary-General. OIOS jurisdiction in this matter rests in the provisions of its own mandate.[1] OIOS officials at Headquarters established contact with OLAF representatives in Brussels. Thereafter, OIOS and OLAF investigators maintained close liaison and the two offices coordinated their ensuing investigative responsibilities and activities.

2. In the course of the investigation, OIOS received additional reports and developed prima facie evidence indicating that Mr. Trutschler may have also committed other acts of criminal as well as administrative misconduct, for instance various acts of travel claim fraud. OIOS is pursuing these matters separately and expects to finalize them shortly. A report on these matters will be provided to the relevant programme managers, accompanied by recommendations for remedial action, in accordance with the terms of the OIOS mandate.

II. Background information

Mr. Trutschler's employment with UNMIK

3. In January 2000, Mr. Trutschler was first appointed to UNMIK and assigned to the Public Utilities Department, an UNMIK Pillar IV (Reconstruction)-European Union department created within the framework of the Joint Interim Administrative Structure in Kosovo. Soon thereafter, based on the academic qualifications and practical experience claimed by him both verbally and on his curriculum vitae, he was appointed the internationally recruited co-head of the Public Utilities Department and Chairman of the Supervisory Board of the Kosovo Energy Company.

4. The UNMIK reconstruction pillar operates under the authority of the Special Representative of the Secretary-General and is administered by the European Union. As such, Mr. Trutschler held a European Union letter of appointment that had been facilitated and financed, to the benefit of UNMIK, by the European Agency for Reconstruction.

Power generating entities in the region

5. KEK constitutes a "socially owned enterprise" created under the laws of the former Yugoslavia and administered by the Kosovo Trust Agency under the authority of Security Council resolution 1244 (1999). It is the public utility company

for the generation and supply of electricity in Kosovo. Its principal corporate office is located in Pristina, Kosovo. Its counterpart in Serbia is Elektroprivreda Srbije (EPS), whose head office is located in Belgrade.

The energy grid in the former Yugoslav territory and KEK electricity demands

6. OIOS identified that Kosovo is part of a widespread energy transfer grid within the geo-political boundary of the former Federal Republic of Yugoslavia. This grid was conceived prior to the 1999 Kosovo war. A State located within the boundaries of the grid may today transmit surplus electricity, if it so chooses, via the grid to another State in need of additional electricity.

7. Since the end of the war in 1999, Kosovo has frequently encountered electricity shortages. For that reason, and on the basis of an agreement with the European Union, KEK occasionally purchased electricity from member States, including from Bulgaria, while the European Union made payment for such electricity purchases to the seller. Such electricity would then be transmitted through the former Yugoslavia energy grid to its destination, Kosovo.

III. Investigation

KEK electricity purchases from January to March 2001

8. OIOS found that from January to March 2001, KEK had procured 133 GW/h of electricity from Bulgaria. In compliance with the agreement to assist KEK with its electricity demands, the European Union processed payment to Bulgaria for the electricity purchased. However, during that period of time, the two KEK power plants in Kosovo achieved a higher electricity output than previously expected by UNMIK. The electricity purchased from Bulgaria to the benefit of KEK — ostensibly — was declared by KEK to be in excess of local requirements.[2] KEK re-routed the 133 GW/h of electricity procured from Bulgaria onto the Balkan grid for sale to any State short of power. EPS became its buyer and agreed to pay the market price of $4.3 million to KEK.

KEK management and operations

9. OIOS established that Mr. Trutschler, as Chairman of the Supervisory Board of KEK, was generally charged with oversight and policy responsibilities, but not with involvement in management activities and operational responsibilities, during the critical time frame from January through March 2001. However, OIOS investigators obtained testimony that KEK, with the knowledge of senior managers in the UNMIK reconstruction pillar, had permitted a different system to evolve for political reasons: several managers told OIOS that EPS, the State-administered utilities company of Serbia, refused to interact directly with KEK. However, EPS had indicated that it was prepared to deal with a representative of the United Nations, which administered Kosovo — and ultimately was responsible for public entities such as KEK — in the interim. For this reason, UNMIK Pillar IV management designated Mr. Trutschler as the EPS contact, including for billing and payment issues.

