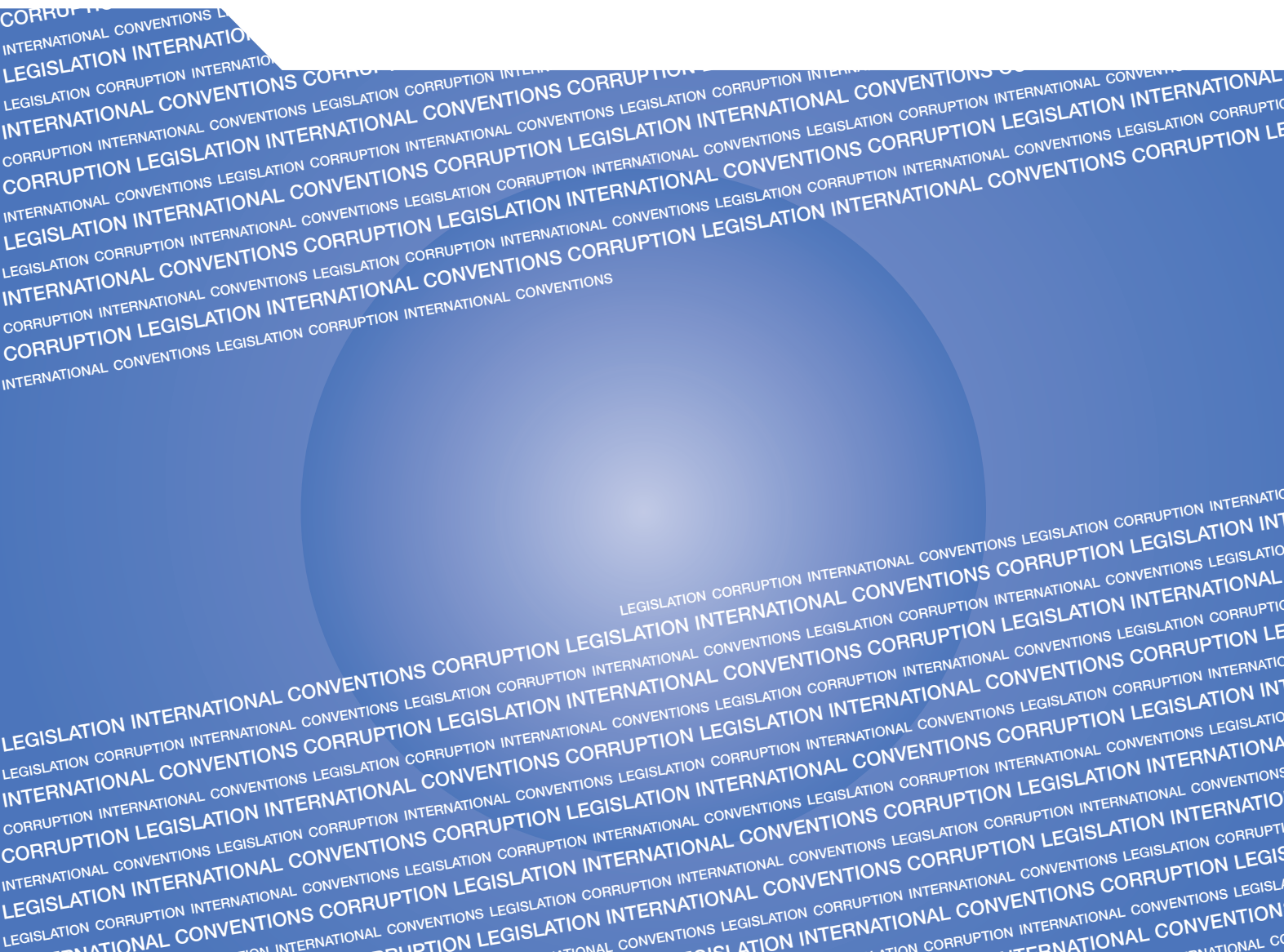




Specialised Anti-Corruption Institutions

**REVIEW OF MODELS: SECOND EDITION
ANTI-CORRUPTION NETWORK
FOR EASTERN EUROPE AND CENTRAL ASIA**



Specialised Anti-Corruption Institutions

REVIEW OF MODELS: SECOND EDITION

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Foreword

Although its effects on democratic institutions and economic and social development have long been apparent, the fight against corruption has only relatively recently been placed high on the international policy agenda. Today, many international organisations are addressing the global and multi-faceted challenge of fighting corruption.

The OECD provided a major contribution to this important effort in 1997 with the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Soon after, in 2002, the Council of Europe Criminal Law Convention on Corruption came into force. It provides common standards concerning corruption-related offences, and requires its parties to create specialised authorities for fighting corruption.

The United Nations Convention against Corruption, which came into force in 2005, is the most universal in its approach: it covers a very broad range of issues including prevention of corruption, criminalisation of corruption, international co-operation, and recovery of assets generated by corruption. It also requires its parties to establish specialised bodies responsible for preventing corruption and for combating corruption through law enforcement.

In addition to mandating anti-corruption bodies, these international conventions establish standards for their effective operation: the bodies should be independent from undue interference, specialised in corruption, and have sufficient resources and powers to meet their challenging tasks.

This report is an updated edition of a report released in 2008 providing a comprehensive overview of the experience of anti-corruption bodies and relevant international standards and including 14 case studies. This new edition reviews evolving understanding of international standards and practice, as well as describes the most recent experience of anti-corruption institutions. The report consists of two parts. Part 1 provides a summary of main international requirements regarding anti-corruption bodies and an analysis of key elements of international standards such as independence, specialisation, resources and training, and selected key features, such as main models, functions, role of co-ordination and co-operation at national and international levels. Part 2 of the report comprises case studies of 19 anti-corruption institutions from countries around the world.

The preparation of the 2012 edition benefited from valuable information provided by the participating institutions and countries in July – September 2012. The authors gratefully acknowledge the information provided by the Independent Commission against Corruption (Hong Kong, China), the Corrupt Practices Investigation Bureau (Singapore), the Special Investigation Service (Lithuania), the Corruption Prevention and Combating Bureau (Latvia), the Special Prosecutor's Office against Corruption and Organised Crime (Spain), the National Anti-Corruption Directorate (Romania), the Office for the Suppression of Corruption and Organised Crime (Croatia), the Central Service for Prevention of Corruption (France), the State Commission for Prevention of Corruption (Former Yugoslav Republic of Macedonia), the Commission for the Prevention of

Corruption (Slovenia), the Serious Fraud Office (the United Kingdom), the Anti-Corruption Agency (Serbia), the Corruption Eradication Commission (Indonesia), the Office for Government Ethics (USA), the Office of the Comptroller General (Brazil), the Directorate of Corruption and Economic Crime (Botswana), and the Ministry of Justice of Poland.

This 2012 updated edition of the report was prepared by Mrs. Vera Devine (consultant) and Ms. Inese Gaika of the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs. It is based on the 2008 edition mainly prepared by Mr. Goran Klemenčič and Mr. Janez Stusek (then University of Maribor, Slovenia).

The report was prepared in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The ACN is a regional anti-corruption initiative supported by the OECD. Its aim is to assist the countries in Eastern Europe and Central Asia in their fight against corruption. Further information about the ACN is available on its website, www.oecd.org/corruption/acn.

The second edition of the report was made possible by financial contributions from the United States, Switzerland and the United Kingdom to the OECD Anti-Corruption Network for Eastern Europe and funding provided by the OECD.

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Acronyms and Abbreviations

<i>ACPO</i>	Special Prosecutor's Office against Corruption and Organised Crime (Spain)
<i>ACD</i>	Anti-Corruption Department in Azerbaijan
<i>CBA</i>	Central Anticorruption Bureau (Poland)
<i>CGU</i>	Office of the Comptroller General (Brazil)
<i>CPC</i>	Commission for the Prevention of Corruption (Slovenia)
<i>CPIB</i>	Corrupt Practices Investigation Bureau (Singapore)
<i>DCEC</i>	Directorate of Corruption and Economic Crime (Botswana)
<i>DNA</i>	National Anti-corruption Directorate (Romania)
<i>EBRD</i>	European Bank for Reconstruction and Development
<i>EU</i>	European Union
<i>EC</i>	European Commission
<i>GRECO</i>	Group of States against Corruption, Council of Europe
<i>ICAC</i>	Independent Commission Against Corruption (Hong Kong, China)
<i>KNAB</i>	Corruption Prevention and Combating Bureau (Latvia)
<i>KPK</i>	Corruption Eradication Commission (Indonesia)
<i>OECD</i>	Organisation for Economic Co-operation and Development
<i>OGE</i>	Office of Government Ethics (the United States)
<i>ØKOKRIM</i>	National Authority for Investigation and Prosecution of Economic and Environmental Crime (Norway)
<i>SCPC</i>	Central Service for the Prevention of Corruption (France)
<i>SFO</i>	Serious Fraud Office
<i>STT</i>	Special Investigation Service (Lithuania)
<i>TI</i>	Transparency International
<i>UNCAC</i>	United Nations Convention against Corruption
<i>USKOK</i>	Office for the Suppression of Corruption and Organised Crime (Croatia)

Executive Summary

One of the best-known specialised anti-corruption institutions - Hong Kong's Independent Commission against Corruption - was established in 1974. The Commission has contributed significantly to Hong Kong's success in reducing corruption.

Recent international treaties against corruption require their member states to provide specialised bodies dedicated to fighting and preventing corruption. The United Nations Convention against Corruption requires the existence of two types of anti-corruption institutions – a body or bodies that prevent corruption and a body, bodies or persons specialised in combating corruption through law enforcement.

Inspired by the success story of Hong Kong's anti-corruption commission and its three-pronged approach to fighting corruption and also encouraged by international conventions, many countries around the world, including in Eastern Europe, established specialised bodies to prevent and combat corruption. Creating such bodies was often seen as the only way to reduce widespread corruption, as existing institutions were considered too weak for the task, or were considered to be part of the corruption-problem and could therefore, not be part of the solution for addressing it.

Both corruption-prevention and combating corruption through law enforcement involves a large number of multi-disciplinary functions. When considering establishing or strengthening anti-corruption bodies, countries need to consider the full range of *anti-corruption functions*, including:

- **Anti-corruption policy development, co-ordination, monitoring and research on corruption.** These functions include development and co-ordination of anti-corruption strategies and action plans, monitoring and co-ordination of implementation and assessment of the efficiency and effectiveness of anti-corruption measures. Research on corruption helps to see how widespread the corruption is, what areas and sectors are mostly exposed to it. Another important function is to serve as a focal point for international co-operation.
- **Prevention of corruption.** These functions require very diverse measures ranging from the promotion of integrity in public service, prevention of conflict of interest, implementation of asset declaration systems, ensuring integrity in the judiciary and among the elected officials and effective control of political party financing. They also include facilitating the reporting of corruption and the protection of whistleblowers, preventing corruption in public procurement, in the use of public funds and issuing of licenses, permits and certificates, anti-money laundering measures, and promotion of public access to information. Prevention of corruption in the private sector is another important function.
- **Anti-corruption education and raising awareness.** This area includes organising public awareness campaigns, developing and implementing educational programmes for various groups of citizens, media, NGOs, businesses, and the public at large.

- **Investigation and prosecution of corruption-related crimes.** First, these functions aim to ensure a legal framework to effectively prosecute corruption, including dissuasive sanctions for all forms of corruption. Second, they aim to ensure effective enforcement of anti-corruption legislation throughout all stages of criminal proceedings, including the identification, investigation, prosecution and adjudication of corruption offences. In doing so, it is also important to ensure a proper transition between criminal and administrative proceedings. Third, these functions include overseeing inter-agency co-operation and information exchange, on specific cases and outside such cases (among law enforcement bodies and with auditors; tax and customs authorities; the banking sector and the Financial Intelligence Unit; public procurement officials; state security; and others). Fourth, these functions include acting as a focal point for mutual legal assistance and extradition requests. Finally, maintaining, analysing and reporting law enforcement statistics on corruption-related offences is another important function.

Responsibility for the anti-corruption functions listed above should be clearly assigned to existing or newly-created institutions. Both the United Nations and the Council of Europe anti-corruption conventions establish *criteria for effective specialised anti-corruption bodies*, which include independence, specialisation, and the need for adequate training and resources. In practice, many countries face serious challenges in implementing these broad criteria.

- **Independence** primarily means that the anti-corruption bodies should be shielded from undue political interference. Thus, *genuine political will* to fight corruption is the key prerequisite for independence. Such political will must be embedded in a comprehensive *anti-corruption strategy*. The independence level can vary according to specific needs and conditions. Experience suggests that it is *structural and operational autonomy* that are important, along with a clear legal basis and mandate for a special body, department or unit. This is particularly important for law enforcement bodies. Transparent procedures for the *director's appointment and removal*, proper human resources management, and internal controls are important elements to prevent undue interference. Independence should not amount to a lack of *accountability*: specialised services should adhere to the principles of the rule of law and human rights, submit regular performance reports to executive and legislative bodies, and enable public access to information on their work. Furthermore, no single body can fight corruption alone. *Inter-agency co-operation, and co-operation with civil society and businesses* are important factors to ensure their effective operations.
- **Specialisation** of anti-corruption bodies implies the availability of *specialised staff with special skills and a specific mandate for fighting corruption*. The forms and level of specialisation may differ from country to country, as there is no one successful solution that fits all. For instance, the Council of Europe Criminal Law Convention on Corruption clarifies the standard for law enforcement bodies, which can require the creation of a special body or the designation of several specialised persons within existing institutions. International trends indicate that in OECD countries, *specialisation is often ensured at the level of existing public agencies and regular law enforcement bodies*. Transition, emerging and developing economies often establish *separate specialised anti-corruption bodies* often due to high corruption-levels in existing agencies. In addition, these countries often create separate specialised bodies in response to pressure from donors and international organisations.

- **Adequate resources, effective means and training** should be provided to the specialised anti-corruption institutions in order to make their operations effective. *Specialised staff, training and adequate financial and material resources* are the most important requirements. Concerning specialised law enforcement anti-corruption bodies, an important element to properly orient them is *the delineation of substantive jurisdictions among various institutions*. Sometimes, it is also useful to *limit their jurisdiction to important and high-level cases*. In addition to specialised skills and a clear mandate, specialised anti-corruption bodies must have sufficient powers, such as *investigative capacities and effective means for gathering evidence*. For instance, they must have legal powers to carry out covert surveillance, intercept communications, conduct undercover investigations, access financial data and information systems, monitor financial transactions, freeze bank accounts, and protect witnesses. The power to carry out all these functions should be subject to proper checks and balances. *Teamwork* between investigators, prosecutors, and other specialists, e.g. financial experts, auditors, information technology specialists, is probably the most effective use of resources.

Considering the multitude of anti-corruption institutions worldwide, their various functions, and performance, it is difficult to identify all main functional and structural patterns. Any new institution needs to adjust to the specific national context taking into account the varying cultural, legal and administrative circumstances. Nonetheless, identifying “good practice” for establishing anti-corruption institutions, as well as trends and main models is possible. A comparative overview of different *models of specialised institutions fighting corruption* can be summarised, according to their main functions, as follows:

- **Multi-purpose anti-corruption agencies.** This model represents the most prominent example of a single-agency approach based on key pillars of repression and prevention of corruption: policy, analysis and technical assistance in prevention, public outreach and information, monitoring, investigation. Notably, in most cases, prosecution remains a separate function. The model is commonly identified with the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents. This model can be found in Australia (in New South Wales), Botswana, Lithuania, Latvia, Poland, Moldova and Uganda. A number of other institutions, for instance, in the Republic of Korea, Thailand, Argentina and Ecuador, have adopted elements of the Hong Kong and Singapore models, but follow them less rigorously.
- **Specialised institutions in fighting corruption through law enforcement.** The anti-corruption specialisation of law enforcement can be implemented in detection, investigation or prosecution bodies. This model can also result in combining detection, investigation and prosecution of corruption into one law enforcement body/unit. This is perhaps the most common model used in OECD countries. This model is followed by the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime *Økokrim*, the Central Office for the Repression of Corruption in Belgium, the Special Prosecutors Office for the Repression of Economic Offences Related to Corruption in Spain, but also by the Office for the Prevention and Suppression of Corruption and Organised Crime in Croatia, the Romanian National Anti-Corruption Directorate, and the Central Prosecutorial Investigation Office in Hungary.

This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Good examples of such bodies can be found in Germany, the United Kingdom and Albania.

- **Dedicated anti-corruption policy and corruption-prevention bodies.** This model includes institutions that have one or several corruption prevention functions, such as research and analysis, policy development and co-ordination, training and advising on risks of corruption, and recommending improvements. These bodies normally have coordinative functions, but do not have law enforcement powers. Examples of such institutions can be found in such countries as Albania, Azerbaijan, Georgia, France, India, Malta, Montenegro, the Netherlands and the Philippines. Moreover, sometimes specialised corruption-prevention institutions have other specific functions, for instance, to collect and/or control asset declarations of public officials, to control political party financing, or to enforce regulation relative to prevention of conflicts of interest by public officials. In such cases, preventive agencies are entrusted with specific powers, for instance, to conduct administrative inquiries; summon persons; request documents; and impose administrative sanctions. Corruption-prevention institutions in Serbia, Slovenia and the Former Yugoslav Republic of Macedonia are among such institutions.
- **Prevention of corruption by other public institutions.** The prevention of corruption is a very broad area, and a dedicated corruption-prevention body cannot do all the work alone. It is increasingly recognised that specialised units or the management and control structures *within* the *existing* state institutions can play an important role in preventing corruption within their ranks. For instance, public service commissions play an important role in ensuring merit-based and professional public service and its protection from undue political influence, providing public servants with advice on ethical standards and ethics training or collect and control the asset declarations of public officials. Examples are the Council of Ethics for the Public Service in Turkey, the Department of Public Administration and Public Service in the Ministry of Finance in Estonia or the Federal Chancellery in Austria. Some countries have specialised bodies for conflict of interest prevention, ethics and integrity in the public administration or in parliaments, for example, the Office of Government Ethics in the United States, the National Integrity Agency in Romania, the Chief Official Ethics Commission in Lithuania, or the Parliamentary Commissioner for Standards in the House of Commons in the United Kingdom.

Some countries have internal ethics and integrity units in ministries and public bodies to promote or enforce anti-corruption and integrity rules. Self-governing bodies in the judiciary are responsible for ensuring integrity among judges. In fact, this is done in many countries by judicial councils or dedicated ethics commission for judges. Public internal and external audit, tax and other public control bodies can play an important role in prevention and detection of corruption. Central election commissions in some countries play a role in enforcing rules on financing of political parties and electoral campaigns, e.g. the Electoral Commission in the United Kingdom. Business ombudsmen have been established in several countries to, among others, prevent corruption involving companies, e.g. Russia and Georgia.

Assessing performance is a challenging task for anti-corruption agencies, and many agencies lack the skills, expertise, and resources to develop adequate methodologies and

monitoring mechanisms. Few agencies have rigorous implementation and monitoring mechanisms in place to trace their performance, and to account for their activities to the public. At the same time, showing results might often be the crucial factor for an anti-corruption institution to gain, or retain public support and fend off politically-motivated attacks. The report recommends that anti-corruption agencies develop their monitoring and evaluation mechanisms to examine and improve their own performance and to improve public accountability and support.

While many anti-corruption bodies created in the past decade have achieved results and gained public trust, the experience in emerging and transition economies shows that establishing a dedicated anti-corruption body alone cannot help to reduce corruption. The role of other public institutions, including various specialised integrity and control bodies, and internal units in various public institutions is increasingly important for preventing and detecting corruption in the public sector. This trend converges with the approach of many OECD countries where specialised anti-corruption units were established in law-enforcement agencies, while the task of preventing corruption in the public sector and in the private sector was ensured by other public institutions as part of their regular work.

The findings of this report are demonstrated by case studies from 19 countries. The case studies provide comprehensive descriptions of selected specialised anti-corruption institutions or preventive institutions operating in different parts of the world and are presented in a comparable framework. The case studies include both the agencies' formal basis for operation and their main achievements in practice. They cover the following countries:

- *Multi-purpose bodies*: Hong Kong, China, Singapore, Latvia, Lithuania, Poland, Indonesia and Botswana;
- *Law enforcement bodies*, including specialised police and prosecution services: Spain, Romania, Azerbaijan, Croatia, Norway and the United Kingdom;
- *Policy co-ordination and prevention bodies*: France, Slovenia, the Former Yugoslav Republic of Macedonia, Serbia, the United States and Brazil.

Part I

**International Standards and Models
of Anti-corruption Institutions**

Chapter 1

Sources of International Standards

In the mid-1990s the problem of corruption was recognised as a subject of international concern and drew the attention of numerous global and regional inter-governmental organisations. The last decade witnessed a growing constellation of international “hard law” (treaties and conventions) and “soft law” (recommendations, resolutions, guidelines and declarations) instruments elaborated and adopted within the framework of organisations such as the United Nations, the Council of Europe, the OECD, the Organization of American States, the African Union, and the European Union. The multitude of international legal instruments on corruption varies in scope, legal status, membership, implementation and monitoring mechanisms. However, all aim to establish common standards for addressing corruption at the domestic level through its criminalisation, enforcement of anti-corruption legislation and preventive measures. In addition, international legal instruments also aim to identify and promote good practices, and to facilitate co-operation between member states.

From the very beginning of this process it was apparent that merely strengthening legislation would not be sufficient to effectively control corruption. The complex, multifaceted phenomenon of corruption signals a failure of public institutions and good governance. There is consensus within the international community that anti-corruption legislation and measures need to be implemented and monitored through specialised bodies and/or personnel with adequate powers, resources and training. Mechanisms need to be in place to secure a high level of structural, operational and financial autonomy of institutions and persons in charge of the fight against corruption to guard them from improper political influence. As stated in the *Conclusions and Recommendations of the First Conference for Law Enforcement Officers Specialised in the Fight against Corruption*, which took place in Strasbourg in April 1996, “corruption is a phenomenon the prevention, investigation and prosecution of which need to be approached on numerous levels, using specific knowledge and skills from a variety of fields (law, finance, economics, accounting, civil engineers, etc.). Each State should therefore have experts specialised in the fight against corruption. They should be of a sufficient number and be given appropriate material resources.”

In the European context, one of the first sources of “soft” international standards that highlighted the need for specialised institutions and persons in the area of detection, investigation, prosecution and adjudication of corruption offences were the Twenty Guiding Principles for the Fight against Corruption, adopted in 1997 within the Council of Europe. In 1998 most of these standards were translated into the Council of Europe Criminal Law Convention on Corruption. Anti-corruption instruments initially focused on promoting specialisation of law enforcement and prosecution bodies, aiming at more effective enforcement of anti-corruption legislation. It was the United Nations Convention against Corruption (UNCAC) adopted in 2003 that put prevention in the spotlight and, as the first global international treaty in the area of corruption, required

member states not only to ensure specialisation of law enforcement, but also to establish specialised preventive anti-corruption bodies. A few key articles of these international instruments are listed below.