A. Case studies

Case One

1. Mr. Trutschler's diversion of EPS payments

10. OIOS investigators learned that sometime in May or June 2001, KEK employees had become aware that KEK had failed to receive payment on three invoices involving the sale of the 133 GW/h of electricity to EPS. Documentary evidence indicates that actions to recover the money were thwarted by confusion generated by the senior staff member. The year-end reconciliation of accounts for 2001, which was made under the guidance of the Finance Director of KEK, confirmed that three invoices issued by KEK to EPS for the sale of electricity remained unpaid. OIOS investigators reviewed the relevant documentation and found that, indeed, KEK had invoiced EPS for the January to March 2001 sales of electricity in three separate invoices, amounting to $4.3 million.

2. EPS transfer of funds to Gibraltar

11. After it was discovered that payments from EPS had not been received, KEK issued another request for payment of the $4.3 million. However, EPS informed KEK that it had already paid the invoiced amounts, adding that according to instructions received from KEK, the payments had been made to KEC Ltd, which, supposedly, was located at an address identical to that of KEK in Pristina. EPS provided documentation to KEK in support of its contention. OIOS analysed this documentation and noted that the invoices in question referred not to KEK but to KEC Ltd, a phonetically identical and orthographically similar acronym to that of KEK. In addition, OIOS observed that although individual United States dollar amounts invoiced by KEC Ltd differed from those of the original, genuine invoices issued by KEK, the overall amount corresponded precisely to the amount owed to KEK by EPS. However, the invoices, issued by KEC Ltd, identified as the beneficiary a Gibraltar bank account in the name of KEC Ltd, not the Kosovo consolidated account used by KEK.

12. OLAF carried out inquiries into the transfers to Gibraltar and found that the $4.3 million had been transferred from EPS to the Gibraltar branch of Jyske Bank. It was deposited into the United States dollar account of K Energy & Commodity Trading Ltd, or KEC Ltd, in Gibraltar, a company chartered to be "trading with electric and other energy as well as with (different kinds of) commodities".

3. Mr. Trutschler's companies and bank accounts

13. Investigations undertaken by OIOS and OLAF revealed that while Mr. Trutschler had been in the employ of UNMIK Pillar IV (Reconstruction)-European Union, he established and incorporated at least four Gibraltar corporations and corresponding bank accounts. They included KEC Ltd, the beneficiary of the EPS payment, which had been incorporated on 4 April 2001. OIOS found that, formally, all of the Gibraltar companies in question were managed on behalf of Mr. Trutschler as a trust by Fiduciary Management Ltd, which was owned by an individual who resided permanently in Gibraltar. However, OIOS and OLAF established that this trusteeship regarding Mr. Trutschler's companies was designed to function as a veil and that Mr. Trutschler had, in fact, retained for himself

unlimited power of attorney regarding each of the companies, including the respective bank accounts. He was also designated as the sole financial beneficiary. OIOS notes that this is a common strategy for the operation of shell companies.

4. Mr. Trutschler's attempts to secure the funds

14. OIOS was informed that Mr. Trutschler had obtained knowledge of the ensuing investigation into the missing funds. As a result, he proceeded to transfer, by wire, those funds remaining in his Gibraltar accounts to an offshore bank account in Belize, in favour of a company called Northern Star Ltd. OIOS established, by circumstantial evidence, that it was Mr. Trutschler who had ownership of Northern Star Ltd, in Belize. However, Jyske Bank managed to thwart the transfer to Belize and the funds were returned to Gibraltar within a week. To protect the interests of KEK, OLAF retained a private law firm in Gibraltar, which sought and obtained a court order freezing the Gibraltar accounts in early May 2002.

5. Mr. Trutschler's "arrangement fee"

15. OIOS noted that Mr. Trutschler's greed as well as his fragile financial state of affairs was reflected in the fact that he charged KEC Ltd, his own company, with an "arrangement fee" of 1.7 per cent, i.e. approximately €64,000, in favour of TAU International, another company under his ownership and control. OIOS obtained information showing that Mr. Trutschler had been forced to institute bankruptcy proceedings regarding this company, which was incorporated in Essen, Germany. However, he continued to maintain a bank account on behalf of TAU International in Basel, Switzerland, into which he deposited the "arrangement fee".