Twenty guiding principles for the fight against corruption¹

Principle 3. Ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations;

Principle 7. Promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

Council of Europe Criminal Law Convention on Corruption²

Article 20 – Specialised authorities

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

United Nations Convention against Corruption³

Article 6 – Preventive anti-corruption body or bodies

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and co-ordinating the implementation of those policies;
 - (b) Increasing and disseminating knowledge about the prevention of corruption.
1. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
 2. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

Article 36 – Specialised authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

There are other regional instruments that include provisions relating to specialised institutions. These include the following:

African Union Convention on Preventing and Combating Corruption⁴

Paragraph 5 of Article 20

State parties are required to “ensure that national authorities or agencies are specialized in combating corruption and related offences by, among others, ensuring that the staff are trained and motivated to effectively carry out their duties.”

Southern African Development Community (SADC) Protocol against Corruption⁵

Article 4

Amongst other preventive measures “an obligation to create, maintain and strengthen institutions responsible for implementing mechanisms for preventing, detecting, punishing and eradicating corruption” is listed.

Inter-American Convention against Corruption⁶

Paragraph 9 of Article III

Calls are made for “oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts.”

The sources of international standards, although different in scope, contents and objectives, define a clear international obligation for the countries to ensure institutional specialisation in the area of corruption. It is worth noting that the obligations on institutional specialisation under the Council of Europe Criminal Law Convention on Corruption and the UNCAC are mandatory. The UNCAC further requires that countries ensure the specialisation in two areas, prevention (including education and public awareness) and law enforcement. States are therefore obliged to secure the existence of

- Specialised bodies in charge of prevention of corruption; and
- Specialised bodies or persons in charge of combating corruption through law enforcement.

There is, however, a notable difference between the two areas. According to the UNCAC, prevention needs to be addressed at the institutional level, by creation or dedication of a specialised body (or bodies) with anti-corruption prevention and co-ordination functions. Criteria on specialisation in the area of law enforcement, according to the UNCAC and the Council of Europe conventions, can be fulfilled either by creation of a specialised body or by designation of an adequate number of specialised persons within existing institutions.

The international standards also set basic benchmarks for specialisation. The main benchmarks are the following: independence and autonomy, specialised and trained staff, adequate resources and powers.

Finally, international standards neither offer a blueprint for setting up and administering a specialised anti-corruption institution, nor advocate a single best model or a universal type of an anti-corruption agency. From this perspective, provisions of international law relating to the institutional framework for prevention and suppression of corruption are considerably less developed and precise than, for instance, provisions relating to the elements of corruption offences, such as active and passive bribery or offences concerning trading in influence and abuse of official position. However, the aforementioned conventions define features and set important benchmarks according to which anti-corruption institutions should be established. Furthermore, international monitoring mechanisms have developed a valuable body of assessments and recommendations, which provide a useful set of best international practice in this area.⁷

Notes

1. Resolution (97) 24 on The Twenty Guiding Principles for the Fight against Corruption, adopted by the Committee of Ministers of the Council of Europe on 6 November 1997.
2. Council of Europe, Criminal Law Convention on Corruption, adopted on 4 November 1998, entered into force on 1 July 2002.
3. United Nations Convention against Corruption, adopted on 31 October 2003, entered into force on 14 December 2005.
4. African Union Convention on Preventing and Combating Corruption, adopted on 11 July 2003, entered into force on 5 August 2006.
5. Southern African Development Community Protocol against Corruption, adopted on 14 August 2001, entered into force on 6 July 2005.
6. Inter-American Convention against Corruption, adopted on 29 March 1996, entered into force on 6 March 1997.
7. See, for example, GRECO's first evaluation round reports in 2000 - 2002 focused on compliance with Guiding principles 3, 6 and 7, www.greco.coe.int; Esser, A. and M. Kubiciel (2004).

Bibliography

- Council of Europe GRECO Evaluation Reports,
www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.
- Esser, Albin and Kubiciel, Michael (2004), *Institutions against Corruption: A Comparative Study of the National Anti-corruption Strategies reflected by GRECO's First Evaluation Round*, study commissioned by the Council of Europe, Strasbourg.
- Organisation for Economic Co-operation and Development, Working Group on Bribery, Country Reports on the implementation of the OECD Anti-Bribery Convention, <http://www.oecd.org/corruption>.

Chapter 2

Elements of International Standards

This section reviews the main features of the specialised anti-corruption bodies according to international standards and practices.¹ These elements include mandate and functions; specialisation; independence and autonomy; transparency and accountability; adequate resources, means and specialised and trained staff; inter-agency co-operation; co-operation with civil society and the private sector; and international co-operation and networking.

Main anti-corruption functions

International instruments identify the following main anti-corruption functions: *investigation and prosecution of corruption; prevention of corruption; education and awareness raising; and co-ordination, monitoring and research*. In fact anti-corruption bodies undertake these and a variety of other tasks, for example, receive and respond to complaints, gather intelligence, conduct investigations, impose administrative sanctions; conduct research on corruption; provide ethics policy guidance, scrutinise asset declarations; provide anti-corruption information and education; ensure international co-operation. Anti-corruption functions and tasks can be assigned to one or more specialised institutions.

The mandate of *investigation and prosecution* provides for the enforcement of anti-corruption legislation, with a focus on criminal law. It is usually performed by separate specialised structures within the existing institutions – the police (or the multi-purpose agency) and the prosecution service. Depending on the fundamental principles of the respective national criminal justice system, the prosecution service can also employ investigators; on the other hand, very few investigation services also have powers to prosecute. The main challenge of institutions mandated to fight corruption through law enforcement is to specify their *substantive jurisdiction* (offences falling under their competence), to avoid a conflict of jurisdictions with other law enforcement agencies and to ensure efficient co-operation and exchange of information with other law enforcement and control bodies.

“Corruption” is not an exact criminal law term. For the purposes of substantive jurisdiction of specialised law enforcement bodies it needs to be further defined, *e.g.* by enumerating offences under their competence such as serious forms of passive and active bribery, trading in influence, abuse of powers etc. However, these criminal offences are often committed in concurrence with other financial and economic crimes as well as in the course of organised criminal activity. In many countries, the investigation and prosecution of financial and economic crimes are the responsibility of other specialised law enforcement departments. To address this problem, specialised law enforcement institutions for the fight against corruption are sometimes combined with *specialised economic or organised crime services*. This option can have its own pitfalls and can

dilute anti-corruption priorities in the larger context of the fight against economic and organised crime.

An important question is to what extent the jurisdiction of such a law enforcement body should be mandatory. Experience shows that mandatory jurisdiction results in overburdening the institution with cases and in particular with “street corruption” cases. One of the solutions is to limit the jurisdiction of the service to important and high-level corruption cases. If this approach is adopted, it is crucial that the law prescribes precisely the factors for determining such jurisdiction to avoid abuse of discretion and conflicts of jurisdiction with other bodies.

Another issue related to jurisdiction is how much discretion the anti-corruption agency should exercise in the selection of cases, and whether its focus should be retrospective (dealing with acts committed before the establishment of the institution). In many countries, including transition economies in Eastern Europe, specialised anti-corruption institutions have been created after the change of government which gained power on a strong anti-corruption platform. As a result, there are political and public expectations not only to ensure good governance of the new administration, but also to pursue abuses of the previous governments. While this expectation might be highly legitimate in some circumstances, focus on the past gives rise to two important caveats: it can taint (rightfully or wrongly) the newly established anti-corruption institution with a label of pursuing politically motivated persecutions. It can result in a disproportionate allocation of resources of the newly established institution on past cases – making it impossible to pursue current cases effectively. Accordingly, as much as possible, the jurisdiction should be prospective and oriented towards the future. Its retrospective focus should be limited to only the most severe and clearly indicated cases.

Preventive functions are numerous and diverse, and often cannot be performed by a single institution. The UNCAC requires States parties to develop and maintain anti-corruption policies and effective measures to prevent corruption. It contains a number of mandatory requirements to prevent corruption without explicit reference to “corruption”. Namely, countries should take measures that promote transparency and integrity in the public sector, ensure appropriate systems of public procurement, promote transparency and accountability in the management of public finances, promote integrity in the judiciary and take measures aimed at preventing corruption involving the private sector, including enhancing accounting and auditing standards and ensuring an appropriate regulatory and supervisory regime to prevent and detect money-laundering activities. Moreover, to prevent corruption, according to the UNCAC, countries are required to involve the civil society in anti-corruption efforts and disseminate information concerning corruption. The UNCAC also includes preventive measures that countries have an *obligation to consider*, including transparent and merit-based employment policies and practices in the public sector, appropriate remuneration, education and training of public officials, transparency in funding of political parties, prevention of conflict of interest in the public sector, codes or standards of conduct for public officials, facilitation of reporting of corruption by public officials, declarations of assets of public officials.

Co-ordination, monitoring and research are also important functions necessary for comprehensive national anti-corruption strategies and can be entrusted to specialised anti-corruption bodies.

Co-ordination is required at two levels: policy co-ordination and co-ordination of implementation measures. Where different law enforcement agencies are responsible for detection and investigating of corruption, a co-ordinating function is essential. Even

where a single law enforcement specialised body has jurisdiction to investigate and prosecute corruption, institutionalised co-ordination with other state control bodies is needed, *e.g.* tax and customs, financial control, public administration. Furthermore, any comprehensive national anti-corruption strategy, programme or action plan requires a multidisciplinary mechanism charged with overseeing and co-ordinating its implementation and regular progress reports. Such a mechanism will have to be institutionally placed at an appropriate level to enable it to exercise its powers throughout different state institutions. Ideally, it will also involve civil society.

Monitoring of implementation and research are vital functions to develop anti-corruption policies and to properly implement them. Research on corruption helps to see how widespread the corruption is, what areas and sectors are mostly exposed to corruption risks, what specifically these risks are and how possibly they can be remedied. In a number of countries, regular sociological surveys on corruption are conducted among the population and the businesses. Usually they show their perception of causes of corruption, attitudes towards corruption or how well respondents are informed about government's anti-corruption efforts (examples of such surveys can be found in Armenia, Tajikistan, Ukraine and Latvia).²

Comparing prevention functions of dedicated corruption-prevention bodies and multi-functional anti-corruption bodies with preventative functions covered in Part II of this report, most popular prevention functions entrusted to these bodies are anti-corruption education, and training and awareness-raising; review of corruption risks in public sector and development of integrity plans/methodologies/recommendations; centralising, analysing and verifying asset declarations/personal wealth reports of public officials; receiving of corruption complaints; as well as the development and implementation of anti-corruption policies; research on corruption; anti-corruption assessment of legal acts; prevention of conflicts of interest; control of financing of political parties; registers of lobbyists; and serving as focal points for international co-operation in anti-corruption field.

Many corruption-prevention functions, which do not specifically refer to "corruption", are performed by existing state institutions. The use of public funds is controlled by supreme audit institutions and financial control bodies; procedures in public procurement are developed by relevant departments in ministries or public procurement bodies; public service commissions and academies are in charge of recruitment and training in the civil service. Important work to prevent corruption is done by ethics commissions; commissions for prevention of conflicts of interest; tax services, ministries of economy; financial intelligence units and others.

The role of the existing/conventional state institutions should not be underestimated. They are better established in traditions of some countries and better equipped to reach out to their constituencies and make improvements. Hence, the existing public institutions, where they function effectively and their integrity is not questioned, can specialise in the anti-corruption field and play a prominent role to prevent corruption in their sectors. A study in 2009 noted that assigning the corruption prevention functions solely to specialised agencies may cause difficulties, mainly because of the capacity constraints of such agencies that make outreach difficult to achieve on a substantial scale, and in countries that are large in size and with significant rural communities.³ However, assigning corruption prevention across existing bodies should still be part of a strategy to fight corruption; there should be a central point for anti-corruption efforts, which looks at the progress made in a comprehensive manner and ensures it is visible.

Specialisation

It is widely acknowledged that specialisation is essential for the effective fight against corruption. Corruption needs to be approached at various levels and requires specific expertise, knowledge and skills in a variety of fields, including law, finance, economics, accounting, civil engineering, social sciences, and other domains.⁴ There are few criminal phenomena, if any, that require such a complex approach and a *combination of diverse skills*. These skills are normally scattered across various institutions, but are rarely concentrated in any particular body specialised in tackling corruption. When all these skills are brought together in a specialised institution, this brings a level of *visibility and independence* to those dealing with corruption. Without an adequate level of independence, the fight against serious corruption is destined to fail.

Specialisation may take different forms. *International standards do not imply that there is a single best model for a specialised anti-corruption institution*. International standards, while requiring the establishment of specialised bodies or persons in the field of prevention and law enforcement, do not directly advocate for institutional specialisation at the level of courts. Furthermore, there is no strict requirement of a dedicated institutional entity for the fight against corruption through investigation and prosecution. Strictly speaking, the designation of an adequate number of specialised persons within existing structures already meets the requirement of international treaties. It is the responsibility of individual countries to find the most effective and suitable institutional solution adapted to the local context; level of corruption; and existing national institutional and legal framework.

A comparative overview of different types of specialised institutions can be summarised as follows:

- *Multi-purpose model*

This is possibly the only approach that would – strictly speaking – live up to the name “anti-corruption agency” as it combines in one institution all three main functions: enforcement (usually investigation), prevention, and public education and support. A multi-purpose single-agency model has attracted most visibility and triggered most of the discussions in the international arena.

- *Law enforcement model*

This model takes different forms of specialisation in the field of investigation and prosecution or the combination of the two. Sometimes the law enforcement model also possesses some important elements of preventive, co-ordination and research functions. What distinguishes this from other models is the level of independence or autonomy and of visibility, as it is normally placed within the existing police or prosecutorial hierarchy.

- *Preventive bodies*

This is the most diverse category and covers a variety of institutional solutions. It includes specially created, dedicated corruption prevention agencies, commissions and units, but also existing state institutions which contribute to prevention of corruption as part of their normal responsibilities, often without referring to “corruption”.

Independence and autonomy

The independence of a specialised anti-corruption institution is considered to be a fundamental requirement for the proper and effective exercise of its functions. This consensus is reflected in all major international legal instruments.

The level of independence of an anti-corruption agency can be assessed based on various parameters discussed below in more detail. Key is, however, the “[a]bility (of the anti-corruption agency) to engage in its activities and carry out its functions — especially to investigate and/or prosecute concrete allegations — effectively and efficiently and without undue influence or undue reporting obligations at its own discretion without prior consultation or approval.”⁵

While the political and institutional context of anti-corruption agencies varies, it is key for the independence of these agencies that they *operate in environments characterised by the rule of law, and a “comprehensive and stable statutory/constitutional legal framework.”*⁶ In absence of these preconditions, independence of anti-corruption institutions can hardly be ensured.

Reasons why the independence criterion ranks so high on the anti-corruption agenda are closely linked with the nature of corruption. Corruption in many respects equals abuse of power. In contrast with other illegal acts, in public corruption cases at least one perpetrator comes from the ranks of persons holding a public function; the higher the function, the more power the person exercises over other institutions. The level of “required” independence of a given anti-corruption institution is therefore closely linked with the level of corruption, good governance, rule of law and strength of existing state institutions in a given country. Prosecution of “street corruption” (corruption of rather low level public officials, for instance traffic police officers, with little or no political influence) does not normally require an institution additionally shielded from undue outside political influence. On the other hand, tackling corruption of high-level officials (capable of distorting the proper administration of justice) or systemic corruption in a country with deficits in good governance and comparatively weak law enforcement and financial control institutions is destined to fail if efforts are not backed by a sufficiently strong and independent anti-corruption institution.

While formal and fiscal independence is required by international instruments and is an important factor influencing the institution’s performance, it does not in itself guarantee success. Any kind of formal independence can be thwarted by political factors.⁷ It is genuine political commitment, coupled with adequate resources, powers and staff, which are as crucial as formal independence, if not more so, to the success of an anti-corruption institution. Consequently, in light of international standards, one of the prominent and mandatory features of specialised institutions is not full independence but rather an adequate level of *structural and operational autonomy* secured through institutional and legal mechanisms aimed at preventing undue political interference as well as promoting “pre-emptive obedience”.⁸ In short, “independence” first of all entails de-politicisation of anti-corruption institutions.

The adequate level of independence or autonomy depends on the type and mandate of an anti-corruption institution. Institutions in charge of investigation and prosecution of corruption normally require a higher level of independence than those in charge of preventive functions;⁹ multi-purpose bodies that combine all preventive and repressive functions in one single agency call for the highest level of independence, but also the most transparent and comprehensive system of accountability.

The question of independence of the law enforcement or prosecutorial bodies that are institutionally placed within existing structures in the form of specialised departments or units requires special attention. Police and other investigative bodies are in most countries highly centralised, hierarchical structures reporting at the final level to the Minister of Interior or Justice. Similarly, but to a lesser extent, this is true for prosecutors in systems where the prosecution service is part of the government and not the judiciary. Finally, in certain countries the Prosecutor General or head of an anti-corruption body can be appointed by, and directly report to the President. In such systems the risks of undue interference is substantially higher when an individual investigator or prosecutor lacks autonomous decision-making powers in handling cases, and where the law grants his/her superior or the chief prosecutor substantive discretion to interfere in a particular case. Accordingly, the independence of such bodies requires careful consideration in order to limit the possibility of individuals abusing the chain of command and hierarchical structure, either to discredit the confidentiality of investigations, or to interfere in crucial operational decisions such as commencement, continuation and termination of criminal investigations and prosecutions. There are many ways to address this risk. For instance, special anti-corruption departments or units within the police or the prosecution service can be subject to separate hierarchical rules and appointment procedures; police officers working on corruption cases, though institutionally placed within the police, should in individual cases report only and directly to the competent prosecutor.

Specific preventive functions could also influence the level of independence and condition the institutional placement of the body. For instance, a central control institution that is responsible for declarations of assets and prevention of conflicts of interest, which collects and inspects information on all elected and high-level officials, including members of the government, parliament, judges and prosecutors, cannot be situated within the government as this could amount to the breach of the separation of powers.

A number of factors determine the independence of an anti-corruption body:

- *Legal basis*

An anti-corruption institution should have a clear legal basis governing the following areas: mandate, institutional placement, appointment and removal of its director, internal structure, functions, jurisdiction, powers and responsibilities, budget, personnel-related matters (selection and recruitment of personnel, special provisions relating to immunities of the personnel if appropriate, etc.), relationships with other institutions (in particular with law enforcement and financial control bodies), accountability and reporting, etc. The legal basis should, whenever possible, be stipulated by law rather than by-laws or governmental or presidential decrees. Furthermore, internal operating, administrative, and reporting procedures and codes of conduct should be adopted in legal form by regulations and by-laws.

- *Institutional placement*

A separate permanent institutional structure – an agency, unit or a commission – has *per se* more visibility and more independence than a department or a unit established within the institutional structure of a selected ministry (interior, justice, finance, etc.). Similarly, a body placed within an institution that already enjoys a high level of autonomy from the executive (e.g. the Prosecution Service, the Supreme Audit Institution, the Ombudsman, the Information Commissioner, the Public Administration Reform Agency, etc.) could benefit from such existing autonomy.

- *Appointment of senior management*

The symbolic role played by the head of an anti-corruption institution should not be underestimated. In many ways, the director represents one of the pillars of the national integrity system. The selection process for the head should be transparent and facilitate the appointment of a person of integrity and competence, on the basis of high-level consensus among different power-holders and branches of power.

It is important to set out adequate and clear appointment *criteria* for the post of director. There are numerous examples in countries with specialised anti-corruption agencies. Among the requirements feature professionalism; reputation; outstanding achievements and working experience; substantial experience in a management position; and strategic thinking and leadership. Besides, in the case of Hong Kong anti-corruption commission, the Commissioners have been appointed “from outside the Commission, on the basis that a fresh pair of eyes was a safeguard against bad habits becoming institutionalised”.¹⁰ These criteria are aimed to ensure that candidates are not politically affiliated and are capable and experienced to lead the anti-corruption agency.

Box 2.1. Approaches to selection of management in anti-corruption bodies

In *Latvia*, the candidates to the position of the Director of the Corruption Prevention and Combating Bureau are first selected through an open vacancy announcement. Then the Prime Minister asks the Prosecutor General; the Supreme Justice; and the Director of the Constitution Protection Bureau for an opinion about shortlisted candidates. Further, the candidates are interviewed by the Cabinet of Ministers, which then discusses them. Shortlisted candidates are then examined by the National Security Council. Finally, the Director is elected by the Parliament.

In *Lithuania*, the President plays an eminent role, selecting the Director and proposing his candidature to the Parliament. Upon consent of the Parliament, the President appoints the Director.

In *Serbia*, the Anti-Corruption Agency is led by the Board and the Director. Board members are nominated by nine different state authorities (the National Assembly; the President of the Republic; the Government; the Supreme Court of Cassation; the State Audit Institution; the Protector of Citizens and Commissioner for Information of Public Importance; the Social and Economic Council; the Bar Association of Serbia; and the Association of Journalists). The Board members are then elected by the National Assembly. Ultimately, the Board selects the Director through public advertisement based on professional criteria designed to ensure that a non-political and professional person is selected. The Parliament cannot dismiss the Director or any member of the Board.

In *Slovenia*, the Director and deputy Directors of the Commission for the Prevention of Corruption are appointed through a special procedure, consisting of an open recruitment procedure and nomination by a special board of representatives of the Government; the National Assembly; NGOs; the Independent Judicial Council; and the Independent Council of Officials, and screening and interviewing the Candidates.

Approaches to the appointment of management of anti-corruption agencies vary, but a common denominator is opting for a specific appointment procedure combining various levels of decision-making; appointment by a single political figure (*e.g.* a Minister or the President) is not considered a good practice. Besides, the post of director of anti-corruption institutions is frequently subject to an open competition and this vacancy is publicly advertised.

The future head of anti-corruption body can be nominated by the Government, following an open vacancy announcement and asking opinions by the Prosecutor General,

the Supreme Justice, the Constitution Protection Bureau and the National Security Council, which is then followed by an election by the Parliament (Latvia); nominated by the President to the Parliament and appointed by the President upon consent of the Parliament (Lithuania); appointed by the Prime Minister upon consent of the President, the Committee for Special Services and the relevant Parliament's commission (Poland); shortlisted by a special committee and then elected by the Parliament on the proposal of the President (Indonesia); appointed by the President following open recruitment procedure and nomination by a special board (Slovenia); by the Prosecutor General following opinion of a minister and a collegial body (Croatia); following the opinion of the President (Azerbaijan); appointed by the President, at the proposal of the Minister of Justice and with prior opinion of the Superior Council of Magistracy (Romania); or by a board nominated by various institutions and elected by the Parliament (Serbia).

The director's tenure in office should also be protected by law against unfounded dismissals. A study suggests that heads and key personnel in anti-corruption institutions should be appointed for a minimum of two legislative periods, in order to avoid incoming governments' interference with the post, without the possibility of reappointment for a second term. In many instances, there are mechanisms in place to avoid the arbitrary dismissal of the head of the agency by the parliament or the executive.¹¹

- *Budget and fiscal autonomy*

Adequate funding is of crucial importance. While full financial independence cannot be achieved (at the minimum, the budget will be approved by the Parliament and in many cases prepared by the Government), sustainable funding needs to be secured and legal regulations should prevent unfettered discretion of the executive over the level of funding.

Accountability and transparency

No state institution can be fully autonomous, and due consideration should be given to the need to preserve *accountability and transparency* of the institutions, especially if it possesses intrusive investigative powers. In the discharge of its duties and powers, anti-corruption bodies should strictly adhere to the principles of the rule of law and internationally recognised human rights.