6. Did KEK or UNMIK employees assist in Mr. Trutschler's actions?

16. OIOS inquired into the possible reasons for the fact that the payment of the amount of $4.3 million that had been outstanding from EPS was not pursued in a more vigorous fashion by KEK. Documentation reviewed by OIOS showed that a number of KEK employees had been aware in mid-2001 that EPS remained delinquent vis-à-vis KEK or that the payment had not been accounted for. Some KEK employees held the view that this payment, on an exceptional basis, had been channelled through the UNMIK Central Fiscal Authority — ostensibly based on collusion between Mr. Trutschler, who served as the Chairman of the KEK Supervisory Board, and the Chairman of the KEK Board of Directors.

17. OIOS found that the wire transfer from Gibraltar to the Belize account was made on 25 April 2002. That was the same day that a letter addressed to Mr. Trutschler was prepared by the new Chairman of the KEK Supervisory Board, requesting Mr. Trutschler to repay the missing funds, i.e. $4.3 million. Interviews by OIOS revealed that the Deputy Special Representative of the Secretary-General for Pillar IV (Reconstruction), upon learning of the missing funds, had in fact asked the senior staff member's successor, the then-Chairman of the KEK Supervisory Board, to dispatch a letter of this kind. OIOS subsequently inquired into the possibility of whether this letter may have served as a warning, inadvertently or intentionally, to Mr. Trutschler, causing him to seek to keep his ill-gotten gains by transferring them to an offshore environment.

18. OIOS document analysis of banking records also revealed that Mr. Trutschler had transferred $200,000 from his KEC Ltd account in Gibraltar through KT

Systems Ltd, another company he established in Gibraltar, to the Bank of Nova Scotia in Ontario, Canada, to the benefit of an account held by his successor as the Chairman of the KEK Supervisory Board, a Canadian national and fellow staff member of the UNMIK reconstruction pillar ("the successor"). In an Investigations Division/OIOS interview with Mr. Trutschler during his detention in Germany, he argued that he had made the $200,000 payment in March 2002 to his successor, ostensibly as an investment in the singing career of the successor's daughter, and based on an agreement between the two to this effect dating back to the summer of 2001. The successor, who has since resigned from UNMIK, is now represented by legal counsel and would not participate in an interview with OIOS. The Deputy Special Representative of the Secretary-General for Pillar IV (Reconstruction), however, informed OIOS that the successor, in April 2002, advised that he had received the $200,000 payment from the senior staff member, supposedly in March 2002, and that the funds were not "tainted". OIOS determined that the successor was aware at this time of a separate investigation by OLAF into the senior staff member's allegedly fraudulent travel claims.

19. OIOS noted, with regret, that the then-Chairman of the KEK Board of Directors, who could have shed light on this issue, had passed away in the time between the events at issue and the initiation of the OIOS investigation.

20. OIOS inquired into the possibility that Mr. Trutschler's payment to his successor was a quid pro quo for assistance, connivance or silence on his part. The following issues were considered by OIOS in this context:

(a) First, OIOS noted that according to Mr. Trutschler's story, the agreement between him and his successor to support the daughter in her singing career supposedly was concluded in the summer of 2001. However, he could not explain why it had taken him until March of 2002, i.e. nine months, to make the payment in the amount of $200,000. We note that he had $4.3 million in ill-gotten gains at his disposal in his Gibraltar account as of September 2001 when the EPS transfers were completed;

(b) Secondly, once the payment was made, the successor accepted it, although there is a likelihood that he may have known at that point in time that Mr. Trutschler had obtained the amount of $4.3 million unlawfully. This is reflected in the context of his conversation with the Deputy Special Representative of the Secretary-General for Reconstruction, to whom the successor had emphasized that the money he had received was "untainted". OIOS would note that such an assurance would not make sense unless there was also "tainted" money;

(c) Finally, on 25 April 2002, the successor addressed a letter to the senior staff member requesting repayment of the $4.3 million. On the same day and as an evident consequence, Mr. Trutschler sought to secure the funds offshore by transferring them to Belize.

21. OIOS has considered these pieces of circumstantial evidence in detail. We note that the evidence available against the successor — at this time — does not have sufficient probative value to show Mr. Trutschler's payment to his successor on the KEK Supervisory Board in the amount of $200,000 was made quid pro quo for his warning about the ensuing investigation or his failure to act regarding the missing funds. OIOS is aware that evidence showing the link or causality between one and the other would generally be required for a criminal case against Mr. Trutschler's

successor. UNMIK and OLAF, with the assistance of OIOS and outside counsel engaged in Canada, are currently exploring legal options, including civil and criminal actions, inter alia. The management of the UNMIK reconstruction pillar has authorized the allocation of €5,000 in legal fees to this end. Efforts to secure the return of the full amount of this money by the voluntary cooperation of the successor were not achieved.

7. Asset recovery

22. As a result of legal actions, the original $4.3 million has been returned to UNMIK. Mr. Trutschler had exchanged the original funds in the course of his transactions into euros, the value of which has risen against the United States dollar, to the benefit of UNMIK. However, it should be noted that had Mr. Trutschler's criminal intervention not occurred, UNMIK would have placed the funds in the Kosovo accounts, which are held in Frankfurt, Germany. This also would have resulted in a significant augmentation of their value vis-à-vis the United States dollar. Regarding Mr. Trutschler's successor and his acceptance of the amount of $200,000, OIOS and OLAF continue to seek the return of these funds and appropriate interest from the successor. However, OIOS was advised by correspondence with the successor's counsel that of $200,000, only the amount of $80,000 remains. The final disposition of this matter therefore has not yet been determined.

Case Two

1. Submission of false invoices by the senior staff member

23. The investigation also confirmed that Mr. Trutschler had unlawfully obtained a further amount of €220,000 of KEK funds through the submission of two false invoices. These invoices were purported to have been submitted to UNMIK by two energy-related companies, Scottish Hydro Electric and Siemens. The investigation showed that in both cases, Mr. Trutschler provided verbal instructions to his subordinates in KEK and the Public Utilities Department to make the respective payments. OIOS inspected the invoices and noted that they did not list any bank account numbers and routing or SWIFT codes. Rather, OIOS found that Mr. Trutschler told his subordinates to which account the funds should be sent, it being the account of yet another company he set up in Gibraltar, called H3R.

24. OIOS conducted an analysis of the invoices and noted that the Siemens invoice, which was in the amount of €90,000, displayed striking similarities in font and design to the false invoices sent by Mr. Trutschler to EPS. OIOS contacted Siemens and confirmed that no invoice of the kind used by Mr. Trutschler had been issued by that company to KEK. Mr. Trutschler, during an interview with OIOS, admitted that the invoice constituted a forgery.

25. In the case of the other invoice, which supposedly originated from Scottish Hydro Electric and amounted to £36,000, Mr. Trutschler's apparent modus operandi was different. OIOS confirmed that no evidence existed to show that this company had had any contractual relationship with UNMIK or any other claim to the funds. However, OIOS could not establish with certainty that Mr. Trutschler had generated the invoice himself.

26. The evidence indicates that Mr. Trutschler was challenged by a third person inside UNMIK to transfer the funds from his Gibraltar account back to the bank account of KEK, which he did. OIOS established that Mr. Trutschler subsequently initiated the transfer of funds to the account of a subsidiary of Scottish Hydro Electric, Southern Energy/Southern Power, although it did not have any contract with UNMIK. Thus, Mr. Trutschler removed the funds permanently from the custody and control of KEK without any basis for so doing.

27. OIOS established that the loss of KEK assets was compounded by another circumstance. The amount in question, £36,000 purportedly invoiced, was converted into deutsche marks for the purpose of the wire transfer to the account of Scottish Hydro Electric. The equivalent, DM 130,000, however, was calculated as €130,000, which constitutes approximately twice the amount supposedly owed to Scottish Hydro Electric.