Whatever the form of specialisation and institutional placement, *specialised anti-corruption institutions need to be integrated in the system of checks and balances essential for democratic governance*. The explanatory report to the Criminal Law Convention on Corruption rightfully states that “the independence of specialised authorities for the fight against corruption should not be an absolute one. Indeed, their activities should be, as far as possible, integrated and co-ordinated with the work carried out by the police, the administration or the public prosecutor's office. The level of independence required for these specialised services is the one that is necessary to perform properly their functions.”¹²

All anti-corruption bodies do eventually depend on and are accountable to those in power, and few, if any, have a constitutional status equivalent to that of the judiciary or an ombudsman – such a level of independence is neither required, nor advocated by the international standards.

Forms of accountability of specialised institutions and persons must be tailored to the level of their specialisation; institutional placement; mandate; functions and most of all,

their powers against other institutions and individuals. In all instances, such institutions are required to submit regular performance reports to a high-level executive and legislative body; they also have to enable and proactively facilitate public access to information on their work.¹³ Law enforcement institutions must be subject to prosecutorial and court supervision. An example of a good practice in a single multi-purpose agency is to employ special external oversight committees, which can include representatives of different state bodies and civil society.¹⁴

Increasingly, the international debate acknowledges that accountability is an important cornerstone for anti-corruption agencies to gain public trust and support. Practice in many countries attests that support from the population is crucial in times when the body comes under politically-motivated attacks. Therefore, accountability should also include a dimension of *accountability to the public*. Agencies often have specific mechanisms to liaise with the media and pay particular attention to regularly informing the public through the media about their work. In most cases, agencies also issue annual and other regular reports about their work, although the quality of these reports varies, depending on the degree of overall organisational capacity of the agency and its ability to report against meaningful performance indicators.

Adequate resources, means and training

Setting up and sustaining specialised anti-corruption institutions is costly. However, in the long run it is even more costly to set up a specialised body and then fail to provide it with adequate resources, hence hindering its performance. This, consequently, results in the failure to obtain and maintain public confidence. The requirement to provide anti-corruption institutions with adequate resources and training is an obligation included in all international legal instruments cited in the previous section.

It is crucial that the *selection and the appointment of personnel in anti-corruption agencies* are based on objective, transparent, and merit-based criteria. In-depth background and security checks can be used in the recruitment procedures. Personnel should enjoy an appropriate level of job security in their positions. Salaries need to reflect the nature and specificities of work. Measures for protection from threats and pressure on the law enforcement staff and their family members should be in place.

The composition of personnel of an anti-corruption institution - the number of staff members, their professional profiles - should reflect the institution's mandate and tasks. As knowledge on corruption increases, so are the demands on developing the skills and expertise to detect and combat it. This, in turn, requires agencies to ensure that they have the specialist skills among their staff to apply modern investigative techniques, including for conducting financial investigations or forensic accounting.

While it is increasingly acknowledged that specialised anti-corruption bodies need to acquire *specialised skills and experience* and this seems an obvious requirement, in practice many institutions face serious difficulties with recruiting adequate staff and attracting specialised experts. Reasons for this are not always linked to economic considerations or limited resources in a given country, but more often reflect either a lack of genuine political commitment to address the problem of corruption or decision-makers' ignorance of the complexity of corruption. As stated in a 2009 study, "inadequacy of recruitment and training procedures is one of the major causes for the lack of specialisation".¹⁵

The type of skills and knowledge anti-corruption bodies seek depend on their mandate and functions; however, a common trend is to try to build a pool of *diverse skills and expertise in different fields beyond conventional law enforcement skills or general experience in the public administration*. For investigation and prosecution, such specialised skills are needed as hands-on knowledge of investigative techniques, previous experience in investigation and prosecution bodies, training in novel methods to investigate corruption, language skills and expertise in various fields, such as economics, audit/forensic accounting, finance, banking, customs, IT (see, for example, in Part 2 sections on Slovenia, Romania, Azerbaijan). Prevention requires previous experience in co-ordinating public policies; governance reform; ethics; conflict of interest prevention; public education and training; conducting research; language skills and others. Preventive bodies with administrative control functions will seek persons with previous experience in state audit, tax or inspection bodies. Reputation and trust are an overarching criterion, but they are particularly important for law enforcement bodies. There are various models of employment in place, ranging from permanent to seconded staff.

Special continuous *training* is one of the most crucial requirements for the successful operation of an anti-corruption body, whether it is newly established or already existing.¹⁶ Corruption is a complex and evolving phenomenon; prevention and prosecution of corruption require highly specialised knowledge in a broad variety of subjects. Furthermore, in-service training should be the norm, and a number of agencies are having agency-specific training plans aimed at increasing staff's qualifications and skills.

The UNCAC and the Council of Europe conventions also highlight that in order to fight corruption law enforcement bodies need *effective means for gathering evidence*. The use of different forms of covert measures and special investigative means, as well as access to bank information are crucial for successful investigation and prosecution of corruption. However, importance of other methods is increasingly acknowledged too, such as use of open source information; data bases; thorough analysis of corporate information; financial investigations; and forensic accounting. It is crucial to further focus on following money flows and identifying, tracing and seizing proceeds from corruption.

International conventions also encourage to *protect persons who help the authorities in investigating and prosecuting corruption* (procedural and non-procedural witness protection measures) and to *facilitate reporting of corruption and co-operation with the authorities* (ranging from whistleblower protection to the possibility of granting limited immunities and reduction of punishment to collaborators of justice).

In order to effectively gather evidence, law enforcement anti-corruption bodies are granted extensive and intrusive *powers*, often even more than regular police. Such broad and intrusive powers given to anti-corruption law enforcement bodies, should, however, be strictly scrutinised in the light of international human rights standards, and should be subject to external oversight.

The question of adequate powers (to request documents, conduct inspections, summon and interrogate persons, etc.) is also relevant for *preventive bodies*, which have certain *control functions in such areas as prevention of conflicts of interest, political party financing or control of declaration of assets of public officials*.

Inter-agency co-operation and involvement of the public

An anti-corruption body cannot function in a vacuum and none can perform all tasks relevant for the suppression and prevention of corruption alone. Therefore, strong and well-functioning *inter-agency co-operation and exchange of information* are among the features of anti-corruption agencies defined in international standards. Particular attention should be paid to co-operation and exchange of information among anti-corruption agencies, control and law enforcement bodies, including tax and customs administrations, regular police forces, security services, financial intelligence units, etc.

Efforts to achieve an adequate level of co-ordination, co-operation and exchange of information among public institutions in the anti-corruption field should take into account the level of existing “fragmentation” of the anti-corruption functions and tasks divided among different institutions. However, even multi-purpose anti-corruption agencies with broad law enforcement and preventive powers cannot function without institutionalised (and mandatory) channels of co-operation with other state institutions in the area of enforcement, control and policy-making. Co-operation is naturally of crucial importance in systems with a multi-agency approach where preventive institutions are not institutionally linked with law enforcement bodies.

In practice, inter-institutional co-operation and co-ordination is often a challenge. Problems in this area range from overlapping jurisdictions and conflicts of competencies to the lack of competencies (where institutions refuse jurisdiction in sensitive cases and shift responsibilities to other institutions). If this area is overlooked (as it often is) in the process of designing the legal basis of the new institution, it will likely seriously hinder the performance of the institution and taint its relations with other state institutions in the future. A 2009 study noted that “[w]hile in theory, the success of anti-corruption institutions greatly depends on effectiveness and co-operation of a wider range of complementary institutions, in practice these are often not well connected and integrated, due to their wide diversity, overlapping mandates, competing agendas, various levels of independence from political interference and a general institutional lack of clarity. Against such background the establishment of an anti-corruption commission has been seen in many cases as adding another layer of (ineffective) bureaucracy to the law enforcement sector.”¹⁷

Often law enforcement officials, especially in countries with a centralised prosecution service, believe that the code of criminal procedure provides a sufficient framework for the co-ordination of the investigation and the prosecution of criminal offences. Experience indicates that such general rules alone are not adequate for securing a proper level of co-operation in dealing with complex corruption cases. General rules cannot address issues that may arise outside the investigation of specific cases, such as analysis of trends and risk areas, co-ordinating policy approaches and proactive detection measures. Furthermore, such rules do not address co-operation between law enforcement and preventive institutions, which is also important. In different countries, these issues are addressed either through creation of *special multidisciplinary co-ordinating commissions*, through *special legal provisions on co-operation and exchange of information* or by *signing special agreements and memorandums* among relevant institutions on co-operation and exchange of information.

Even comprehensive institutional efforts against corruption are prone to fail without active *support from the society and the private sector*. One of the important elements of anti-corruption efforts increasingly promoted by different international instruments is co-

operation with civil society and the private sector. Also, a feature of the Hong Kong anti-corruption commission was, from the beginning, its close involvement of the community in its work.¹⁸ This should be taken into account not only by preventive and education bodies, but also by law enforcement bodies.

International co-operation and networking

The need for international co-operation is evident whenever anti-corruption agencies have law enforcement functions. In cases involving complex corruption schemes with activities or money transfers taking place abroad, it is key for agencies in different countries to co-operate. The need for international co-operation goes beyond law enforcement. Anti-corruption as an internationally recognised discipline is comparatively young and still in the process of developing. Hence, its success depends, to a large extent, on the exchange of good practices, of empirical evidence about the impact of certain tools, and on the development and refinement of international standards. International networking and exchange of best practices is often a valuable source of know-how for newly established bodies.

Anti-corruption agencies are the logical focal points of expertise for international co-operation. International co-operation is, in many cases, part of their mandate. They can only profit from international developments and contribute to them if they immerse themselves in the international network of anti-corruption stakeholders. This is also attested by the fact that all international conventions on corruption encourage international co-operation of State parties (for example, Chapters IV and VI of the UNCAC).

Important platforms for international co-operation and networking in the anti-corruption field are the inter-governmental mechanisms monitoring countries' implementation and enforcement of international anti-corruption standards: the OECD Working Group on Bribery and its Law Enforcement Officials' meetings; the Council of Europe GRECO and the Mechanism for the Review of Implementation of the United Nations Convention against Corruption.

A number of regional anti-corruption initiatives have been established over the years, which encourage networking and sharing of lessons learned and best practices among countries, such as anti-corruption initiatives supported by the OECD, including the Anti-corruption Network for Eastern Europe and Central Asia¹⁹ and the OECD/ADB Asia-Pacific Initiative or the Regional Anti-Corruption Initiative for South Eastern Europe.²⁰

Useful forums for networking of anti-corruption agencies are also the International Association of Anti-Corruption Authorities and, for EU member states, the European Partners against Corruption and the EU contact-point network against corruption.²¹

Assessing the performance of anti-corruption institutions

The rise in numbers of anti-corruption institutions over the past decades is in remarkable contrast to the relative lack of conclusive evidence that the existence of anti-corruption bodies helps to reduce corruption. In part, this is due to the fact that anti-corruption bodies have often been created as a demonstrative, political-level statement about countries' resolve to fight corruption (often because of international legal

obligations, or because of pressure from the international community and donors), with the agencies subsequently operating in politically challenging environments, over which they have little control. In part, it is due to the fact that few agencies are looking at themselves from an organisational perspective, although this is something over which they do have control.²²

With regard to measuring corruption, there is a number of surveys on the perceptions of corruption, and on the governance or business climate, such as Transparency International Corruption Perception Index, the World Bank Governance Indicators (for example, Control of Corruption or Rule of Law indicators), or such surveys as the Doing Business or Freedom House reports Nations in Transit. Altogether and over time, they produce a comparable overview over how the perception of corruption is changing; however, they do not provide much information about the performance of a single institution.

A 2011 study argues that only few anti-corruption institutions have proper mechanisms in place to monitor their performance and to account for their activities to the public.²³ While assessing the performance is a challenging task, and many agencies lack the skills, expertise and resources to develop adequate methodologies and mechanisms, showing results might often be the crucial factor to facilitate transparency and accountability of the agencies, as well as to build institutional memories and improve agencies' policies and performance. It is also important for an anti-corruption institution to gain or retain public support and fend off politically-motivated attacks.

In recent years, progress has been made in developing methodologies and tools to help anti-corruption agencies to assess their institutional capacities and to measure their performance. The UNDP, in 2011, developed guidelines for anti-corruption agencies to assess their capacity. These guidelines provide modules to assess capacities of the agency in selected areas, for example, research on corruption; promotion of integrity; detection; etc. Based on the results, the agency can then develop an action plan for capacity development.²⁴ A study conducted by U4 and published in 2011 discusses how best to evaluate the effectiveness of anti-corruption agencies. It encourages anti-corruption agencies to ensure internal monitoring and evaluation systems, but points out that these systems will only be meaningful as long as the agency has a strategy of what it wants to achieve to be able to measure progress.²⁵

Certainly, assessment of the performance of specialised anti-corruption institutions needs to take into account the broader context in which they operate.

Notes

1. On this subject see introductory chapters of Council of Europe (2004), and UNDP (2005).
2. See, for example, Armenia Corruption Surveys 2008 – 2010, www.crrc.am/index.php/en/159/; Perception of Corruption Surveys in Georgia, www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/GEPAC/779-Georgia%20General%20Public%20Survey-2009.pdf
3. Hussmann, K., H. Hechler and M. Penailillo (2009), “Institutional arrangements for corruption prevention: Considerations for the implementation of the UNCAC Article 6”, *U4 Issue 2009:4*, Anti-Corruption Resource Centre, www.u4.no.
4. Council of Europe, *Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173)*, paragraph 96.
5. Kreutner, M. (ed.) (2010), pp. 51 – 66.
6. Kreutner, M. (ed.) (2010), pp. 51 – 66.
7. Meagher, P. (2004).
8. Esser, A. and M.Kubiciel (2004), p. 37.
9. Council of Europe (2004), p. 17; UNDP (2005), p.5.
10. De Speville (2010), p.53
11. Kreutner, M. (ed.) (2010), pp. 51 – 66.
12. Council of Europe, *Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173)*, paragraph 99.
13. UNDP (2005b).
14. See, for example, the system of checks and balances of the Independent Commission Against Corruption in Hong Kong, www.icac.org.hk/en/checks_and_balances/bf/index.html.
15. De Sousa, L. (2009), p.8
16. Esser, A. and M.Kubiciel (2004), p. 48.
17. U4 Expert Answer: “Coordination Mechanisms of Anti-corruption Institutions”, 2009, www.u4.no.
18. De Speville, B. (2010)
19. For more information see www.oecd.org/corruption/acn.
20. For more information see www.oecd.org/site/adboecdanti-corruptioninitiative.
21. For more information see www.iaaca.org, www.epac.at.
22. Doig, A. and D.Norris (2012), pp. 255-273.
23. Johnson, J., *et al.* (2011)
24. UNDP (2011).
25. Johnson, J., *et al.* (2011)

Bibliography

- Camerer, Lala (2001), “Prerequisites for effective anti-corruption ombudsman’s offices and anti-corruption agencies”, 10th International Anti-Corruption Conference, Prague, Transparency International, www.10iacc.org/download/workshops/cs06.pdf.
- Council of Europe (2004), *Anti-corruption Services – Good Practices in Europe*, Council of Europe Publishing, Strasbourg.
- Council of Europe (2005), *Strengthening Anti-Corruption Services in South-Eastern Europe, Current Status and Needs for Reforms*, Report from regional meeting of the Directorate General I Legal Affairs on 31 March - 1 April 2005 in Skopje, www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/paco%20impact/COE%20Report.pdf, accessed 22 January 2013.
- Doig, Alan (1995), “Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies?”, *Public Administration and Development*, Vol. 15, pp. 151 – 165.
- Doig, Alan (2004), “A Good Idea Gone Wrong? Anti-Corruption Commissions in the Twenty First Century”, EGPA 2004 Annual Conference, Ljubljana.
- Doig Alan and Norris, David (2012), “Improving Anti-corruption Agencies as Organisations”, *Journal of Financial Crime*, Vol. 19 No. 3, 2012, pp. 255-273.
- Global Integrity (2011), *2011 Global Integrity Report*, chapter “Anti-Corruption Agencies, not the Panacea” at www.globalintegrity.org/report/findings#aca.
- Johnson, J., *et al.* (2011), “How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators”, U4 Issue September 2011 No. 8, Anti-Corruption Resource Centre, www.U4.no.
- Kreutner, M. (ed.) (2009), “10 Guiding Principles and Parameters on the Notion of Independence of Anti-Corruption Bodies”, in *Practice Meets Science. Contemporary Anti-Corruption Dialogue. IACSS 2009*, Vienna, 2010, pp.51 – 66.
- Meagher, Patrick (2004), *Anti-corruption Services - A Review of Experience*, Center for Institutional Reform and the Informal Sector at the University of Maryland, www.iris.umd.edu/Reader.aspx?TYPE=FORMAL_PUBLICATION&ID=3dca81ee-16c2-46f6-a45c-51490fcb3b99.
- Sousa, Luis de (2009), “Anti-Corruption Agencies: Between Empowerment and Irrelevance”, working paper, European University Institute, Florence.
- Speville, Bertrand de (2000), “Why do anti-corruption agencies fail?”, paper from United Nations Global Program Against Corruption, Implementation Tools, the Development of an Anti-corruption Tool Kit: Inputs for a United Nations Expert Group Meeting, United Nations, Vienna.
- Speville, Bertrand de (2003), “Specialised Anti-corruption Services – good practices in Europe”, paper presented at the Octopus Interface meeting, Council of Europe, 2003.
- Transparency International (2002), *TI Source Book 2000 – Confronting Corruption: The Elements of a National Integrity System*, <http://www1.transparency.org/sourcebook/index.html>.

UNDP (2005a), Report of the Regional Forum on Anti-corruption Institutions, Vienna International Center,
europeandcis.undp.org/files/uploads/Lotta/AC%20Forum%20Report.pdf.

UNDP (2011), *Practitioner's Guide to Assessing the Capacity of Anti-corruption Agencies*, UNDP.
www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/Guide-to-Capacity-Assessment-of-ACAs.html

Valts Kalniņš (2005), "Assessing Trends in Corruption and Impact of Anti-Corruption Measures", discussion paper, *www.oecd.org/corruption/acn*.

Chapter 3

Models of Anti-Corruption Institutions

The first specialised anti-corruption bodies appeared a long time ago, before the establishment of the Singapore's and Hong Kong commissions in the 1950s and 1970s. But it is the example of these two agencies that gave rise to the popular image of the successful, independent multi-purpose anti-corruption agency. However, there are many more types of anti-corruption bodies which exist and operate in various countries.

As already discussed, the question of corruption gained international importance in the late 1990s, and was accompanied by the growing debate about the role of specialised anti-corruption institutions. This process has been closely linked with the process of political democratisation and economic liberalisation in many parts of the world, including in parts of Eastern Europe, Asia, Latin America and Africa. It is also related to the efforts of building the rule of law and good governance in many post-authoritarian and post-conflict environments, as economic and political transitions offer fertile ground for corruption. Besides, corruption was widespread, including in everyday life, the existing institutions were too weak to deal with it, and were often themselves affected by corruption, in particular the criminal justice system.

Responding to this challenge, various anti-corruption bodies, agencies and commissions have mushroomed throughout the last decade, often established in an *ad hoc* manner without a comprehensive strategy, adequate resources and personnel; and sometimes aimed primarily at appeasing the electorate and the donor community. Today, there are only a few specialised anti-corruption institutions in OECD countries. While most transition and developing countries have one or many specialised anti-corruption bodies, only few have proven to be successful, but so far, the success of Hong Kong or Singapore has not been repeated elsewhere.¹

Considering the multitude of anti-corruption institutions worldwide, their various functions and in particular the arguments about their actual performance, it is difficult to identify all main patterns and models. However, some trends can be established based on different purposes of anti-corruption institutions (viewed through their functions). These trends are reflected in different types/models of institutions presented below.

It should also be noted that views in the international anti-corruption literature vary as to whether it is better to establish a single anti-corruption agency or rather direct efforts at strengthening those institutions existing in a country that form already part of the integrity infrastructure, such as the supreme audit institutions, the tax administrations, traditional law enforcement authorities, the internal control departments in various state agencies, etc. It is often argued that wider sector reforms, such as public administration or judiciary reforms, if done well, will strengthen a country's anti-corruption capacity more than the establishment of a single institution that may fail to meet the necessary prerequisites to live up to its mandate.

Multi-purpose anti-corruption agencies

This model represents the most prominent example of a single-agency approach based on three key pillars: investigation, prevention and public outreach and education. In most cases, prosecution remains a separate function to preserve the checks and balances within the system (given that such agencies are already given broad powers and are relatively independent).

The model is commonly identified with the Hong Kong Independent Commission against Corruption and the Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents, such as the Independent Commission against Corruption in New South Wales, Australia; the Directorate on Corruption and Economic Crime in Botswana; the Special Investigation Service in Lithuania; the Corruption Prevention and Combating Bureau in Latvia; the Central Anticorruption Bureau in Poland; or the Inspector General of Government in Uganda. A number of other agencies, for example in Korea, Thailand, Argentina and Ecuador, have adopted elements of the Hong Kong and Singapore strategies, but following them less rigorously.²

Law enforcement type institutions

The law enforcement model takes different forms of specialisation, and can be implemented in detection, investigation and prosecution bodies. This model can also combine specialised anti-corruption detection, investigation and prosecution in one body. Sometimes the law enforcement model also includes elements of prevention, co-ordination and research functions. This model is perhaps the most common approach followed in OECD countries.

Examples of this model: the National Authority for Investigation and Prosecution of Economic and Environmental Crime – *Økokrim* (Norway); the Central Office for the Repression of Corruption (Belgium); the Special Prosecutor's Office against Corruption and Organised Crime (Spain); the Office for the Prevention and Suppression of Corruption and Organised Crime (Croatia); the National Anti-Corruption Directorate (Romania); the Central Prosecutorial Investigation Office (Hungary); and the Permanent Commission against Corruption (Malta).

This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Three examples of such bodies include the Department of Internal Investigations in Germany; the United Kingdom's Metropolitan Police/Anti-corruption Command; and the Internal Control Service of the national police in Albania.

Preventive institutions

As discussed in previous chapters, and as will be demonstrated by cases studies in Part 2, preventive institutions are the broadest model; meanwhile, it can be broken down into three main categories:

- *Anti-corruption coordinating councils.* Such bodies are usually created to lead the anti-corruption reform efforts in the country, in particular to the development, implementation and monitoring of a national anti-corruption strategy. The anti-corruption councils (commissions or committees) consist of

responsible government agencies and ministries, representatives of executive, legislative and judicial branches of power and may involve civil society. The anti-corruption councils usually are not permanent institutions, but operate through regular meetings. They may be supported by permanent secretariats. As examples can be mentioned the Anti-Corruption Council in Georgia supported by the Secretariat in the Ministry of Justice; the Commission on Combating Corruption in Azerbaijan; the Inter-ministerial Working Group in Albania and its secretariat within the Cabinet of Ministers. High-level anti-corruption councils also exist in Tajikistan, Ukraine and Russia.

- *Dedicated corruption prevention bodies.* These institutions are also explicitly created for the prevention of corruption, but they are permanent and have a broader mandate. The prevention bodies are also entrusted with the co-ordination of anti-corruption strategies, but have other functions too, such as assessment of corruption risk and integrity plans for public institutions and sectors, anti-corruption awareness raising and education, conflict of interest prevention, asset declarations, political party financing and lobbying and anti-corruption assessment of legal acts.

Examples of this model: the Commission for the Prevention of Corruption (Slovenia); the Directorate for Anti-Corruption Initiative (Montenegro); the Anti-Corruption Agency (Serbia); the Central Service for the Prevention of Corruption (France); and to some extent also the Commission on Combating Corruption (Azerbaijan).

- *Public institutions, which contribute to the prevention of corruption and are not explicitly referred to as “anti-corruption institutions”.*

Some countries have created *dedicated bodies for issues related to prevention of corruption*, such as prevention of conflicts of interest, ethics, integrity or control of asset declarations in the public administration or the parliaments. Examples include the National Integrity Agency in Romania; the National Integrity Office in the Netherlands; the Office of Government Ethics in the United States; the Chief Official Ethics Commission in Lithuania; the Parliamentary Commissioner for Standards in the House of Commons in the United Kingdom; the High Inspectorate of Declaration and Audit of Assets in Albania; and the Independent Commission for Evaluation, Transparency and Integrity in the Public Administration in Italy, to list just a few.

Further, many existing state institutions *contribute to the prevention of corruption as part of their responsibilities*. These include state audit institutions (for example, the Office of the Comptroller General in Brazil) or institutions in charge of public procurement (for instance, the Complaints Board for Public Procurement in Norway).³ Public internal and external audit institutions, tax and similar public control bodies can play an important role in prevention and detection of corruption as well. Central election commissions in some countries play a role in enforcing rules on financing of political parties and electoral campaigns, e.g. the Electoral Commission in the United Kingdom. Business ombudsmen have been established in several countries to prevent corruption involving companies, e.g. Russia and Georgia.

Public/civil service commissions play a key role in preventing corruption in the public service. Their role is to ensure merit-based and professional public service and its protection from undue political influence, to provide advice

and training to public servants on ethical standards or collect and verify their asset declarations. Examples include the Council of Ethics for the Public Service in Turkey, the Department of Public Administration and Public Service within the Ministry of Finance in Estonia or the Federal Chancellery in Austria.

Finally, *internal integrity/ethics units* in ministries and public bodies promote or enforce anti-corruption and ethical rules from within this body. Another example is the judiciary, where integrity among judges is ensured by its own self-governing bodies, namely judicial councils or dedicated ethics commissions for judges.

Rationales for establishing anti-corruption institutions and selecting the model

The obvious rationale for the establishment of any anti-corruption institution is to address a specific problem of corruption, and to contribute to reducing corruption through a specialised institution. However, in democratic societies, traditional anti-corruption functions (detection, investigation and prosecution of criminal offences; ensuring transparency of public expenditure through financial control; securing open government through access to information and openness to civil society; preventing conflict of interest, etc.) are usually available in existing institutions. However, these anti-corruption functions are scattered across many institutions, and there is not one single body, with a prominent name, that indicates that it is responsible for fighting corruption. A specialised anti-corruption institution may be needed when structural or operational deficiencies within an existing institutional framework does not allow for effective preventive and repressive actions against corruption.

Accordingly, the underlying rationale for establishing a new anti-corruption institution is based on the *expectation* that, unlike existing state institutions, the institution “(i) will not itself be tainted by corruption or political intrusion; (ii) will resolve co-ordination problems among multiple agencies through vertical integration; and (iii) can centralise all necessary information and intelligence about corruption and can assert leadership in the anti-corruption effort. This suggests that the main expected outcome of an anti-corruption institution should be an overall improvement in the performance of anti-corruption functions.”⁴

By contrast, experience points to distinct *dangers* in setting up a specialised anti-corruption institution. These dangers need to be considered in this process; (i) a new institution can create yet another layer of ineffective bureaucracy; (ii) it can divert resources, attention and responsibilities from existing control institutions and donor resources from priority areas of reform; (iii) it can invoke jurisdictional conflicts and turf battles with other institutions; and (iv) it can be abused as a tool against political opponents.⁵

The question of which model of anti-corruption institution a particular country should endorse is very difficult to answer. Any country that considers establishing a specialised anti-corruption institution and discusses the selection of the model must acknowledge a proven fact: institutional transplants from foreign systems are likely to fail if they are not adequately adapted to the local political, cultural, social, historical, economic, constitutional and legal background. It is noteworthy that the dedicated multi-purpose agencies of Hong Kong, Singapore, and even Latvia and Lithuania, which are often cited – and sometimes lauded by international experts – as examples of good models,

function in a very specific context (e.g. in small countries where corruption has been a problem, but not always an endemic one, at a particular stage of democratisation, transition and integration into the global markets; these countries are also characterised by the rule of law, the functioning of the judicial system, basic checks and balances in the administration etc.). Efforts to copy this model in bigger or federal states, or countries with endemic corruption and other important different characteristics have so far brought mixed results.

Accordingly, the first rule is to adapt the model and form of specialised anti-corruption preventive and repressive functions to the local context.⁶ The following factors should be taken into consideration:

- *Estimated level of corruption in the country* For example, a low level of corruption would not necessarily mandate a response in the form of a strong multi-purpose agency with extensive powers. By contrast, endemic corruption might overwhelm a minor agency.
- *Integrity, competence and capacities of existing institutions* The anti-corruption institution should perform or strengthen those functions that are missing or particularly weak in the existing overall institutional framework. It is important, therefore, to start by assessing the existing institutional framework first. If the decision is taken to establish a new body, low integrity of existing institutions requires a higher level of independence of the new anti-corruption institution as an “island of integrity” or “island of competence”.
- *New anti-corruption body vs. specialisation in existing institutions* It is important to assess if the strategy to fight corruption of the Government can be enforced by setting up a new dedicated anti-corruption body, or whether it could be more effective to promote specialisation/ focusing more particularly on corruption risks in one or several existing institutions.
- *Constitutional framework* In many countries, creating an independent institution would face constitutional barriers.
- *Existing legal framework and the national system of criminal justice* Criminal justice systems worldwide differ significantly in the exact distribution of competencies and responsibilities among different actors – police, prosecution, investigative magistrates, courts – especially in relation to preliminary investigation and pre-trial phase.
- *Available financial resources* Reforming or creating new institutions is a costly task. It is important to assess beforehand whether the national budget and other sources can provide sufficient and sustainable funding for such institutional measures, especially in cases when a decision is taken to establish a strong central multi-purpose agency.

It is crucial that the decision to set up a specialised anti-corruption body and the selection of a specific model be *based on analysis and strategy*. The country must first take stock of where it is, including what is the potential of existing institutions to specialise, and then elaborate a detailed roadmap. While these steps might seem obvious, it is surprising that many countries have established anti-corruption agencies without proper evaluation or strategy in a context where basic legal, structural and financial pre-requisites were not in place. The initial vicious circle (in the absence of a specialised institution, there is no one to perform a credible evaluation and draft a viable strategy, pre-requisites for the establishment of the specialised institution) does sometimes present a problem, but should not present an excuse.

Box 3.1. Institutional frameworks for fighting and preventing corruption

Specialised anti-corruption bodies are not alone in fighting corruption. Usually, they are part of a broader framework of institutions in the country, each contributing to fighting and preventing corruption.

In **France**, the *Central Service for Prevention of Corruption* is responsible for prevention of corruption. The *Court of Audit* also works in the field by retrospectively monitoring the management of all administrations and public or semi-public bodies. The anti-money laundering body *TRACFIN* acts when a report is lodged by professionals engaged in countering money-laundering and the financing of terrorism. On the enforcement side, the main services responsible are the Central Office for the Suppression of Major Financial Crime, namely the *Central Anti-corruption Brigade* in the Criminal Police (*la Brigade Centrale de Lutte Contre la Corruption*), the *financial division of the Paris Prefecture* and *specialized courts*. Besides, *ad-hoc commissions on integrity in political life* were created in 2007 and 2012 (the 2012 commission is headed by former Prime Minister and has 13 members, including a former minister, magistrates, senior public officials, academics and aims to come up with recommendations).

In **Lithuania**, the *Special Investigation Service* is the central body in the anti-corruption field, in charge of investigation, prevention and education. In addition, the *Chief Official Ethics Commission* is the central body in the area of public sector ethics and lobbying. The *Department of Organised Crime and Corruption* within the Prosecutor General's Office is responsible for prosecution of corruption-related offences.

In **Romania**, the *National Anticorruption Prosecutor's Office* is the main authority entrusted to investigate and prosecute serious corruption offences. Meanwhile, the national anti-corruption strategy is developed, monitored and co-ordinated by the *Ministry of Justice*. The *National Integrity Agency* is in charge of conflicts of interest prevention and asset declarations.

In **Albania**, the *Inter-ministerial Working Group* is overseeing and a dedicated unit in the Cabinet of Ministers is in charge of co-ordinating anti-corruption efforts, including national anti-corruption strategy. The *Joint Investigation Units* in the General Prosecutor's Office and in several cities of Albania are in charge to investigate and prosecute corruption crimes. The *Internal Control Service*, a structure of the Ministry of Interior, is the anti-corruption investigation agency of the national police. The *High Inspectorate of Declaration and Audit of Assets* is in charge of preventing conflict of interest and centralising and verifying asset declarations of public officials.

As stated above, the proper establishment of a new body to fight corruption should be part of a broader national strategy. At the outset, it is important to clarify the type of the new body and its institutional placement. Further, its mandate should be developed, with clear identification of functions and tasks, as well as rules on inter-agency co-operation. A sound legal basis governing the institution, which should elaborate upon financial, personnel, procedural and operational issues related to the agency needs to be adopted. Adequate budgetary resources need to be allocated. Appointing a politically independent and impartial head of the institution, with a demonstrated experience and good professional reputation, through a transparent process is an important step for a new body. Preparation of internal organisational structures and regulations including the internal code of conduct; initiating the process of recruitment of staff; working out internal administrative, operating and reporting procedures, and establishing manageable work plans and benchmarks to assess progress come next. Staff training is a very important factor for the success of an anti-corruption body, including initial and in-service training.

Notes

1. See, for example, chapter “Anti-Corruption Agencies, not the Panacea” in Global Integrity, *Global Integrity Report 2011* (2011), www.globalintegrity.org/report/findings#aca
2. Meagher (2004).
3. Both institutions mentioned as examples here refer to prevention of corruption as part of their mandate. See more information at www.konkurransetilsynet.no/en/2010/Impact-on-users/Public-procurement and www.cgu.gov.br/english/default.asp
4. Meagher (2004).
5. UNDP (2005), Meagher (2004), Doig (2004), Pope (1999), Council of Europe (2004).
6. Camerer (2001), Doig (2004).

Bibliography

- Council of Europe (2004), *Anti-corruption Services – Good Practices in Europe*, Council of Europe Publishing, Strasbourg.
- Kuris, Gabriel (2012), *Balancing Responsibilities: Evolution of Lithuania’s Anti-Corruption Agency, 1997 – 2007; Surmounting State Capture: Latvia’s Anti-Corruption Agency Spurs Reforms, 2002 – 2012*, Princeton University, Innovation for Successful Societies, 2012, www.princeton.edu/successfulsocieties/content/focusareas/AC/policynotes/country, accessed 22 January 2013.
- Meagher, Patrick (2004), *Anti-corruption Services - A Review of Experience*, Center for Institutional Reform and the Informal Sector at the University of Maryland, www.iris.umd.edu/Reader.aspx?TYPE=FORMAL_PUBLICATION&ID=3dca81ee-16c2-46f6-a45c-51490fcb3b99.
- Pope, Jeremy (1999), “The Need and Role of an Independent Anti-Corruption Agency”, working paper, Transparency International, Berlin, www.transparency.org.
- Speville, Bertrand de (1997), *Hong Kong: Policy Initiatives against Corruption*, OECD, Paris.
- Speville, Bertrand de (1999), “The Experience of Hong Kong, China, in Combating Corruption”, in Stapenhurst, Rick, and Sahr J. Kpundeh (1999), *Curbing Corruption: Toward a Model for Building National Integrity*, World Bank, Washington.
- Speville, Bertrand de (2010), “Anti-Corruption Commissions: the “Hong-Kong Model” Revisited”, *Asia-Pacific Review*, 17: 1, pp.47-71.
- UNDP (2005b), *Institutional Arrangements to Combat Corruption: A Comparative Study*, UNDP Regional Center in Bangkok.
- World Bank (1999), *Fostering institutions to contain corruption*, PREMnotes, Public, Sector, No. 24, June 1999.

Part II

Selected Models of Specialised Anti-Corruption Institutions

Chapter 4

Multi-purpose Anti-Corruption Agencies

Hong Kong, China: Independent Commission Against Corruption

The Independent Commission Against Corruption (ICAC) was established in Hong Kong in 1974 as an independent, multi-disciplinary body. Its mandate is a combination of three main tasks: pursue the corrupt through effective detection and investigation; eliminate opportunities for corruption by introducing corruption-resistant practices; and educate the public on the harms of corruption and foster their support in fighting corruption. The ICAC reports directly to the head of the government. At the end of 2011, 73% of the Commission's staff worked in the investigative branch.

Background Information

The decision to set up an independent, multi-disciplinary institution to effectively curb corruption from law enforcement, preventive and educational sides was a direct result of a report from a commission of inquiry into corruption in Hong Kong conducted in 1973. The report concluded that corrupt practices had seriously infiltrated many spheres of Hong Kong's public life, and that corruption was particularly serious within the police force. Accordingly, the report clearly pointed out that "responsible bodies generally feel that the public will never be convinced that Government really intends to fight corruption unless the Anti-Corruption Office is separated from the Police."

Following the report, the ICAC was established in February 1974. Since its inception, the ICAC mandate covered three main functions: investigation, prevention and education. To be effective, the ICAC was from the outset endowed with necessary investigative powers – such as arrest, search and seizure, access to financial information and confiscation of assets.

From the very beginning of its operations, the ICAC attached great importance to raising public confidence and to establishing the credibility and effectiveness of the institution. Accordingly, one of the first priorities of the ICAC was the apprehension and conviction of an infamous high-ranking police officer, suspected of corruption, who fled Hong Kong, and was in the public eye a symbol of the corrupt police force and of the ineffectiveness of the law enforcement institutions. Within a year, the officer was extradited back to Hong Kong, successfully prosecuted, and convicted. In the following year, the ICAC successfully cracked down on a corruption syndicate involving police officers. The ICAC's early successes gave a boost to public confidence in its anti-corruption work. Already by 1977, three years after the establishment of ICAC, the proportion of non-anonymous corruption reports (complaints about corruption) made to ICAC surpassed that of anonymous reports.

Legal and Institutional Framework

The ICAC derives its status from the Independent Commission Against Corruption Ordinance. The institution is a dedicated anti-corruption agency independent of the public service, other law enforcement agencies or prosecutorial service, combining investigative, preventive and educational tasks. Its independence is guaranteed by the Basic Law, Hong Kong's mini-constitution, which states that the ICAC is accountable to the Chief Executive. In addition, the ICAC is given specific legal powers and tasks, which can be perceived through two other laws: the Prevention of Bribery Ordinance, and the Elections (Corrupt and Illegal Conduct) Ordinance.

Independent Commission Against Corruption Ordinance

- Establishes the ICAC and prescribes the duties of the ICAC Commissioner;
- Sets the parameters of the ICAC's investigation work, the procedure for handling an arrested person and for the disposal of property connected with offences;
- Gives the ICAC the powers of arrest, detention and granting bail;
- Confers on the ICAC the powers of search and seizure;
- Vests the ICAC with the power of taking non-intimate samples from an arrested person for forensic analysis;
- Empowers the ICAC to arrest persons referred as *prescribed officers* (listed below) who commit the offence of blackmail by or through misuse of office as well as any persons who commit crimes connected with, or directly or indirectly facilitated by, suspected offences under the Prevention of Bribery Ordinance and the Elections (Corrupt and Illegal Conduct) Ordinance.

Prescribed officers include any person holding an office of remuneration under the Government and any principal official of the Government appointed in accordance with the Basic Law or of the Monetary Authority appointed under certain provisions of the Exchange Fund Ordinance, Chairman of the Public Service Commission, any member of the staff of the Independent Commission Against Corruption, as well as any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance, any judicial officer appointed by the Chief Justice and any member of the staff of the judiciary.

Prevention of Bribery Ordinance

- Specifies the offences of bribery involving government, public body and private sector employees;
- Gives the ICAC powers, with the order of court, to unravel and identify the transactions and assets concealed in different guises by the corrupt. The powers include searching bank accounts; searching and seizing documents; and requiring the suspects to provide details of their assets, income and expenditure;
- Confers on the ICAC the powers, with the order of court, to detain travel documents and restrain disposal of property in order to stop the corrupt from attempting to flee Hong Kong or laundering their ill-gotten gains so as to avoid forfeiture by the courts; and,
- Gives the ICAC the power to protect confidentiality of an investigation.

Elections (Corrupt and Illegal Conduct) Ordinance

- Prevents corrupt and illegal conduct at elections;
- Specifies offences involving the elections to elect the Chief Executive (the head of the Hong Kong Special Administrative Region Government), members of the Legislative Council, District Councils, Heung Yee Kuk, the Chairman or Vice-Chairman or members of the Executive Committee of Rural Committees, and Village Representatives.

Box 4.1. The Procedure of Investigating and Prosecuting Corruption Crimes by ICAC

1. ICAC Report Centre receives a complaint (by individuals, legal persons, ICAC Regional Offices or by other governmental departments) about corruption;
2. The complaint is examined by the Directorate of the Operations Department and categorised with a view to pursuing or not pursuing further action;
3. For complaints with further action recommended, investigations will be carried out by the ICAC's Operations Department;
4. For complaints with substantiated evidence, relevant details will be submitted, for the consideration for and institution of prosecution, to the Secretary for Justice, the head of the Department of Justice of the Hong Kong Special Administrative Region Government;
5. Prosecution of corruption will be conducted by the two ICAC sections (public sector and private sector corruption) of the Commercial Crime Unit, the Prosecutions Division, and the Department of Justice. It advises the ICAC and handles its prosecutions.
6. Reports on prosecutions, concluded investigations, etc. will be submitted to the Operations Review Committee, the oversight body of the Operations Department.

Source: Independent Commission Against Corruption (Hong Kong, China), Department of Justice

Organisationally, the ICAC comprises the office of the Commissioner and three functional departments - Operations, Corruption Prevention, and Community Relations - serviced by the Administration Branch. Operations Department receives, considers and investigates complaints alleging corrupt practices. Corruption Prevention Department examines practices and procedures of government departments and public bodies to reduce corruption opportunities and offers corruption prevention advice to private organisations upon request. The Community Relations Department educates the public against the threats of corruption and enlists public support in combating corruption. Within the Operations Department, there is a Witness Protection and Firearms Section, an International and Mainland (Operational) Liaison Section, a Forensic Accounting Group, and an Information Technology and Computer Forensics Group (see organisational chart below).

Human, Training and Material Resources

In its first year of operation, the ICAC hired 369 people through open recruitment. Experienced people were attracted and hired from various local sources and the United Kingdom police forces, in addition to specialists headhunted from the accounting and other professions in the private sector.

As at the end of 2011, the Commission employed 1 298 staff, including 947 in the Operations Department, 59 in the Corruption Prevention Department, 177 in the Community Relations Department and 115 in the Administration Branch¹ (see organisational chart below).

More than half of the staff currently working in the ICAC has served in the Commission for more than 10 years. Interest in working for the ICAC has been high since its establishment, and the Commission never has problems with staffing from that perspective. One of the reasons for this lies in the overall public support in curbing corruption, as well as in the credibility that ICAC has gained through effective implementation of its mandate and tasks.

Throughout the years, the ICAC has developed an elaborate system of training for its personnel.

Basic training. During their first tour of duty, all new recruits undergo an extensive Induction Training Programme, which provides basic training to them so that they may be deployed to any of the three Departments within the Commission. All new recruits serve their first contract in the Operations Department so that they can benefit from exposure to a wide range of corruption investigations before being considered for a posting to either the Corruption Prevention or Community Relations Departments. Training for new recruits lasts just over two years, with a Stage I Induction course at the time of joining, a Stage II course after several months of on-the-job training, followed by a Stage III course towards the end of their first contract. Officers undergo intensive training on a wide range of subjects whilst on these courses, including law, rules of evidence, computer forensics, financial investigation skills, cognitive interview techniques, corruption prevention, communication skills, and so on.

Continuous training. Continuous professional training for serving officers covers such subjects as asset recovery, forensic accounting and undercover operations. Additionally, officers benefit from local external courses. These courses enable officers to keep abreast of the latest developments in various fields such as information technology, the financial markets, corporate finance, leadership and strategic management. Given the increasing number of cases requiring financial and computer data analysis, ICAC has not only increased its professional training for its investigators on financial investigation and computer forensics, but also created a new Forensic Accounting Group to support frontline investigations, as well as expanding its experience-sharing with law enforcement agencies abroad.

In addition to this professional training, officers also receive training on team building, leadership, stress management, change management, quality management and personal effectiveness. ICAC officers also receive extensive professional and management training abroad.

Budget-wise, the ICAC is one of the most envied anti-corruption agencies in the world. The annual budget of the Commission amounts to US\$ around 106 Million, which corresponds to about US\$ 15 per capita of the Hong Kong Special Administrative Region. The ICAC is financed from a single head of expenditure of the Government budget. Its annual estimates are considered by the Advisory Committee on Corruption, before submission to the Chief Executive for approval in accordance with the ICAC Ordinance. Similar to other government departments, the ICAC's annual estimates are also subject to approval of the Legislative Council. The ICAC's accounts are

administered according to government regulations and procedures, and are subject to examination by the Director of Audit.

Accountability

The work of the ICAC comes under the scrutiny of four independent advisory committees, comprising community leaders or responsible citizens and appointed by the Chief Executive of the Hong Kong Special Administrative Region:

- Advisory Committee on Corruption;
- Operations Review Committee;
- Corruption Prevention Advisory Committee; and
- Citizens Advisory Committee on Community Relations.

The committees respectively offer advice and improvement proposals on the overall policies of the Commission, as well as the work of its three functional departments. In addition, the ICAC produces annual reports, which are available on its website. Also, statistics including corruption complaints, election-related corruption complaints, and prosecutions are also uploaded for the free access of the public.

Practice and Highlights

Box 4.2. Performance Standards employed by ICAC

All tasks are performed within “performance standards” in which the ICAC staff are committed to:

- Respond to a report of corruption within 48 hours;
- Respond to a report which does not involve corruption within 2 working days;
- Respond to a request for corruption prevention advice within 2 working days; and
- Respond to a request for anti-corruption education services or information within 2 working days.

Source: Independent Commission Against Corruption (Hong Kong, China).

Receiving corruption complaints. In recent years, the number of corruption complaints (excluding those related to elections) received by the ICAC ranges from 3,300 to 4,000 a year. The total number of election-related complaints ranges from around 600 to 900 per election year. Comparison of corruption complaints in 1975 and 2011 shows a significant drop in complaints relating to the public sector, in particular the police; and a significant increase in complaints in relation to the private sector. To receive reports from the public, its Report Centre operates 24-hour a day. In 2011, the Centre dealt with 5,963 corruption and non-corruption reports.

Pro-active Investigation of Corruption Cases. The Operations Department is responsible for investigations and is the largest department of the ICAC. It employs proactive investigation techniques to identify instances of corruption that might otherwise go unreported. The strategy includes the use of undercover operations and broader and more effective use of intelligence and information technology. This approach has been proven to be effective in uncovering many serious cases of corruption.