2. Asset recovery

28. While OIOS and OLAF have obtained custody of the amount of €90,000 transferred into Mr. Trutschler's account under the Siemens invoice, civil action regarding the missing amount of €130,000 disbursed to the subsidiary of Scottish Hydro Electric has not yet been taken. A recommendation to this effect is included at the end of the present report.

Case Three

1. Mr. Trutschler's employment fraud in the course of his hire by UNMIK

29. As a part of the OIOS investigation into Mr. Trutschler's modus operandi and for the purpose of the present report, the OIOS investigators examined his background and the circumstances of his hire. OIOS established that as a means to be considered for employment with the UNMIK reconstruction pillar, he had submitted a document purporting to constitute an accurate curriculum vitae. According to this document, Mr. Trutschler, who was 33 years of age at the time of his hire, claimed to have had more than 10 years of work experience in water and waste-water management in international environments. Furthermore, he stated that he had successfully pursued study courses at three different universities — in Florida and Boston, United States of America, and in Aachen, Germany. He also asserted that he had successfully completed a doctorate (PhD) course. In addition, Mr. Trutschler claimed on his application documentation that as "President" of one of his companies, TAU International, in Germany, he had employed some 160 engineers. OIOS investigators ascertained that all of his claims were completely false and that his company, TAU International, in fact had declared bankruptcy under the relevant German statutes at the time of his hire.

IV. Conclusion

Diversion of and breach of trust regarding $4.3 million

30. The investigation revealed that Mr. Trutschler abused the power accorded him by UNMIK and KEK and violated his duty to safeguard KEK property and financial interests. Such activity constitutes a criminal offence both in Kosovo and in Germany, where it is punishable as "breach of trust", a statutory criminal offence

pursuant to section 266 of the German Penal Code. Mr. Trutschler deliberately acted to cause, and did cause, KEK to suffer a financial loss in the amount of $4.3 million, the recovery of which he sought unsuccessfully to evade. Mr. Trutschler also acted in an aggravated form pursuant to section 266 of the German Penal Code by causing loss of assets of great magnitude and by abusing his power as a public official.

Breach of trust and uttering of false invoices in the amount of $220,000

31. Mr. Trutschler committed acts of breach of trust via the two false invoices by requiring that payment be made by UNMIK into a bank account under his control. Thus, he caused a loss of KEK assets in the amount of $220,000. In the case of the Siemens invoice, Mr. Trutschler also made use of an invoice with knowledge of its falsity (section 267 of the German Penal Code).

Fraudulent use of an academic title

32. Mr. Trutschler used the title "PhD" to obtain an appointment to UNMIK, even though he had not received the right to use such a title. Such activity is illegal in Germany under the specific misdemeanour statute penalizing such activity (section 132 (a) of the German Penal Code).

Mr. Trutschler's trial and conviction

33. The competent court in Bochum, Germany, issued an arrest warrant to apprehend Mr. Trutschler. German criminal law provides that a German citizen may be prosecuted for acts committed abroad if they constitute criminal offences both in that foreign jurisdiction and in Germany (section 7 of the German Penal Code). Following a trial, with evidence presented by the Prosecutor's Office, Bochum, which included testimony by an OIOS senior investigator, the court found him guilty as charged for the acts as listed above. He received a sentence of a prison term of three years and six months and remains in detention at this time.

Systemic failure to detect deception and fraud in recruitment

34. The circumstances surrounding Mr. Trutschler's recruitment show that this could have been prevented. Although it is the nature of fraudsters to employ lies and deception, in this instance, not one of the standard steps common in recruitment processes was undertaken. If such steps had been followed, it is reasonable to conclude that Mr. Trutschler's lies of personal and professional achievement would have been exposed. As noted, almost all of Mr. Trutschler's assertions in his curriculum vitae were found to be false. Yet, OIOS could not identify any attempt on the part of the UNMIK reconstruction pillar to obtain confirmation regarding even one of the personal, academic or professional references listed by Mr. Trutschler. Indeed, the administrative officer acknowledged this weakness. OIOS contacted the relevant academic institutions and swiftly ascertained that Mr. Trutschler had not successfully pursued any studies or earned any degree from the universities he listed, including the degree of PhD. Furthermore, OIOS noted that he lacked the so-called "key qualifications" for his appointment in the areas of water supply, waste-water and waste management. The UNMIK reconstruction pillar, however, failed to make even those minimal verification steps during the recruitment phase. A public records check would have revealed that Mr. Trutschler's company, TAU International, ostensibly the employer of some 160 engineers, was bankrupt.