Advising on corruption prevention. The Corruption Prevention Department each year conducts about 70 detailed procedural reviews and hundreds of consultations to help government and public bodies to identify and eliminate management and organisational weaknesses that breed corruption loopholes. Its Advisory Services Group provides free, confidential and tailor-made corruption prevention advice to private organisations.

Researching on anti-corruption initiatives. The Centre of Anti-Corruption Studies, currently under the auspices of the Corruption Prevention Department, was established in April 2009 to facilitate and conduct research and analytical studies on issues pertaining to the development of anti-corruption initiatives locally, regionally, and internationally. In September 2010, the Centre hosted the Conference on Collaborative Governance and Integrity Management, which was attended by over 200 public officers, anti-corruption personnel and academics from Europe, the United States, China and Hong Kong. The latest anti-corruption literature and anti-corruption laws can be found on the Centre's dedicated website www.cacs.icac.hk.

Furthermore, the ICAC's Community Relations Department puts efforts into tailor-made education campaigns for different target groups including:

The Public sector. In spearheading integrity programmes for staff of public institutions, the ICAC has forged close partnership with the Civil Service Bureau (CSB), which is in charge of government staff policy and other matters. In late 2006, the ICAC and the CSB jointly launched the Ethical Leadership Programme and requested each government organisation head to appoint a senior directorate officer to be the Ethics Officer in assuming the overall responsibilities of developing and sustaining ethical culture in his/her own organisation. Currently, a network of around 150 Ethics Officers and Assistant Ethics Officers coming from all government organisations has been formed. Apart from offering Ethics Officers advice in devising and implementing integrity management plans, the ICAC also regularly organises workshops for Ethics Officers to share and exchange views on issues of common concern such as supervisory accountability, conflict of interest and misconduct in public office. In addition, training assistance and training packages are also provided to meet individual departments' needs.

The Business community. In mid-1990s, a business ethics campaign was first launched to reach over 2,000 listed and major companies, and trade and professional associations to encourage these organisations to adopt corporate codes of conduct. A similar programme for all listed companies in Hong Kong was again completed in 2005. As an on-going practice, the ICAC now offers service to all newly listed companies within three months of their listing. Over 65% of these companies contacted adopted ICAC's prevention services. Besides, with the support of six major chambers of commerce in Hong Kong, the ICAC set up the Hong Kong Ethics Development Centre in 1995 to promote business ethics on a long-term basis. Anti-corruption seminars and training sessions are regularly held for managers and employees in various trades, including the financial services, construction and tourism industries, and professionals such as accountants, engineers, surveyors and architects.

Youth. To sustain a culture of probity in our society, the ICAC inculcates the values of honesty and integrity amongst youth in different phases of their school life through teaching packages, projects, or face-to-face talks/workshops. The ICAC uses more interactive means such as drama performances to disseminate anti-corruption messages to secondary students. To optimise the impact of preventive education, the ICAC has also partnered with various youth bodies, district organisations, schools, and universities. With the support of tertiary education institutions, the ICAC has been organising an

Ambassador Programme since 2007, with an aim to mobilising university students to organise activities on the school campus to put across probity messages among their fellow students. Besides, a Personal Ethics Module for University Students was developed in 2010, and eight local universities incorporated the module in their General Education Programmes in 2011/12.

Elections. To uphold clean and fair public elections and to inculcate a clean election culture, the ICAC have launched comprehensive education and publicity programmes to promote the “Support Clean Elections” message to the Hong Kong community. The programmes comprise briefings and distribution of reference materials to candidates, election helpers and voters, as well as the running of an election hotline and a dedicated website. The ICAC will also arrange roving exhibitions, poster campaigns, TV and radio advertisements, and engage a mobile exhibition vehicle to enhance public awareness to the importance of upholding clean public elections.

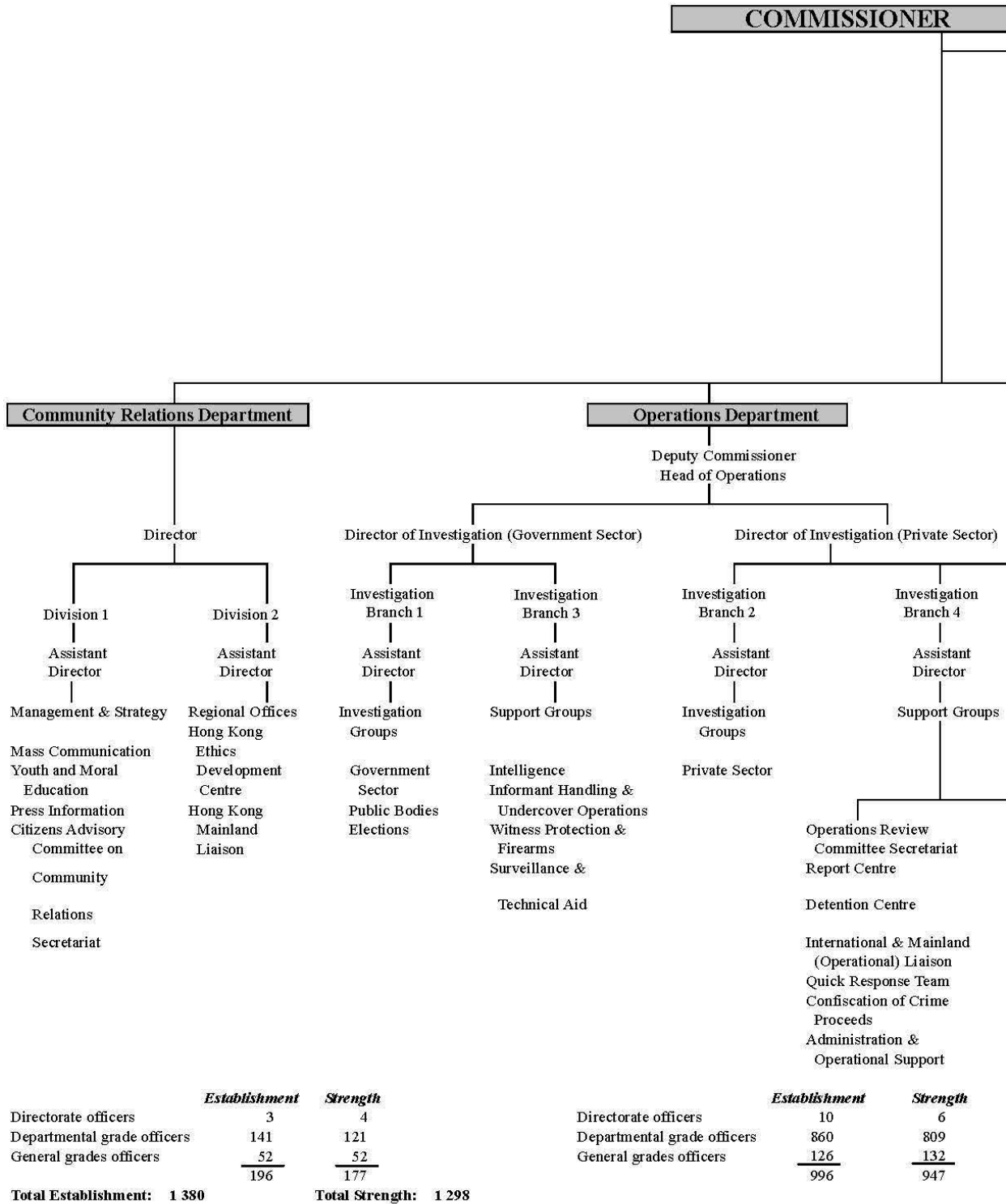
Box 4.3. Anti-corruption Efforts in Hong Kong Infrastructure Projects

To provide corruption prevention input to the government agencies implementing infrastructure projects, the ICAC has set up a task group comprising of construction professionals with substantial corruption prevention experience to conduct regular reviews on the procedures adopted by these agencies for the letting and administration of consultancy agreements and construction works contracts to identify corruption loopholes and recommend measures to plug them. For mega-size infrastructure projects such as the West Kowloon Cultural District Development (involving the development of 15 performing arts venues, a cultural institution with museum functions, an exhibition centre and more than 3 hectares of piazza areas), and the new cruise terminal (involving two alongside berths of 800 metres and a cruise terminal building on a site measuring 7.6 hectares), the ICAC adopted a whole-process approach, whereby advice on the tender assessment procedures is offered first, followed by ICAC’s representatives sitting as observers on the tender assessment panels of respective projects to further advise on the assessment procedures as and when appropriate. Integrity management workshops are also organised for the management and supervisory staff of the implementing agencies, consultants and contractors involved in these projects to raise their integrity standard and awareness of corruption prevention.

Source: Independent Commission Against Corruption (Hong Kong, China).

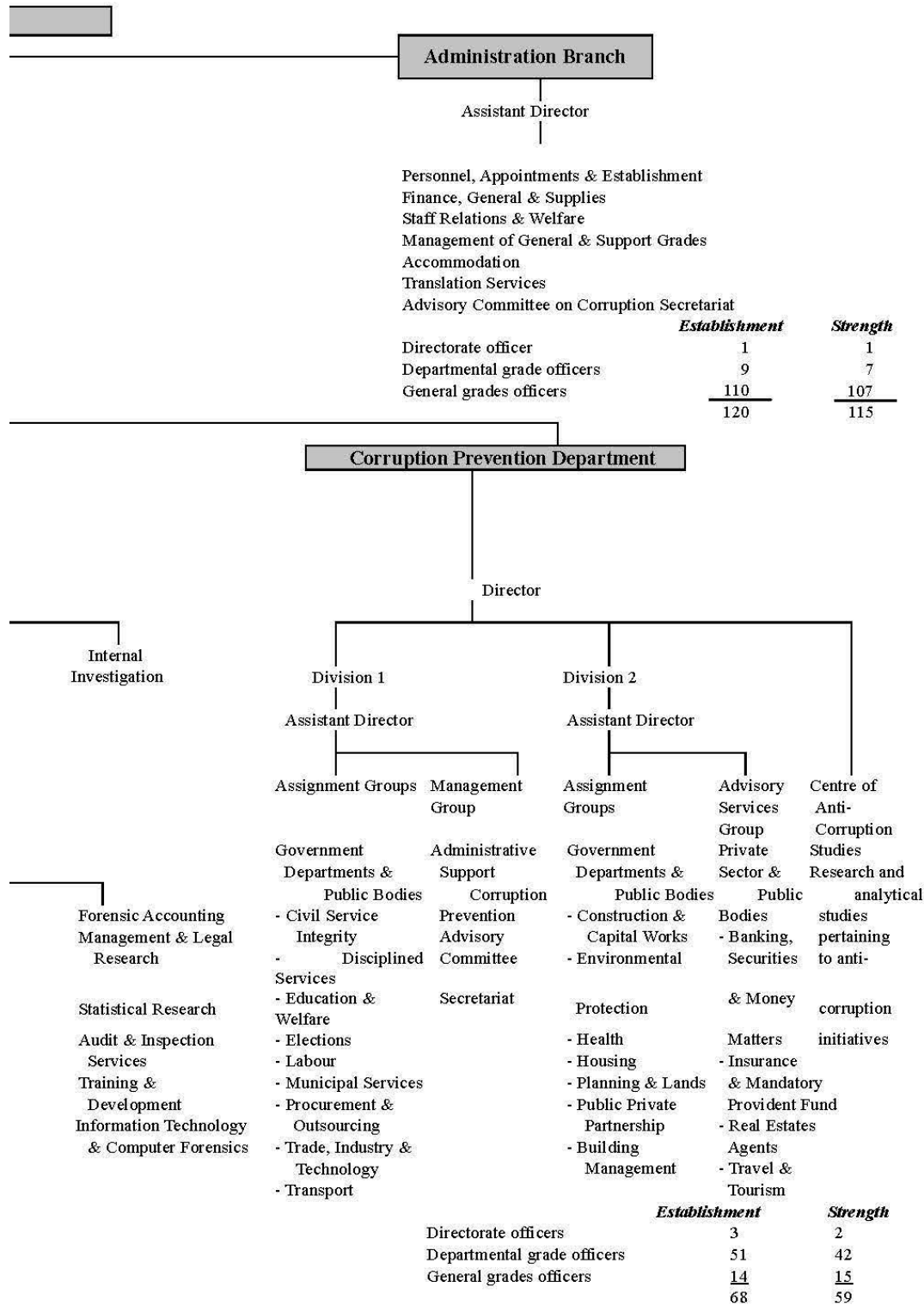
Educating the public and enlisting their support to anti-corruption work. In pursuing their tasks, the Community Relations Department, through seven regional offices strategically located in different parts of the territory, co-operates with relevant public institutions such as the district councils and non-government organisations to provide corruption prevention education and convey anti-corruption messages to different walks of life in the community. One of the manifestations of the continued public support and involvement is the ICAC Club, with over 1,000 volunteers, which provides an avenue for citizens to help organise community education programmes.

Figure 4.1. Organisation of the Independent Commission



Source: Independent Commission against Corruption. Hong Kong Special Administrative Region. 2011 Annual Report.

Against Corruption, position as of 31 December 2011



Face-to-face contact aside, the use of mass media has proven to be an effective strategy to educate the public against the evils of corruption. Each year, the Community Relations Department produces theme-based announcements of public interest to draw the public's attention to the work carried out by the ICAC. In recent years, the Department has also widely used the internet to keep the public posted of ICAC news and developments.

Apart from the corporate website (www.icac.org.hk), the Department has developed three other thematic websites – the Hong Kong Ethics Development Centre; iTeen Camp; and the Moral Education website – dedicated to the business sector, youth, and teachers specialising in moral education, respectively. In June 2004, a web-based audio-visual platform, the ICAC Channel, was launched to provide latest information through multimedia productions. The ICAC also started to discuss and interact with youngsters on messages of positive values and integrity via popular social media platforms to strengthen its online presence since 2009.

Meanwhile, TV drama series, a signature product that the ICAC produces at an interval of two to three years, continued to attract a wide audience. Each of the five episodes of “ICAC Investigators” broadcast in 2011 had an average audience of around 1.2 Million in Hong Kong. The drama was also awarded one of the top 20 best TV Programmes in 2011 at the Appreciation Index organised by the public service broadcaster Radio Television Hong Kong.

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Singapore: Corrupt Practices Investigation Bureau

The Corrupt Practices Investigation Bureau (CPIB) was established in 1952 as an independent anti-corruption agency. Its mandate is to investigate and prevent corruption in the public and private sector. The main functions of the CPIB are to receive and investigate complaints alleging corrupt practices; investigate malpractices and misconduct by public officers which raise a suspicion of bribery and corruption-related offences; and prevent corruption by examining the practices and procedures in the public service to minimise opportunities for corrupt practices.

Background Information

Singapore's Corrupt Practices Investigation Bureau (CPIB) was established, in 1952, as an independent body responsible for the investigation and prevention of corruption. Prior to 1952, a small unit known as the Anti-Corruption Branch under the Criminal Investigation Department of the Singapore Police Force was in charge of investigating corruption cases.

Corruption was perceived to be a way of life in the forties and early fifties in Singapore. The relative ineffectiveness of the Anti-Corruption Branch in curbing corruption led to the establishment of the CPIB as an independent body, separated from the Police, to investigate all corruption cases. In the early days, the CPIB faced a number of difficulties. For instance, weak anti-corruption laws and the lack of resources hampered the gathering of evidence against corrupt individuals. Another problem was the lack of broad public support. Citizens did not cooperate fully with the CPIB as they were sceptical of its effectiveness and were afraid of reprisals.

The breakthrough came in 1959, when Singapore attained internal self-government. The People's Action Party - led Government was committed to putting an end to corrupt practices in Singapore through the means of toughened legislation and a revamped CPIB, which was devoted entirely to the investigation of corrupt practices and preparation of evidence to be used for prosecution. Firm action was taken against corrupt officials, and public confidence in the CPIB grew as people realised that the Government was sincere in its anti-corruption drive.

The Prevention of Corruption Act was enacted in June 1960. It incorporates significant provisions to eliminate deficiencies in then-existing anti-corruption legislation. Additional powers of investigation were given to the CPIB, and punishment for corrupt behaviour was also enhanced. The Prevention of Corruption Act today provides the CPIB with the necessary power to fight corruption. In 1989, the Corruption (Confiscation of Benefits) Act was passed. The Act empowers the court to freeze and confiscate properties and assets obtained by corrupt offenders. In 1999, the Corruption (Confiscation of Benefits) Act was replaced with a new legislation called the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act. New offences of money laundering were introduced in addition to giving the same powers to the court for the freezing and confiscation of properties and assets obtained by offenders.

Legal and Institutional Framework

CPIB is an independent governmental body with the mandate to investigate and prevent corruption in the public and private sectors in Singapore. The CPIB derives its

powers of investigation from the Prevention of Corruption Act (Chapter 241) which forms the legal basis.

The main *functions* of the CPIB are to:

- Receive and *investigate* complaints alleging *corrupt practice*;
- *Investigate malpractices and misconduct* by public officers with an undertone of corruption; and
- *Prevent corruption* via public education and by examining the practices and procedures in the public service to minimise opportunities for corrupt practices.

The CPIB is responsible solely for the *investigation* of corruption-related offences involving bribery. Other economic crime offences (e.g., such as embezzlement) fall under the jurisdiction of the Commercial Affairs Department of the Singapore Police Force. The bureau is responsible for safeguarding the integrity of the public service and for encouraging corruption-free transactions in the private sector. While the CPIB investigates offences falling within the ambit of the Prevention of Corruption Act, prosecutorial powers reside with the Attorney-General. The courts discharge the adjudication function. These form part of the necessary checks and balances for the rule of law in Singapore.

While the primary function of the bureau is to investigate corruption under the Prevention of Corruption Act, it is also empowered to launch an investigation into any other criminal offences discovered in the course of a corruption investigation.

Besides investigation of corruption offences, the bureau carries out *corruption prevention*. The CPIB reviews the work methods and procedures of selected departments and public bodies to identify administrative weaknesses in the existing systems which could facilitate corruption and malpractices, and recommends corresponding remedial and prevention measures to the heads of departments concerned. Officers of the bureau also reach out to schools, government agencies, business and international communities through public education talks, learning journeys, visits, seminars, workshops and conferences to create awareness on the pitfalls of corruption.

Under the Prevention of Corruption Act,² CPIB has the following *powers*:

Powers of arrest:

Section 15 (1) The Director or any special investigator may without a warrant arrest any person who has been concerned in any offence under Prevention of Corruption Act or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned.

Section 15 (2) The Director or a special investigator arresting a person under subsection (1) may search such person and take possession of all articles found upon him which there is reason to believe were the fruits or other evidence of the crime.

Powers of investigation:

Section 17 (1) In any case relating to the commission

- (a) of an offence under section 165 or under 213 to 215 of the Penal Code, or of any conspiracy to commit, or of any attempt to commit, or of any abetment of such an offence;

- (b) of an offence under the Prevention of Corruption Act; or
- (c) of any seizable offence under any written law which may be disclosed in the course of an investigation under the Prevention of Corruption Act

The Director or a special investigator may, without the order of the Public Prosecutor, exercise all or any of the power in relation to police investigations into any offences given by the Criminal Procedure Code.

Provided that an investigation into an offence under the Penal Code shall be deemed to be a police investigation to which sections 23 and 258 of the Criminal Procedure Code 2010 shall apply in the same manner and to the same extent as if the Director or the special investigator concerned were a police officer.

Special powers of investigation:

Section 18 (1) Notwithstanding anything in any other law, the Public Prosecutor, if satisfied that there are reasonable grounds for suspecting that an offence under the Prevention of Corruption Act has been committed, may, by order, authorise the Director or any police officer of or above the rank of assistant superintendent named in such order or a special investigator so named to make an investigation in the matter in such manner or mode as may be specified in that order. The order may authorise the investigation of any bank account, share account, purchase account, expense account or any other account, or any safe deposit box in any bank, and shall be sufficient authority for the disclosure or production by any person of all or any information or accounts or documents or articles as may be required by the officer so authorised.

Section 18 (2) Any person who fails to disclose such information or to produce such accounts or documents or articles to the person so authorised shall be guilty of an offence and shall be liable on conviction to a fine not exceeding SGD 2,000 or to imprisonment for a term not exceeding one year or to both.

Powers of investigation authorised by Public Prosecutor:

Section 19 The Public Prosecutor may issue an order to authorise the Director or a special investigator to exercise, in the case of any offence under any written law, all or any of the powers in relation to police investigations given by the Criminal Procedure Code.

Public Prosecutor's power to order inspection of bankers' books:

Section 20 (1) The Public Prosecutor may, if he considers that any evidence of the commission of an offence under the Prevention of Corruption Act or under sections 161 to 165 or 213 to 215 of the Penal Code or of a conspiracy to commit, or an attempt to commit, or an abetment of any such offences by a person in the service of the Government or of any department thereof or of a public body is likely to be found in any banker's book relating to that person, his wife or child or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for that person, by order authorise the Director or any special investigator named in the order or any police officer of or above the rank of assistant superintendent so named to inspect any book and the Director, special investigator or police officer so authorised may, at all reasonable times, enter the bank specified in the order and inspect the books kept therein and may take copies of any relevant entry in any such book.

Public Prosecutor’s powers to obtain information:

Section 21 (1) In the course of any investigation or proceedings into or relating to an offence by any person in the service of the Government or of any department thereof or of any public body under the Prevention of Corruption Act or under section 161 to 165 or 213 to 215 of the Penal Code or a conspiracy to commit, or an attempt to commit, or an abetment on any such offence, the Public Prosecutor may, notwithstanding anything in any other written law to the contrary, by written notice –

- (a) Require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person and by the spouse, sons and daughters of that person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;
- (b) Require that person to furnish a sworn statement in writing of any money or other property sent out of Singapore by him, his spouse, sons and daughters during such period as may be specified in the notice;
- (c) Require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person where the Public Prosecutor has reasonable grounds to believe that the information can assist the investigation;
- (d) Require the Comptroller of Income Tax to furnish, as specified in the notice, all information available to the Comptroller relating to the affairs of that person or of the spouse or a son or daughter of that person, and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person, spouse, son or daughter which is in the possession or under the control of the Comptroller;
- (e) Require the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his possession or under his control;
- (f) Require the manager of any bank to give copies of the accounts of that person or of the spouse or a son or daughter of that person at the bank.

Section 21 (2) Every person to whom a notice is sent by the Public Prosecutor under subsection (1), notwithstanding the provisions of any written law or any oath of secrecy to the contrary, comply with the terms of that notice within such time as may be specified therein and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both.

Powers of search and seizure:

Section 22 (1) Whenever it appears to any Magistrate or to the Director upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any place there is any document containing any evidence of, or any article or property relating to –

the commission of an offence under the Prevention of Corruption Act, or under sections 161 to 165, or 213 to 215, of the Penal Code; or

a conspiracy to commit, or any attempt to commit, or an abetment of any such offence –

the Magistrate or the Director may, by warrant directed to any special investigator or police officer not below the rank of inspector empower the special investigator or police officer to enter that place by force if necessary and to search, seize and detain any such document, article or property.

Accountability

CPIB is directly subordinated to the Prime Minister's Office. The Bureau is headed by a Director who is directly responsible and report to the Prime Minister.

The Director of the CPIB is an officer appointed by the President of Singapore. Cabinet or a Minister acting under the general authority of the Cabinet advises or recommends the President a candidate. The President can, however, acting in his discretion, refuse to appoint or revoke the appointment of the Director if he does not concur with the advice or recommendation. In addition, the President may appoint such number of deputy directors, assistant directors and special investigators of the CPIB as he may think fit. He may also create different grades for deputy directors, assistant directors and special investigators as he may think fit.

Any powers conferred on and duties to be performed by the Director under the Prevention of Corruption Act may - subject to the orders and directions of the Director - be exercised or performed by a Deputy Director or an assistant director of the Bureau. A Deputy Director and an assistant director of the Bureau may exercise the powers conferred by the Prevention of Corruption Act on a special investigator. The Director, deputy directors, assistant directors and special investigators of the CPIB are public servants within the meaning of the Penal Code.

Human and Material Resources and Training

CPIB has one of the smallest officer-to-population ratio among the forerunner anti-corruption agencies in the region. CPIB obtains the budget to fund its operations annually from the Ministry of Finance.

With a lean outfit of less than 150 officers, training is naturally a critical function which determines the effectiveness in CPIB's operations. All newly-appointed officers undergo a 4-months basic course aimed at instilling knowledge of the law, investigation and enforcement procedures. A competency-based training framework also ensures that each level of officers have the required skill-sets and are competent to perform their duties. Besides formal training, the Bureau organises awareness talks to enhance officers' professional and personal development. Officers who are inclined towards specialist areas, such as forensics and polygraph, are also given opportunities to build their expertise in these areas and obtain accreditations.

Highlights and practice

Singapore supports a *zero-tolerance approach to corruption*. It is based on a whole-of-government effort together with the participation of the community and relies on a strong political will and encompasses:

- the rule of law, i.e., strong and effective anti-corruption law and independent judiciary,
- a functionally independent anti-corruption agency; and
- a responsive government that serves the public interest.

Personal example set by the Government provide moral authority for the anti-corruption movement in Singapore. Also it demonstrates that the political will is the corner-stone of any anti-corruption effort. It is believed that corruption in Singapore is very much under control and that a culture of zero tolerance to corruption has been inculcated in the society. Singapore has been ranked regularly by *Transparency International* as one of the five least corrupt countries in the world. Likewise, the *Political and Economic Risk Consultancy's Corruption in Asia Report*, since its inception in 1995, has ranked Singapore as the least corrupt country in Asia.

Independence was strengthened by subordinating the CPIB directly to the Prime Minister with the aim to prevent undue interference and to ensure that the CPIB does not favour any particular government department or public institution. Under the supervision of the Prime Minister's Office, the CPIB was able to operate without fear or favour. In addition, Constitutional amendments were made in 1991 for the Elected President to appoint or revoke the appointment of the Director of the CPIB. The amendments also allow the Elected President to concur with the Director of the CPIB to carry out certain investigations notwithstanding that the Prime Minister had refused to give his consent.

Building skills and ensuring integrity of CPIB staff. As part of the on-going civil service-wide reforms started in Singapore in 1995 under the broad umbrella of the initiative called *Public Service in the 21st Century*, CPIB enhances process-control so as to better manage investigations, principally through the introduction of *performance indicators*. This is directed towards the mission of "swift and sure action", case management system, case conference, and a full review of all investigative processes as part of fulfilling ISO 9000 requirements. Further, CPIB strives to enhance personnel practices through the *improvement of career opportunities and training*, and creating an *organisational culture* characterised by an adherence to the core values of integrity, devotion and teamwork. CPIB uses a system of *personnel appraisals* and organisational health surveys to encourage its officers to align themselves to these values. In addition, CPIB works closely with the Public Service Division and other key civil service departments to ensure that the high level of integrity within the Singapore Civil Service is upheld.

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Lithuania: Special Investigation Service

The Special Investigation Service (Specialiųjų tyrimų tarnyba – STT) is a multi-purpose anti-corruption body established in 1997 in Lithuania. STT has a broad mandate in the anti-corruption fields of investigation, prevention and education. Institutionally, the STT is an independent body accountable to the President of the Republic and the Parliament. In addition to law enforcement and criminal intelligence powers related to bribery and corruption-related offences, the STT has general functions in the field of prevention, education, co-ordination and implementation of the National Anti-corruption Programme. However, the STT is generally perceived as a law enforcement institution. In 2012, the service had some 230 staff in the central office and 5 regional departments, most of them were employed in investigation divisions.

Background Information

In the period from regaining its independence in 1990 till becoming a member of the European Union and NATO in 2004, Lithuania has succeeded in building one of the most comprehensive anti-corruption systems in Europe, based on a multi-faceted approach of preventive and repressive, legal and institutional measures. This can be attributed to a number of factors, including the political commitment of successive governments, strong outside incentives and reform requirements during the accession process to the EU, as well as membership in international anti-corruption monitoring mechanisms such as the Council of Europe's GRECO. The process of legislative reform in the area of corruption has also been facilitated by Lithuania's accession to major international treaties in the field of corruption and its participation in different technical co-operation and evaluation programmes, including those of the OECD.

The STT was initially established in 1997 under the Ministry of the Interior, and performed the function of criminal prosecution regarding corruption in the public and private sector.³ Recognising the need to address corruption through a multi-faceted approach of repression, prevention and education, Lithuania further explored various models of anti-corruption institutions, and decided to follow the well-publicised *Hong Kong model*. In 2000, the Law on the STT was adopted, which created an independent institution with a broad mandate in the fields of investigation and prevention of corruption. Building on the material and human resources of its predecessor, the new institution became operational within a month from the adoption of the law.

The STT has been designed as a focal anti-corruption body to detect, investigate and prevent corruption offences, to provide education in the field of corruption, to ensure co-ordination of the anti-corruption measures between state and municipal bodies as well as with the civil society and the private sector, and to co-ordinate anti-corruption strategies at the national and local level. The main objectives of the STT are to create a national system of corruption prevention, to improve the legal anti-corruption framework, to develop corruption-related data and analyses, and to develop international relations to combat corruption.⁴

The STT is the most visible part of an otherwise complex legal and institutional framework of the Lithuanian anti-corruption system. The National Anti-corruption Programme, adopted by the Parliament (Seimas) in 2002 and updated every two years, bases the fight against corruption on three pillars: prevention, investigation and enforcement and public education. It also provides for monitoring and review mechanism

enabling regular updating of the measures, setting of priorities, and foresees the adoption of sector and institution specific anti-corruption strategies. Preventive aspects of the system are on a general and strategic level addressed by the Law on the Prevention of Corruption adopted in 2002. Corruption and transparency measures are further regulated by different laws and regulations that cover all common corruption prevention topics: prevention of conflicts of interest; declaration of assets and income by public officials; ethics and transparency of the public service; prevention of money-laundering and financial control over the use of public funds.

In addition to the STT, there are other specialised anti-corruption bodies in the field of prevention and co-ordination in Lithuania:

The *Chief Official Ethics Commission (VTEK)*. Established in 1999, VTEK is an independent institution accountable to the Parliament and comprising five members (the President of the Republic; the President of the Parliament; and the Prime Minister each appoints one member, and the Minister of Justice appoints two) assisted by a small permanent Secretariat. Under the Law on the Adjustment of Public and Private Interests and the Law on the Prevention of Corruption, VTEK is the main control institution in the area of prevention of conflicts of interest of high-level public officials and the central authority in the field of public ethics, providing expertise and recommendations concerning anti-corruption programmes and legal reforms in this field. VTEK receives, and within its scope of jurisdiction investigates, complaints from the general public; it can initiate investigations on the basis of information received. While performing investigations, it has the right to access information and documents from all other institutions, and may refer cases to the prosecution authorities or courts.

The *Seimas Anti-corruption Commission*. This is a parliamentary body set up in 2001. Its functions, as described in the Law on the Seimas Anti-corruption Commission, consist of monitoring of the implementation of the National Anti-corruption Programme, hearing reports of different institutions on their work in the anti-corruption field, analysing and elaborating of legislative proposals in the area of corruption, and other financial and economic crimes. The Commission also receives complaints by citizens and has powers to request documents and experts' assistance from other state institutions, to invite present and past state officials to give explanations on matters under elaboration, as well as to propose to other institutions to conduct inspections and resolve issues under their competence.

Inter-departmental Commission for Co-ordinating the Fight against Corruption. This is a non-permanent body set-up in 2003 under the Government consisting of senior representatives of different ministries and other bodies, e.g. the STT, which meets periodically to review and discuss co-ordination of the implementation of the National Anti-Corruption Programme, as well as other activities of central and local government institutions and agencies in the areas of corruption-prevention and detention of corruption-related violations of law.

Department of Organised Crime and Corruption within the Prosecutor General's Office (DOCC). The DOCC is a specialised prosecution service with jurisdiction to commence and conduct prosecution against organised crime and corruption related offences; to conduct, co-ordinate or supervise pre-trial investigations in this area. Specialised divisions within the Prosecutors Service with jurisdiction over organised and corruption offences have been created already in 1993. In 2001, these were restructured into the DOCC, which is a separate department within the Prosecutor General's Office.

Furthermore, the DOCC has five regional Divisions integrated in the regional prosecutor's offices.

Finally, there are specialised law enforcement bodies within the Ministry of the Interior or the Government which have similar functions and which cooperate with the STT in the implementation of their respective mandates. These are: the Financial Crime Investigation Service, Police Organised Crime Investigation Service, and the State Security Department.

Legal and Institutional Framework

The main legal basis governing the objectives, main tasks and functions, organisation, financing, accountability and the rights and duties of the officers of the STT is the Law on the Special Investigation Service adopted in 2000. Further tasks of the Service are prescribed by the Law on the Prevention of Corruption, while its investigative powers derive from the Law on Operational Activities and the Criminal Procedure Code.

Article 2 of the Law on the STT establishes that it is “a state law enforcement agency functioning on the statutory basis, accountable to the President of the Republic and the Seimas, which detects and investigates corruption-related criminal acts, develops and implements corruption-prevention measures.”

The Law also provides for a definition of corruption as “a direct or indirect seeking for, demand or acceptance by a public servant or a person of equivalent status of any property or personal benefit (a gift, favour, promise, privilege) for himself or another person for a specific act or omission according to the functions discharged, as well as acting or omission by a public servant or a person of equivalent status in seeking, demanding property or personal benefit for himself or another person, or in accepting that benefit, also a direct or indirect offer or giving by a person of any property or personal benefit (a gift, favour, promise, privilege) to a public servant or a person of equivalent status for a specific act or omission according to the functions of a public servant or a person of equivalent status, as well as intermediation in committing the acts specified in this paragraph.” This definition is important, since it frames the “jurisdiction” of the STT in the performance of its tasks.

Under Article 8 of the Law, the STT shall perform the following *functions*:

- carry out intelligence activities in detecting and preventing corruption-related criminal acts;
- conduct a pre-trial investigation of corruption-related criminal acts;
- co-operate with other law enforcement institutions in the manner laid down by legal acts;
- collect, store, analyse and sum up the information about corruption and related social and economic phenomena;
- on the basis of the available information, prepare and implement corruption-prevention and other measures;
- jointly with other law enforcement institutions implement crime control and prevention programmes;

- report in writing, at least twice a year, to the President of the Republic and the Chairman of the Seimas about the results of the Service's activities and submit its proposals how to make the activities more effective.

Article 15 of the Law on the Prevention of Corruption gives the STT further specific functions in relation to the co-ordination and implementation of the National Anti-corruption Programme at national and local level, such as to:

- together with the Government participate in the development and implementation of the National Anti-Corruption Programme;
- put forward proposals to the President, the Seimas and the Government as to the introduction and amendment of legislation necessary for the implementation of corruption-prevention activities;
- take part in the Government's discharge of its functions of co-ordination and supervision of State and Municipal agencies' corruption-prevention activities;
- together with other State and Municipal agencies, implement corruption prevention measures;
- together with other State and Municipal agencies, implement the National Anti-Corruption Programme.

The STT also carries out background checks (or "vetting process") of officials before they are appointed to certain public functions, depending on the level of clearance required.

In spite of a broad mandate in the field of prevention and co-ordination, the STT is predominantly characterised as a law enforcement body. It has original – but not exclusive – jurisdiction over detection and investigation of corruption-related offences as enumerated in the Article 2 of the STT law, including cases of bribery, trading in influence, graft, abuse of office, bribery of an intermediary, tampering with official records, misappropriation/embezzlement of property, and others.

The investigative powers and the conduct of criminal investigation by the STT are governed by the Criminal Procedure Code and the Law on Operational Activities.

Corruption offences are processed in the same manner, and before regular criminal courts, as all other criminal offences. Accordingly, the difference in investigation and prosecution of corruption offences does not lie in the specific procedural powers of the main actors, but in the specialised institutions that are tasked with detection and investigation – STT – and prosecution – DOCC – of corruption offences. Normally, it is the STT that initiates preliminary investigation into most suspected or alleged corruption offences either based on the information or complaints received, or as a result of the services' own pro-active activity. When another law enforcement or security service (e.g. the Financial Crime Investigation Service; the Police Organised Crime Investigation Service; the State Security Service, the Tax or Customs Administration) detects a corruption offence, they normally inform the STT or the DOCC to take over. As stated above, the STT does not have exclusive jurisdiction over corruption offences, and there seems to be some outstanding issues in this field, especially in relation to conflicting competencies in cases of concurrence of corruption, and financial and organised crime offences.⁵

The Law on STT, the Law on Operational Activities, and the Criminal Procedure Code give the STT a wide range of investigative powers. These include access to

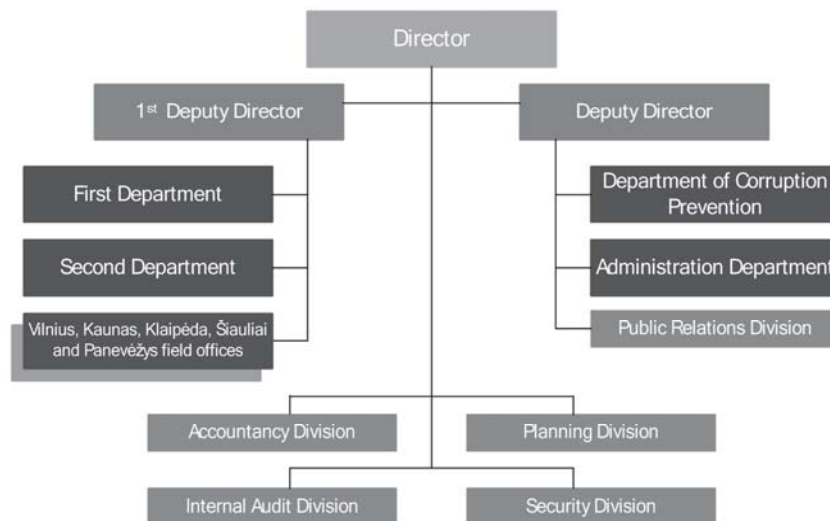
financial data and special investigative means such as covert interception of telecommunications, covert surveillance, deployment of undercover agents and simulated corruption offences (the Constitutional Court has, in 2002, limited the application of provocation and entrapment). While there are no special provisions related to the protection of informants or collaborators of justice in corruption cases, the CPC prescribes a number of procedural protective measures for witnesses, including anonymity; furthermore, a special law on the protection of witnesses and other participants in the criminal procedure and operational activities can be applied to corruption cases.

All pre-trial investigations are conducted under the supervision of the prosecutor – in cases of corruption a prosecutor from a regional division of the DOCC – who formally commences and supervises the pre-trial investigation. In cases of conflicting jurisdiction of law enforcement agencies (e.g. a case of corruption with elements of organised crime or other economic crime), it is the prosecutor who co-ordinates different agencies, can form joint investigation teams, and request further expertise (e.g. in the financial field) from other state institutions. In 2001, the Prosecutor-General and heads of all law enforcement, control and security bodies of Lithuania signed a memorandum on mutual co-operation and exchange of information in operational investigative activities.

All corruption offences investigated by the STT fall under the jurisdiction of the DOCC regional prosecutors. The most important, complicated and urgent cases, as well as those of high public interest, such as offences against the state, major organised crime offences, particular corruption offences, or offences committed by or against high-level state officials, may be taken over by the central DOCC office within the Prosecutor General's Office.

Internally, the STT is structured to reflect its tasks and consists of departments on intelligence activities, prevention and education on a central level and investigative and prevention divisions on regional levels. The STT has a central office in Vilnius, and 5 regional departments.

Figure 4.2. STT Organisational Structure



Source: Special Investigation Service (Lithuania) (STT).

Human and Material Resources

The independent status of the STT is secured through the process of appointment of the Service's top management and regulation on the recruitment, selection of its officers, as well as procedures for their dismissals. The Director is appointed for a term of 5 years by the President of the Republic and with the consent of the Seimas; and can only be dismissed by the President with the consent of the Seimas. The first Deputy Director and the Deputy Director of the STT are appointed and dismissed by the President on the suggestion of the Director.

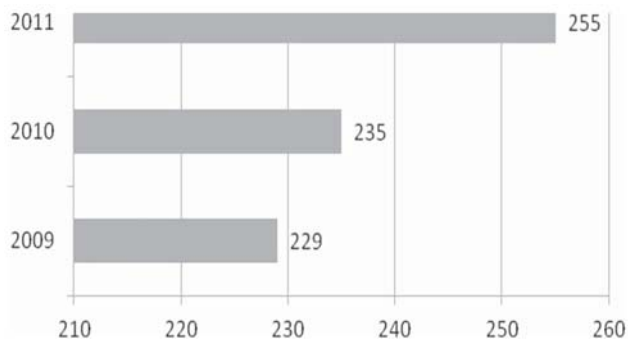
The Law on the STT prescribes detailed rules for the screening and recruitment of the STT officers and rules on the prevention of the conflict of interest. There is also an internal Code of Conduct of the employees of the STT. Furthermore, the Law on STT grants specific immunity to all STT officers. According to Article 17, a criminal action against an STT officer can only be initiated by the Prosecutor-General or his Deputy; the STT officer, in the course of the performance of his/her duties, as a rule cannot be subject to arrest and searches by the regular police; information on personal data of STT officers are considered state secrets; STT officers and their family members can benefit from special protective measures against threats.

Accountability

The STT is accountable to the President of the Republic and to the Seimas, to which it has to provide semi-annual and annual performance reports. It does not report to the Government. Operationally, the STT is also supervised by the prosecution service – DOCC. The public oversight is limited to the openness of the Service through its public relations activities and regular publications of its reports and major activities. In spite of this, however, and especially in the light of its law enforcement nature, the STT has since its establishment maintained rather open and close co-operation with civil society, in particular the national chapter of *Transparency International*.

Practice and Highlights

In 2011, the majority of *pre-trial investigations* were instituted on the basis of elements constituting the criminal act detected by the STT officers. These investigations are usually very complex: more criminal acts are subject to investigation; more suspects are interrogated; more pre-trial investigation acts are conducted, etc. As a result, they take a longer period of time to conclude. In 2011, more complex and prolonged pre-trial investigations were conducted, therefore, the number of completed pre-trial investigations decreased.

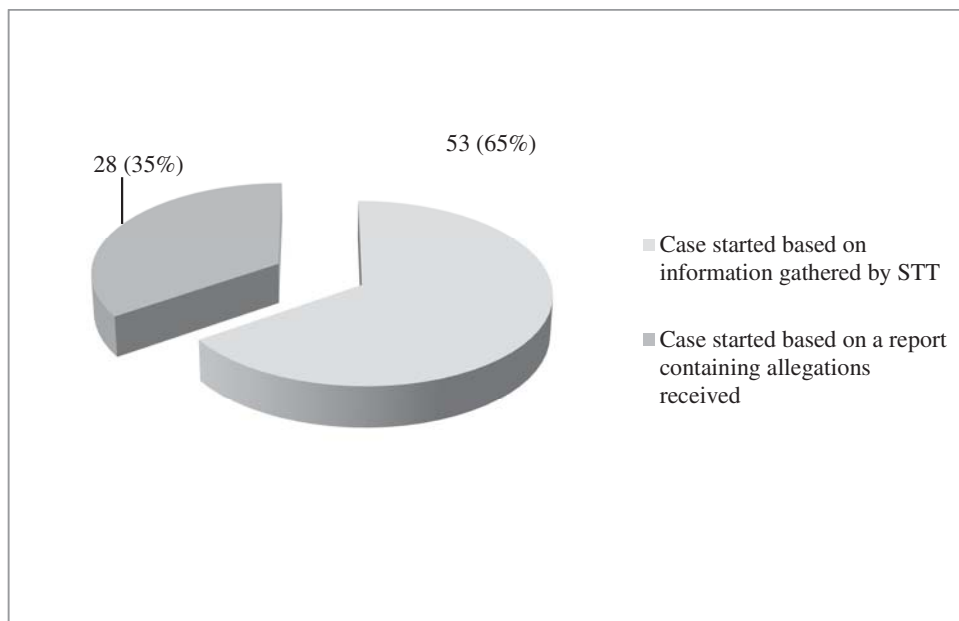
Figure 4.3. Number of pre-trial investigations conducted by STT

In 2011, the number of *pre-trial investigations* conducted by the STT increased by 8,5 percent compared to 2010.

Out of 255 pre-trial investigations 35 percent were of a *complex nature*.

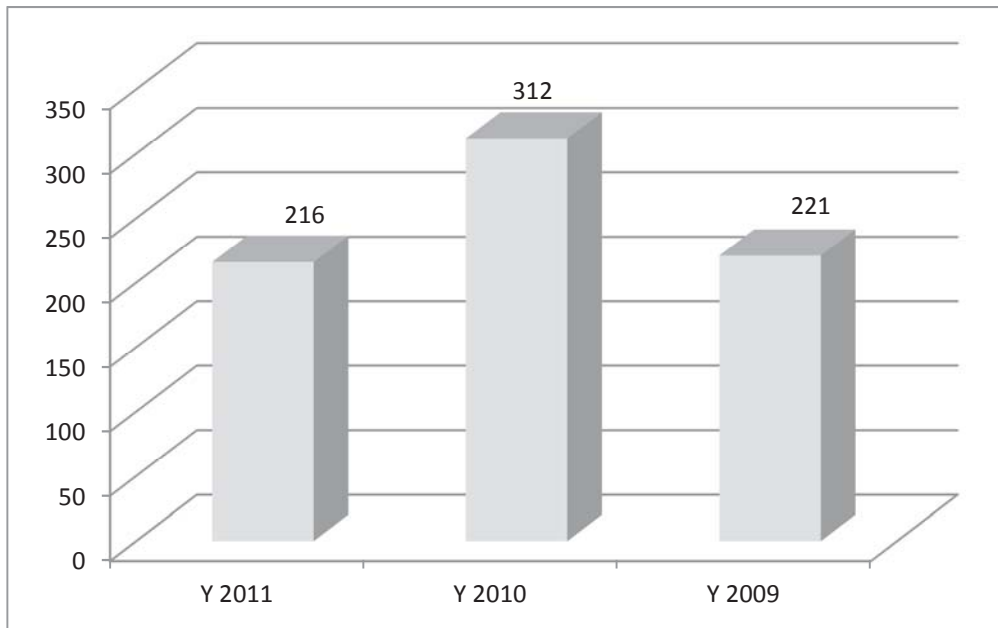
In 2011, pre-trial investigations were carried out by 28 officers each of whom averaged 9 pre-trial investigations including 3 complex ones.

Source: Special Investigation Service (Lithuania).