35. OIOS found that UNMIK provided senior-level employment to a 33-year-old individual without engaging in any background or reference checks. OIOS has concluded that this indicates a significant and alarming breakdown in human resources-related due diligence. In the view of OIOS, this is mitigated neither by exigency nor by the fact that the European Agency for Reconstruction, not UNMIK, financed the contract. UNMIK is precluded neither by law nor by political considerations to engage in its own verification process concerning job applications, especially important for a senior position as held by this fraudster. Rather, OIOS noted that Mr. Trutschler was acquainted and connected with the programme manager for the UNMIK reconstruction pillar, who confirmed to the OIOS investigators that he had accelerated the senior staff member's recruitment and subsequent, swift appointment as co-head of the Public Utilities Department and Chairman of the KEK Supervisory Board.

36. More alarming, however, is the obvious lack of management oversight in Pillar IV, which allowed the abuses detailed here to occur. Not only was this one person vested with virtually unchecked authority, but he was also not called to account for the failures in the conduct of his responsibilities, resulting in a virtual license to steal.

Asset recovery

37. Securing and recovering the funds stolen by Mr. Trutschler was conducted in two stages. First, Jyske Bank managed to reverse the transfer of the remaining funds from Mr. Trutschler's Gibraltar bank account to the offshore account in Belize. This occurred as the result of internal procedures of the bank as they related to large money transfers to offshore banking establishments. It is part of the professional experience of OIOS that, had this late intervention on the part of the bank not occurred, asset recovery in Belize would have been almost impossible. In a second stage, at the direction of OIOS, the remaining funds were transferred by wire back into accounts held under the Kosovo Consolidated Budget in Frankfurt, Germany.

International and inter-organizational cooperation

38. OIOS takes this opportunity to note with deep appreciation the cooperation of OLAF, the Office of the Public Prosecutor in Bochum, Germany, the Royal Gibraltar Police and the banking and other authorities in Gibraltar. This joint effort was exemplary and essential in the successful resolution of this matter and the protection of the financial interests of the European Union, KEK, Kosovo and the United Nations — all within a period of approximately 12 months.

V. Recommendations

39. A criminal conviction against Mr. Trutschler has already been obtained; however, in addition, OIOS offers the following recommendations:

Recommendation 1

As the bulk of the stolen funds have already been recovered by the investigation, UNMIK Pillar IV (Reconstruction)-European Union, should undertake legal remedies against the senior staff member's successor to obtain repayment of the full amount of $200,000.00 transferred to him (Rec. No. IV02/195/01).

UNMIK response

In paragraph 20 of the report it is stated that UNMIK and OLAF, with the assistance of OIOS and outside counsel engaged in Canada, were exploring legal options including, inter alia, civil action and a criminal court complaint. Pillar IV authorized the allocation of €5,000 in legal fees to this end, but the efforts to secure the return of this money by the voluntary cooperation of the successor did not yield results.

In the light of the above-mentioned developments, the Office of Legal Affairs of the Secretariat will re-establish contact with the legal counsel engaged in Canada with a view to obtaining a report on his actions on behalf of UNMIK. The report will enable the Office of Legal Affairs to examine and determine further legal options available to UNMIK in Canada. Any further action involving the institution of legal proceedings in the civil courts of Canada will necessitate prior consultations with the Office of Legal Affairs at Headquarters in view of the financial and manpower resource implications.

OIOS comments

OLAF has advised that approximately $120,000 of the $200,000 total has already been recovered and returned. Furthermore, the legal counsel in Canada is continuing, within the €5,000 allowance, to assist in recovering the outstanding amount. However, no decision on legal remedies will be taken without consultation with UNMIK, Pillar IV, and the Department of Peacekeeping Operations of the Secretariat in New York, and will be based on the results of the ongoing investigation in Canada by the legal counsel.