Figure 4.4. Pre-trial investigations instituted by the STT, by source of information

Source: Special Investigation Service, Lithuania.

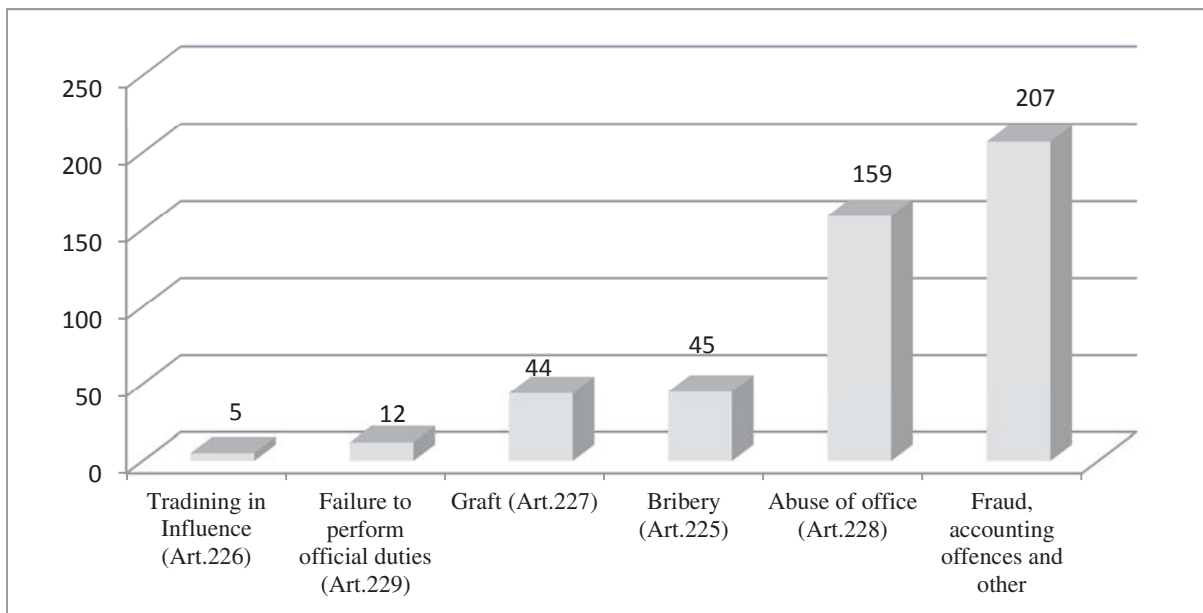
Figure 4.5. The number of persons suspected of the commission of an offence in STT cases



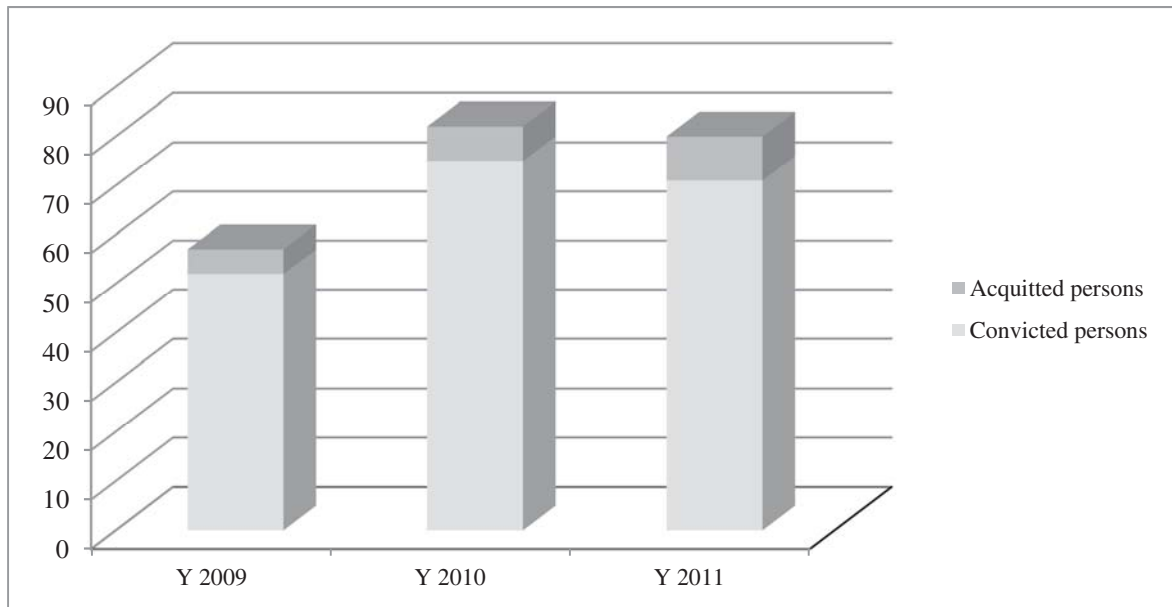
Note: In 2011, out of 216 persons suspected, 131 were public servants, 7 legal persons and 78 other persons.

Source: Special Investigation Service (Lithuania).

Figure 4.6. Detected criminal acts, by the Article of the Criminal Code



Source: Special Investigation Service (Lithuania).

Figure 4.7. The number of convicted and acquitted persons

Persons convicted in 2011:

- 35 public servants (judgement of conviction has come into effect for 11 public servants and has not come into effect for 24 public servants);
- 36 other persons (judgement of conviction has come into effect for 23 persons and has not come into effect for 13 persons).

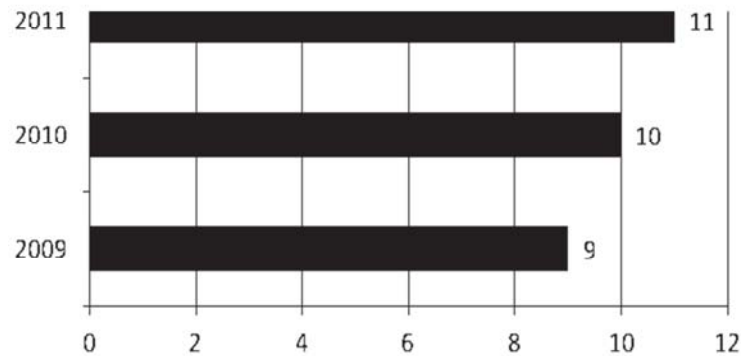
Persons acquitted in 2011:

- 6 public servants (judgement of acquittal has come into effect for 4 public servants and has not come into effect for 2 public servants);
- 2 other persons (judgement of acquittal has come into effect for both of them);
- 1 legal person (judgement of acquittal has come into effect).

Source: Special Investigation Service (Lithuania).

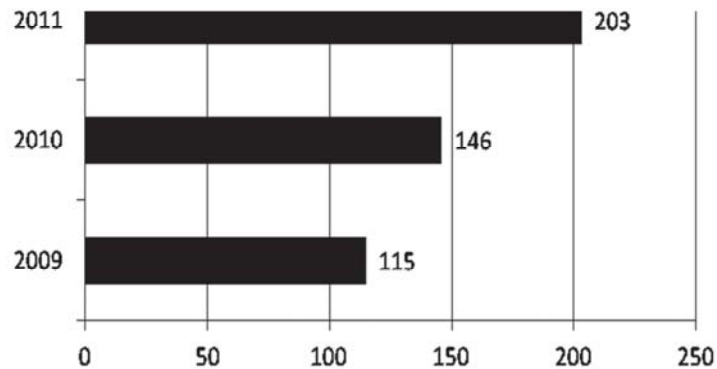
Prevention of Corruption. It is important for the STT to identify causes and reasons for the emergence of corruption, to work out tactics to counter it and to monitor changes and foresee their impact in order to properly implement the assigned functions. The STT, in co-operation with other public and private organisations, seeks to *identify systems and procedures that create preconditions for corruption and to eliminate them.*

Corruption risk analysis. STT assesses the activities of state or municipal institutions, following a procedure prescribed by the Government, and presents conclusions about the development of anti-corruption programmes, as well as recommendations concerning other corruption-prevention measures to these state and municipal institutions.

Figure 4.8. The number of corruption-risk analyses conducted by STT

Source: Special Investigation Service (Lithuania).

Anti-corruption assessment of legal acts carried out by the STT is aimed at assessing the impact of legal regulation on the level of corruption, *i.e.* at detecting legal loopholes facilitating corruption (collisions, inaccuracy of procedures and measures, etc.), and ensuring that legal acts are adopted taking into consideration the potential results of their implementation.

Figure 4.9. Anti-corruption assessment of legal acts, 2009-2011

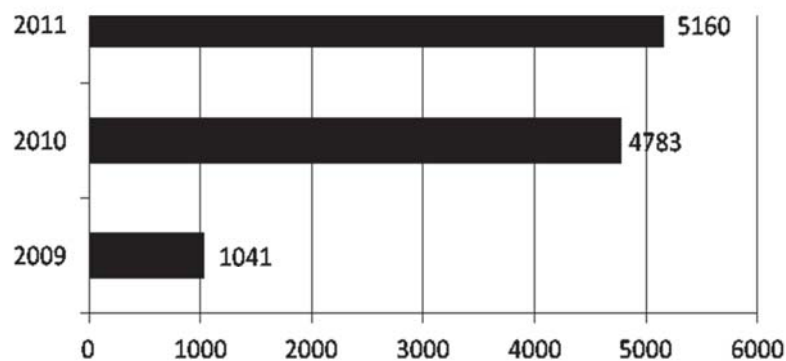
Source: Special Investigation Service (Lithuania).

Screening of persons is a corruption-prevention measure aimed at preventing persons lacking integrity from holding office at a state and municipal institution, receiving state awards, having access to sensitive information or granting personnel security clearance certificate, acquiring shares or long-term tangible assets of public limited liability companies and private limited liability companies owned by state and municipal institutions.

Screening of persons by the STT applies to the following groups:

- persons seeking or holding a position at a state or municipal institution or enterprise and at European Union or other international judicial or other institutions (the Law on Corruption Prevention);
- persons seeking a personnel security clearance certificate (the Law on State Secrets and Official Secrets);
- persons nominated for state awards (the Law on State Awards);
- potential purchasers (the Regulations on Privatisation of State and Municipal Assets at Public Auctions);
- in accordance with co-operation agreements with entities of operational activities, co-operates with such entities.

Figure 4.10. The number of screened natural persons and enterprises



Source: Special Investigation Service (Lithuania).

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Latvia: Corruption Prevention and Combating Bureau

The Corruption Prevention and Combating Bureau (Korupcijas novēršanas un apkarošanas birojs – KNAB) is a multi-purpose anti-corruption agency set up in Latvia in 2002. Its mandate combines prevention, education and investigation of corruption. The KNAB is an independent institution within the public administration system, endowed with investigatory powers. Since its establishment, the KNAB has been gradually strengthened with more financial and human resources. However, due to the economic crisis, budgetary cuts affected all public institutions, and the KNAB’s budget was decreased by 30% in 2009. In 2012, the budget of the KNAB amounted to approximately EURO 3 Million. In January 2012, there were 133 staff members, the majority of whom work on criminal investigations. Since its establishment, the KNAB has frequently been named as one of the most trusted Latvian public institutions.

Background Information

The development of an anti-corruption policy in Latvia began in 1995, when the Parliament adopted the Law “On Prevention of Corruption”. In 1997, the Corruption Prevention Council, a coordinative government institution of representatives from 16 state institutions chaired by the Minister of Justice, was established. A permanent Secretariat to the Council was created in 1999, but it consisted only of three persons. In addition, some existing institutions were strengthened, such as the Security Police and the State Revenue Service. Nevertheless, the fight against corruption was not a priority for any specific body - existing institutions lacked co-ordination, with little results to show for.

A proposal for setting up of a new, independent anti-corruption body was under discussion for several years before it was included in the corruption-prevention programme adopted by the government in 2000. It was decided to create this institution based on the Hong Kong model. The objective was to develop a single focal point for all anti-corruption efforts. The new institution was to deal with prevention, investigation and education of corruption in a comprehensive manner, and had a focus on control of political party financing.

Regarding the status, there were three proposals - an independent institution with a head appointed by the Parliament, an institution attached to the Ministry of Justice with its head appointed by the government; or an institution attached to the General-Prosecutor’s Office, with its head appointed by the Prosecutor-General.⁶ Finally, an independent institution was created.

The law establishing the KNAB was drafted by a working group created in October 2000. It consisted of representatives of the Financial Intelligence Unit, the Prosecutor General’s Office, the State Police, the Security Police, the Ministry of Justice, the Supreme Court, the State Revenues Service, and Transparency International-Latvia (TI Latvia).⁷ The Law was adopted by Parliament in April 2002, and entered into force in May 2002 (by June 2012, it had been amended eleven times).

It took about one year to make the institution operational. The staff of the new agency was recruited mainly from former law enforcement officers, officials from other state institutions and, to a lesser extent, representatives of the private sector.⁸ The KNAB carries out the totality of its functions since February 2003.

The KNAB was established in the context of increasing attention from the international community to corruption problems in Latvia. The main impetus was the accession process to the EU. Since 1998, the fight against corruption was part of the national accession programme; the European Commission regularly called upon the government to step it up. World Bank experts suggested the creation of a specialised anti-corruption agency in 1998. In 1999, Latvia signed the Council of Europe Criminal Law Convention, requiring authorities specialised in the fight against corruption; the 2002 GRECO evaluation stated that the Corruption Prevention Council does not bring about the expected results and efforts of police institutions to fight corruption, saying that they “are frankly segmented and disjointed and that there is an obvious lack of direction and co-ordination which no doubt leads to lost opportunities”.⁹

The establishment of the KNAB faced several difficulties. While political parties represented at the Parliament voted for the law establishing the KNAB, to some extent due to international pressure, once it started to control party financing and proposed to impose sanctions on some of their members, parties were reluctant to support these measures. Establishing co-ordination with other public institutions was another difficulty. Some institutions had diverging views on directions of the national anti-corruption policy, and their willingness to participate varied. Among law enforcement institutions, the State Police, for instance, did not support the idea of establishing “another law enforcement institution.”

In the beginning, some rivalries emerged among the KNAB, the Police and the Prosecutor-General’s Office. Besides, the public had high expectations that the work carried out by the KNAB would have quick and tangible results. Throughout the last 10 years of KNAB’s pro-active work, it has achieved significant results, which allowed it to become one of the most trusted public institutions in Latvia and a reliable and recognised partner of many anti-corruption institutions internationally.

Another challenge KNAB has been facing was the nomination of the head of the KNAB. Since 2002, there have been four Directors approved by the Parliament. The selection of KNAB’s Director has always triggered various procedural issues and disputes among political parties. In order to select the current Director, a professional selection commission was established. It was headed by the Head of the State Chancellery, and it consisted of representatives of the Supreme Court and the Prosecutor-General’s Offices, as well as the Heads of the Constitutional Protection Bureau and the Security Police. A representative of the Latvian chapter of Transparency International participated in the role of observer. In November 2011, the current head of the KNAB was nominated.

Legal and Institutional Framework

The Law on the Corruption Prevention and Combating Bureau forms the legal basis for KNAB. Further, activities of the Bureau are regulated by the Criminal Law, the Criminal Procedure Law, the Investigatory Operations Law, the Code of Administrative Violations, the Law on Preventing Conflict of Interest in the Activities of Public Officials, the Law on Financing of Political Organisations (Parties) and the Law on Pre-election Campaigns before the Saeima Elections and Elections to the European Parliament and the Law on Pre-election Campaigns before Local Government Elections.

The *Law on the Corruption Prevention and Combating Bureau* provides that KNAB is an institution of state administration and that it can carry out investigatory operations.

According to this law, the main *functions* of KNAB are as follows:

Corruption prevention:

- Develop and coordinate the implementation of the national anti-corruption strategy and its mid-term implementation programme, approved by the Cabinet of Ministers;
- Receive and process complaints from citizens, and carry out inquiries upon request of the President, the Cabinet of Ministers, the Parliament, or the Prosecutor General;
- Analyse the results of complaints, inquiries, declarations, corruption-prevention practice, and violations detected by public institutions; suggestion of improvements to ministries and the State Civil Service Administration;
- Elaborate a methodology for corruption prevention in local and national public institutions and in the private sector;
- Analyse existing laws and suggest amendments and draft new laws;
- Control the application of the Law on Prevention of Conflict of Interest in the Activities of Public Officials and other legal acts relating to restrictions of public officials;
- Educate the public on their rights and on ethics, disseminate information regarding trends in corruption and detected violations, carry out public opinion surveys and analysis;
- Develop and coordinate international assistance projects, coordinate international co-operation and analyse experience of other countries;
- On request of the Corruption and Crime Prevention Council, provide information and suggestions on corruption-prevention.

Combating (investigating) corruption:

- Detect and investigate criminal offences related to corruption in the public service as set out in the Criminal Law, and in accordance with the Criminal Procedure Law (see below);
- Hold public officials administratively liable and impose sanctions for administrative violations related to corruption prevention;
- The Law provides also that other relevant authorities with investigatory powers are obliged to assist the KNAB in investigations.

Control over the implementation of rules on political party financing and pre-election campaigning:

- Control the application of the Law on Financing of Political Organisations (Parties) and the conformity with the restrictions for pre-election campaigns;
- Hold persons administratively liable and impose administrative sanctions for violations regarding political party financing and pre-election campaigning;
- Investigate and conduct investigatory operations to detect criminal offences related to violations of rules relative to financing of political organisations and their unions set out in the Criminal Law, except when state security services have jurisdiction;

- Receive and process complaints of citizens, and carry out inquiries requested by the President, the Cabinet of Ministers, the Parliament, or the Prosecutor-General;
- Centralise and analyse information in financial declarations submitted by political organisations and their unions and on relevant violations detected;
- Analyse existing laws, suggest amendments and draft new laws;
- Develop public opinion surveys and analyses;
- Educate and inform the public on rules on financing of political organisations and pre-election campaigns, violations committed and preventive measures taken;

Political parties financing: Under the *Law on Financing of Political Parties*, the KNAB officers have *powers and rights* to carry out investigatory operations; issue administrative protocols, investigate administrative cases, impose administrative sanctions; request and receive information, including classified documents, from other public agencies, enterprises, organisations and persons free of charge, as well as request and receive information from financial institutions on bank accounts and bank transactions (since 2004); make use of registered data bases; give warning on prohibition to violate the law; and have free access to premises of public institutions and other buildings.

The law requires the *political parties to submit to KNAB the following information:* election income and expenditure declarations; and annual financial reports.

KNAB is responsible for *criminal offences* related to activities of public officials in cases involving corruption (Criminal Code, articles 198, 288.² – 288.⁵, 316 – 330), which are as follows: exceeding official authority; using of official position in bad faith; failure to act by a public official; taking a bribe (passive bribery); misappropriation of a bribe; intermediation in bribery; giving a bribe (active bribery); violation of restrictions imposed on a public official; unlawful participation in property transactions; trading in influence; forging of official documents; false official information; disclosure of confidential information; disclosure of confidential information after leaving the public duty; unauthorised receipt of benefits; illegal financing of political parties.

KNAB is a *pre-trial investigation body* according to the Article 386 of the Criminal Procedure Law. KNAB can investigate, under supervision of a public prosecutor, criminal offences involving political party financing and public sector activities involving corruption (Article 387, (6)). In conflicting situations, the Prosecutor-General establishes which pre-trial agency is best placed to investigate the case. After the preliminary investigation, the KNAB forwards proceedings to the Office of Prosecutor-General, asking to start criminal prosecution.

According to the *Code of Administrative Violations*, KNAB can conduct inquiries and impose sanctions in cases involving the following *administrative violations*:

- limitations to additional employment (fine LVL 50 – 250 (Latvian Lats) with/without prohibition to hold public office);
- failure to report conflict of interest (fine up to LVL 250 with/without prohibition to hold public office);
- limitations and incompatibilities for public officials regarding business interests, representation, other income, use of public property, performing public duty in conflict

of interest situation (fine from LVL 50 to 250 with/without prohibition to hold public office);

- limitations regarding taking of gifts, donations or other material benefits (fine from LVL 50 to 250 with/without confiscation of property acquired);
- failure to perform the duties of heads of state or local administrations with respect to prevention of conflict of interest (fine from LVL 50 to 250);
- prohibition to disclose information regarding a person who has reported on other public official's conflict of interest or for creation of unfavourable working conditions without reasonable grounds (fine from LVL 50 to 500 with/without prohibition);
- violation of political parties' financing rules (fines from LVL 250 to 10.000 with/without confiscation).
- failure to comply in good time with the lawful requests of a public official exercising control, supervision or investigatory functions (fine up to LVL 250).
- violation of the rules on pre-election campaigning (warning or a fine up to LVL 1000).

Human and Material Resources

In 2011 there were 137 staff members working at the KNAB, including 2 deputy directors, 10 heads of divisions, 4 deputy heads of divisions, 60 employees working in enforcement and 34 in prevention.

The head of the KNAB is appointed by the Parliament pursuant to the proposition of the Cabinet of Ministers for a term of five years. For this purpose, the Cabinet can set up a selection commission. In 2011, a professional selection commission was set up bringing together the Heads of the State Chancellery, the Constitution Protection Bureau and the Security Policy, representatives of the Supreme Court and the Prosecutor-General's Office. *Transparency International Latvia* participated as observers. There was an open job vacancy; 13 candidates applied, whose names and CV were made public and widely discussed. The current Director was approved by 92 votes out of 100 of Latvian Parliamentarians.

The rules for providing and financing training for the KNAB staff members were determined in 2004. Trainings range from techniques to question suspects and witnesses, procurement procedures, administrative violations and criminal procedure legislation to effective communication, accounting, insurance etc.

The *Code of Ethics of KNAB* was introduced in July 2004. The supervision of its application is exercised by an Ethics Commission.

Accountability

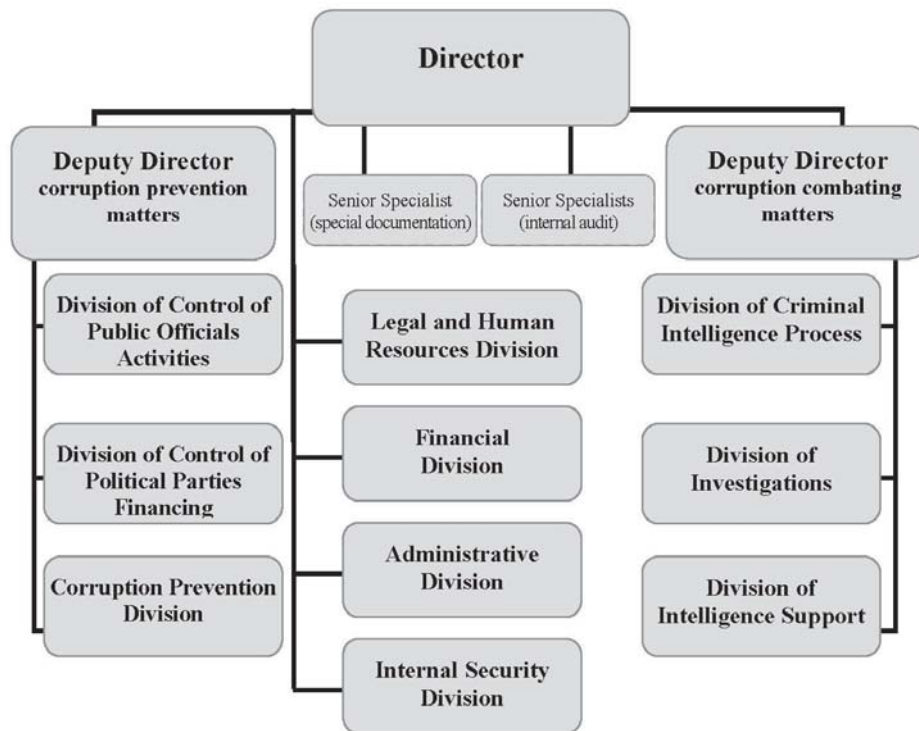
Initially, the KNAB was under the supervision of the Ministry of Justice, but since 2004, it is supervised directly by the Prime Minister. The Prime Minister has rights to cancel an illegal decision, but he has no right to give orders to the Bureau or its officials.