Recommendation 2

UNMIK Pillar IV (Reconstruction)-European Union should consider legal action to recover the amount of €130,000 from Scottish Hydro Electric or its subsidiaries, as the senior staff member improperly transferred this amount (Rec. No. IV02/195/02).

UNMIK response

OLAF will consult with the Office of Legal Affairs at Headquarters and thereafter propose a course of action to recover the amount involved after obtaining the necessary background documentation from Pillar IV. An initial request for the return of the amount involved would in the first instance be made to Scottish Hydro Electric. If unsuccessful, the services of legal counsel will need to be engaged in the United Kingdom to pursue the matter in the courts on behalf of the Kosovo Trust Agency/UNMIK. Again, full account will need to be taken of the financial and manpower resource implications.

Recommendation 3

UNMIK Pillar IV (Reconstruction)-European Union should consider civil action against Mr. Trutschler for the deceptive misrepresentation of his qualifications to UNMIK. This act of deception caused UNMIK to appoint him to a level far in excess of his actual qualifications and the payment of salaries and

emoluments far exceeding the amount to which he would have been entitled had he provided truthful information on his application (Rec. No. IV02/195/03).

UNMIK response

The purpose of any civil action would purportedly be to recover the excess of salary and emoluments paid to Mr. Trutschler as a result of the deception. Mr. Trutschler was appointed in January 2000, and was in office presumably until March 2002, a period of 27 months. It is questionable whether civil action is the proper course of action, taking into account the financial and manpower resources that will be needed to recover the excess in salary and emoluments paid as a result of the deceptive misinterpretation itself and the absence of a strong case.

It should be borne in mind that Pillar IV was negligent in not examining the qualifications of Mr. Trutschler before his recruitment and allowed the situation to continue for 27 months without any effort to confirm claimed qualifications (see Rec. No. 6).

Recommendation 4

In the light of the severe and continuing energy shortage problems in Kosovo, the sale of so-called excess energy should have flagged to senior management in Pillar IV that there were gross irregularities in the KEK operations. UNMIK Pillar IV (Reconstruction)-European Union should review the control mechanisms pertaining to the import and export of energy by KEK. It should take effective measures to improve the control over current and future payments as well as sales. It should also devise a transparent procedure for the designation of those international staff members authorized to represent KEK vis-à-vis Serbian and other foreign clients (Rec. No. IV02/195/04).

Recommendation 5

Based on the findings of this investigation and preliminary results of a private audit authorized by the European Union of UNMIK Pillar IV activities, UNMIK should request OLAF to consider a systematic review of the reconstruction activities in Kosovo with a view to identifying any further corrupt activities (Rec. No. IV02/195/05).

Recommendation 6

The reconstruction pillar of UNMIK should urgently devise standard written administrative and management procedures for personnel and financial functions. This would include the effective and sensible screening of candidates to confirm that they meet the required qualifications for the level of appointment and to ensure that those who submit wrongful information are detected and removed from consideration for hire (Rec. No. IV02/195/06).

UNMIK response

In recommendation 6 it is stated that Pillar IV should urgently devise standard written administrative and management procedures for personnel and financial functions. It is further stated in the recommendation that this would include the effective screening of candidates to ensure that they meet the required qualifications

for the level of appointment and to ensure that those who submit wrongful information are detected and removed from consideration for recruitment. In order to ensure that only qualified persons are engaged to perform functions of critical importance to UNMIK, appointment of senior management should be coordinated with the Office of the Special Representative of the Secretary-General.

Recommendation 7

UNMIK management should urgently review the operations of Pillar IV to ensure that proper management and supervisory controls are enacted (Rec. No. IV02/195/07).

(*Signed*) Dileep **Nair**
Under-Secretary-General for Internal Oversight Services

Notes

[1] See resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999.

[2] Given the continuing problems with delivery of power still existing in Kosovo, OIOS makes no claim that the electricity was, in fact, in excess of requirements. Rather, this notes only that the KEK finding was the basis for the sale of electricity.