The Parliamentary Corruption Prevention Subcommittee of the Defence, Internal Affairs and Corruption Prevention Committee is overseeing the work of the KNAB; it serves as a forum to inform the deputies about activities and developments at the KNAB; the Commission has no right to oppose the decisions of KNAB.

Table 4.1. KNAB Annual Budget, in million euros

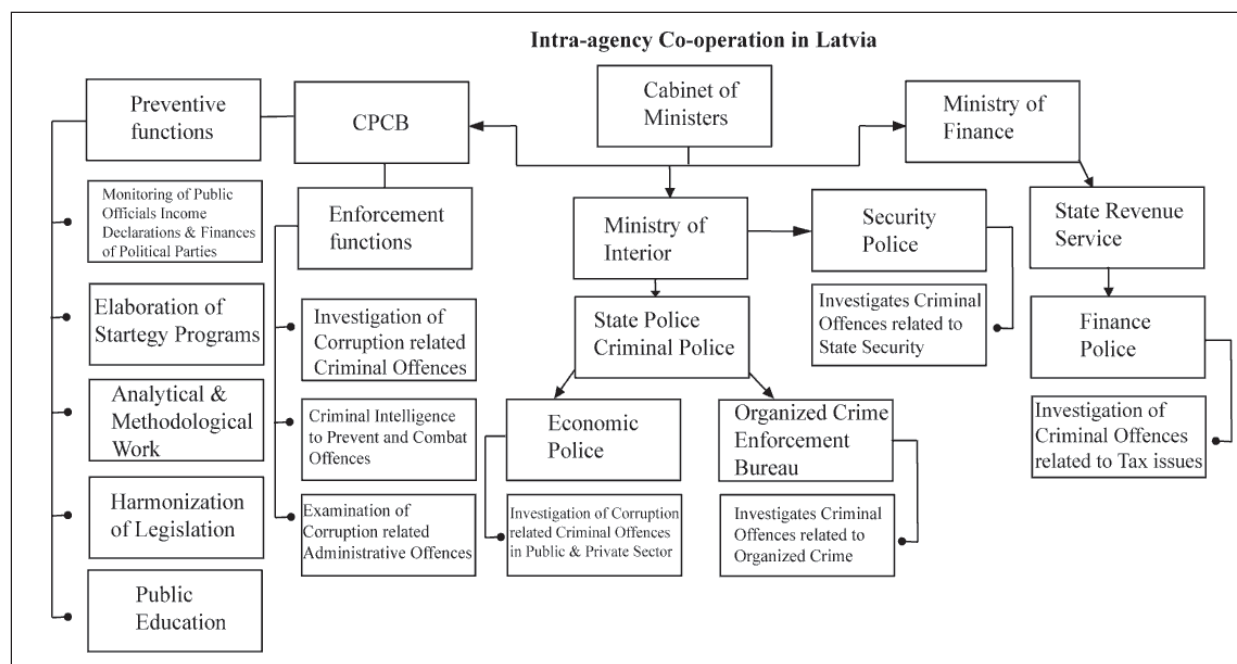
Year	Total
2003	2.37
2004	4.13
2005	3.59
2006	4.55
2007	5.1
2008	5.19
2009	3.66
2010	3.48
2011	3.51
2012	3.34

Source: Corruption Prevention and Combating Bureau (Latvia).

Figure 4.11. KNAB Organisational Structure (20.10.2011)

Source: Corruption Prevention and Combating Bureau (Latvia).

Figure 4.12. Inter-agency co-operation in Latvia



Note: KNAB is referred to as CPCB in the above chart

Source: Corruption Prevention and Combating Bureau (Latvia).

The KNAB has an obligation to submit activity reports to the Cabinet of Ministers and the Parliament every six months. The legislation provides that the KNAB also prepares regular public reports on preventive activities, detected criminal offences and administrative violations. This is reflected in activity reports released every six months in Latvian, and the annual public report. Reports are public information available on the website.

With regard to political party financing, the KNAB reports on the results of control of declarations submitted by political parties within a year. According to the law, these reports and the declarations are public information, and are thus published in the official gazette and available through the searchable political parties financing data base on the website of the KNAB at www.knab.gov.lv/db. Every year, the KNAB prepares reports on the implementation of the national anti-corruption programme.

Public oversight is ensured by the Public Consultative Council. The establishment of the Council in April 2004 followed the need to involve the public, an important element in the Hong Kong model, and also to increase public trust. The Council consists of 15 non-governmental organisations, including the Foreign Investors Council of Latvia, the Ethics Council, the Latvian Medical Association, the Association of Building Professions, the Confederation of Employers, the Union of Lawyers, the Association of Commercial Banks, the Association of Local Authorities, the Chamber for Trade and Industry, the Journalists' Union, Transparency International Latvia, the policy Center "Providus", and the Latvian Lawyers' Association. The main task of the Council is to make assessments and give recommendations, for instance on improving prevention of corruption in the courts.

In addition, the Foreign Advisory Panel was formed soon after the establishment of the KNAB. It aims to provide a forum for the KNAB and foreign missions and international organisations to discuss the activities of the KNAB and needs for support and assistance. The Panel includes representatives of foreign embassies and international organisations' missions. The Panel gets together on a regular basis. For instance, its discussion can focus on the implementation of the National Programme for Corruption Prevention and Combating, results of investigations, control of political parties financing, control of public officials, amendments to legal acts, etc.¹⁰

Practice and Highlights

National Anti-corruption Strategy. Since 1998, Latvia develops anti-corruption policy through mid-term policy planning documents developed under the leadership of KNAB. In 2009, the Latvian Cabinet of Ministers adopted the national Anti-corruption Programme for 2009 – 2013, which was developed by the KNAB. The KNAB has been given the responsibility to control and coordinate the implementation of the programme. In practice, the Bureau informs institutions mentioned in the programme on their respective tasks and centralises information on steps taken; the Bureau gathers the replies on implementation from the relevant institutions and submits to the Cabinet of Ministers an annual report on the implementation of the programme.

Control over political party financing. This is a key area of work of the KNAB. Activities are split into four phases: 1) verification of party declarations with respect to the requirements of the Law on Financing of Political Organisations (Parties); 2) control of accounting documents; 3) control of donations; 4) legality checks and counter-checks and 5) control of pre-election campaigning

In 2011, the KNAB completed control of annual financial reports, elections income/expenditure declarations and membership fees lists, from 130 political parties. Overall, since the establishment of the KNAB, political parties were requested to return illegal donations over an amount of approximately LVL 2 Million (approximately 2.8 millions) following KNAB's requests. During the Parliament's extraordinary elections in 2011, political parties' election expenses did not exceed the stipulated threshold; therefore, the KNAB was not required to stop the pre-election campaign. Also in 2011, donations to political parties continued to drop due to the economic crisis, as well as due to a short pre-election period. As of 2012, political parties in Latvia are partly funded from the national budget. Public funding is granted to those political parties that won more than 2 percent of votes in the last parliamentary elections. The eligible political parties receive 0,50 LVL (approximately 0,71 EURO) annually per vote received.

In September 2011, the Parliament finally adopted amendments to the Criminal Law providing for the criminalisation of illegal financing of political parties, which will reduce the possibility of avoiding liability for serious violations of party financing.

Through the criminalisation of illegal political party financing activities, the KNAB will be able to hold persons who will accept, demand or fund large amounts (more than 10 000 LVL) liable. For such crimes, and depending on the gravity of the offence, a maximum penalty of imprisonment for up to six years is foreseen.

Criminal liability is also foreseen for illegal political party funding on a large scale, for example, for persons donating to political parties from illegal incomes; from the proceeds of crime; or exceeding the threshold. For such offences, the maximum penalty is

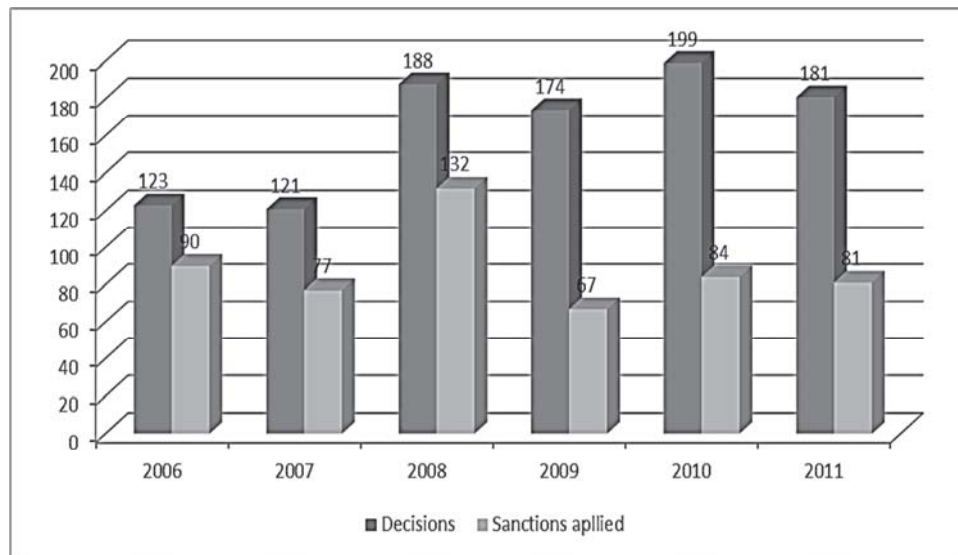
imprisonment for up to four years, for intermediation in illegal financing on a large scale - imprisonment for up to two years.

Taking into account that a person's activities relating to illegal party financing are latent (hidden), it is foreseen to allow an exemption from criminal liability if the illegal financing is linked to extortion, or if the person after the crime was committed voluntarily informs of the occurrence, thus contributing to the detection of the crime.

By determining criminal liability on a variety of political parties' financing-related crimes, control of the political parties' funding, including disclosure of so-called "slush funds" will be improved. KNAB's experience in controlling the financing of political parties, as well as foreign experience, shows that such violations are significant, and they differ from other types of infringements by the great harm they cause to the public interest.

Prevention of conflict of interest in the public sector. The work is based on reports and complaints received by the KNAB on possible breaches of the Law on the Prevention of Conflict of Interest in Activities of Public Officials and the declarations of public officials that are submitted to the State Revenues Service, but can be requested by the KNAB. By the end of 2011, 725 public officials were held administratively liable for violations of the Law on the Prevention of Conflict of Interest. In 2011, 81 public official was held administratively liable for violating this law; fines in the amount of 6880 LVL were imposed (approximately 10 000 EURO), 88 public officials were issued reprimands and 7 were asked to reimburse to the state damages in the amount of 76 905 LVL (109 427 EURO).

Figure 4.13. Number of administrative decisions taken and sanctions applied by KNAB



Source: Corruption Prevention and Combating Bureau (Latvia).

During its work, KNAB established that there are still a considerable number of violations with regard to public procurement at the municipality level. Providing benefits to individual businesses or economic groups in obtaining public procurement contracts and other irregularities, which points to exceeding of a public authority contrary to national interests, is the most common infraction. Another negative trend identified by

KNAB with regard to municipalities is that more often there are signs when executive power merges with decision-making power. This, in turn, creates conflict of interest situations and increases risks when municipal resources are used inefficiently; it also distorts the check and balances system.

In June 2011, amendments to the “Law on Prevention of Conflict of Interest in Activities of Public Officials” entered into force, providing legal protection to persons who submitted information on public officials' conflicts of interest situations and other corruptive offences in an institution (*whistleblowing*). Necessary amendments to the Administrative Violations Code were also adopted determining administrative responsibility for violations of the above-mentioned prohibition of disclosure of information relating to persons who informed on public officials' conflict of interest situations. Such provisions are necessary to ensure reporting on corruption offences, and to promote crime prevention, as well as detection, thereby reducing the risks of corruption.

Education of society and public officials. KNAB provides training to various institutions of the public administration on topics of applying provisions of the “Law on Prevention of Conflict of Interest in Activities of Public Officials”, and on recommendations concerning internal anti-corruption measures in state and municipal institutions. During 2011, KNAB has organised 127 educative workshops where 3.600 public officials participated. In 2011, special attention was paid to the explanation of provisions of the “Law on Prevention of Conflict of Interest in Activities of Public Officials.” *Review and development of anti-corruption policy and legislation:* Over the years, the KNAB has developed valuable expertise in this area. The KNAB has developed a number of proposals and draft laws either alone or in working groups with, for example, the Ministries of Finance, Interior and Justice, the State Revenues Service and the Financial Intelligence Unit. This has helped to achieve, for instance, its own access to bank information or to establish administrative liability of political parties in Latvia. Proposals were developed on such issues as control of income of physical persons, rental of state and local property, and lobbying.

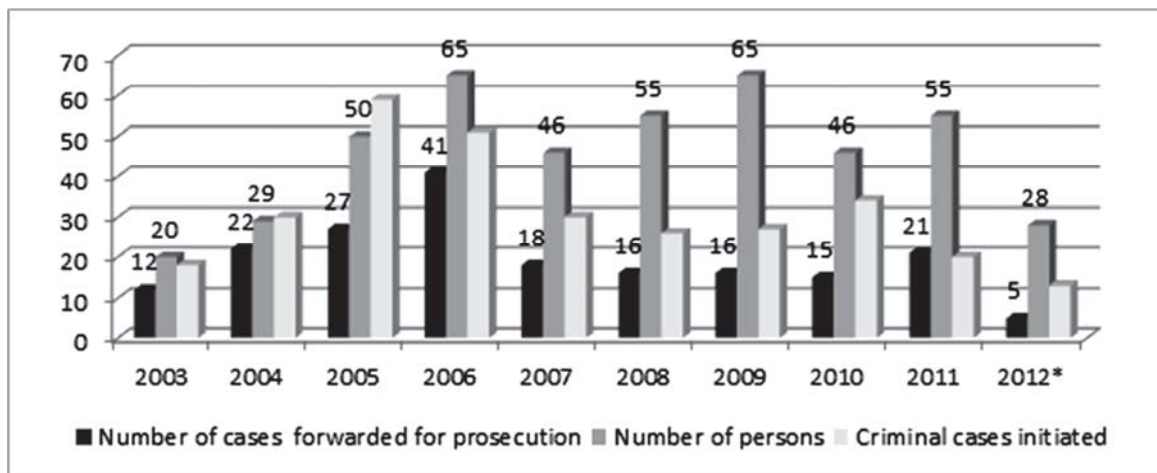
Investigation of corruption-related offences. In terms of disclosing and investigating corruption, there is a growing number of high-profile corruption cases initiated by KNAB and now being prosecuted and adjudicated. Lately, KNAB has investigated bribery crimes with implications beyond the borders of Latvia. The increasing diversity of detected corruption offences both in terms of size of the bribe and level of officials is considered to be one of the successes of KNAB. The first investigation was opened by KNAB in April 2003. By the end of 2011, the KNAB had asked the Prosecutor's Office to start criminal prosecution against 430 persons. These cases mostly involved active and passive bribery, and the use of official position in bad faith.

Among investigations started since 2003, a number of them involve alleged corruption of senior state or local officials; cases were started, for example, against prosecutors, judges, high level officials of the Customs and State Revenues Service, mayors of large cities. There were also cases involving attempts to bribe officials of the KNAB. Cases investigated by the KNAB involving large state-owned companies, public procurement, and senior-level officials and politicians attracted considerable public attention.

Besides, investigative work of the KNAB is closely linked with efficient prosecution and adjudicating of corruption cases. Since 2003, there were 105 court decisions against persons in cases started by the KNAB. In 87% of the cases, the persons were found

guilty and convicted, in 11%, they were found not guilty. The information and data collected during the KNAB's investigations have shown that while there has been success in eradicating occasional corruption, there are still cases where individual persons tend to gain an illegal advantage for themselves or for others by using their official position in bad faith. Increasingly it is found that in order to obtain a personal gain, close personal ties are used, as well as complicated schemes and illegal transfer of payments involving intermediates, shell companies registered as offshore companies and other money-laundering schemes. Such a phenomenon occurs mainly in sectors where considerable financial resources are managed, especially in public procurement, as well as in sectors of public service providers, municipalities and state-owned companies, as well as in areas where the state controls the lawfulness of oligopolistic companies and fights the shadow economy.

Figure 4.14. Investigation of Corruption-related offences by the KNAB, 2003-2012



Source: Corruption Prevention and Combating Bureau (Latvia).

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Poland: Central Anti-corruption Bureau

The Central Anti-corruption Bureau (Centralny Biuro Antykorupcyjne-CBA) exists in Poland since July 2006. It is a multifunctional anti-corruption agency conducting investigation, prevention and public education. It reports to the Prime Minister. Today the CBA employs 779 officers and its main focus is on investigations into corruption crimes.

Background Information

The mandate of CBA is to prevent corruption, including through the monitoring of income declarations, investigating corruption, conducting research on corruption in Poland, as well as educating the public on corruption. It primarily focuses on corruption in public and economic life, with a specific emphasis on public and local government institutions. The CBA is also charged with the fight against activities that are considered detrimental to Poland's economic interests.

The Central Anticorruption Bureau is a centralised government administration office, the head of which is supervised by the Prime Minister. The Prime Minister, or a member of the Council of Ministers appointed for that purpose, coordinates the work of the CBA, through the provision of guidelines for the CBA's work, and the approval, on an annual basis, of the CBA's work plan.

The CBA's structure is provided by a charter of the Prime Minister; it is structurally divided into the Operations and Investigations Department; the Security Department; the Control Proceedings Department; the Analysis Department; the Operational Techniques Department; the Law Bureau; the Finance Bureau; the Human Resources and Training Bureau; the Logistics Bureau; the IT Bureau; the Control and Internal Affairs Bureau; the Internal Audit Bureau; the Cabinet of the Head of CBA; the CBA has offices in 11 out of the 16 voivodeships of Poland.

Legal and Institutional Framework

The CBA's legal basis is the June 2006 Central Anti-corruption Bureau Bill.¹¹

The CBA mandate is structured around four "pillars":

Pillar 1: Operational and investigative activities

This includes the prevention and detection of offences against, among others, the activity of public institutions and local government; the administration of justice; the financing of political parties and fiscal obligations. During criminal investigations, the CBA has police powers, including the right to use special investigative techniques, including wiretapping; undercover operation; and technical surveillance.

Pillar 2: Control Activities

This involves the verification of "asset declarations or statements on conducting business activities by persons performing public functions as well as the detection and fight against acts of breaking the law within the scope of the decisions issued and accomplished within the scope of, among others, privatisation and commercialisation, financial support and granting public procurement orders as well as conducting business activities by persons performing public functions."¹²

Pillar 3: Analytical Activities

This involves the carrying out of analytical activities concerning the phenomena falling within the scope of the CBA's competence as well as presenting information on the above to the Parliament of the Republic of Poland, the President and the Prime Minister. This involves the CBA's activity within the 'anti-corruption shield', which was elaborated in the Chancellery of the Prime Minister (KPRM) according to the decision of the Prime Minister. The main goal of the 'shield' is prevention of irregularities in privatisation of key enterprises and in public procurement. The activities within the scope of the anti-corruption shield are coordinated by the Chancellery of the Prime Minister."¹³

Pillar 4: Anti-corruption Prevention, including education of the public

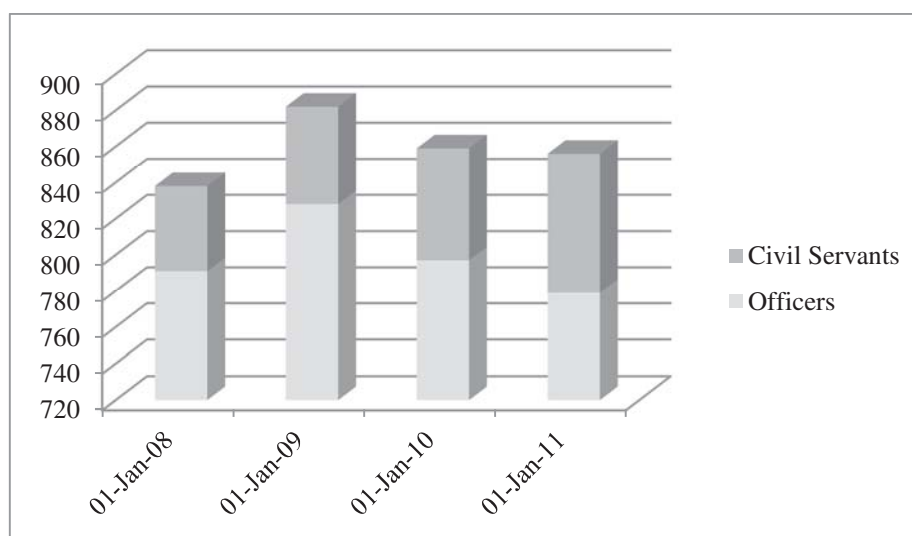
The CBA has an Anti-corruption Education portal at www.antykorupcja.gov.pl and www.antykorupcja.edu.pl. This resource site informs on common corruption phenomena, and aims at the promotion of attitudes and behaviours favouring corruption-prevention. Since 2010, an anti-corruption hotline is in operation for the public to report corruption-cases.

Human, Training, and Material Resources

The Head of the CBA is appointed, and can be recalled, by the Prime Minister, with the consent of the President, the Committee for Special Services and the Parliamentary Special Services Committee. The appointment is for a 4-year term, and there is the possibility of one extension of the mandate.

In 2011 the budget of the CBA was PLN 108 million (Polish Zloty) or approximately 28 million Euros.

Figure 4.15. CBA Staff, 2008 – 2011



Source: Central Anticorruption Bureau (Poland).

As demonstrated in Figure 4.15., in 2011 the CBA employed 779 officers and 77 civil servants (administrative, IT, logistical functions). The 2011 Performance Report points out that these levels are too low to perform the CBA's tasks efficiently.

The Anti-Corruption Bureau Bill in its Article 50 prescribes the recruitment procedure for officers. The terms of the recruitment procedure are set out by the Prime Minister. A probationary period of 3 years applies to CBA officers; this period can be extended, or shortened. A performance appraisal is done every 6 months for officers in probation, and every two years for permanent officers. The law also prescribes the parameters of demotion, suspension or dismissal from service. A number of incompatibility clauses apply: neither the Head of the CBA nor officers can be members of a political party, or act for a political party; there is a ban on trade union membership, and being a CBA officer is incompatible with public office functions. CBA officers are banned from additional employment (except for research and academic activities if approved by the Head of the CBA) and engage in economic activity as prescribed by the relevant law. Prior to assuming duty, CBA officers have to submit asset declarations,¹⁴ which also extend to their spouses or cohabiting partners.

The Head of the CBA defines a suitable training structure for the office.

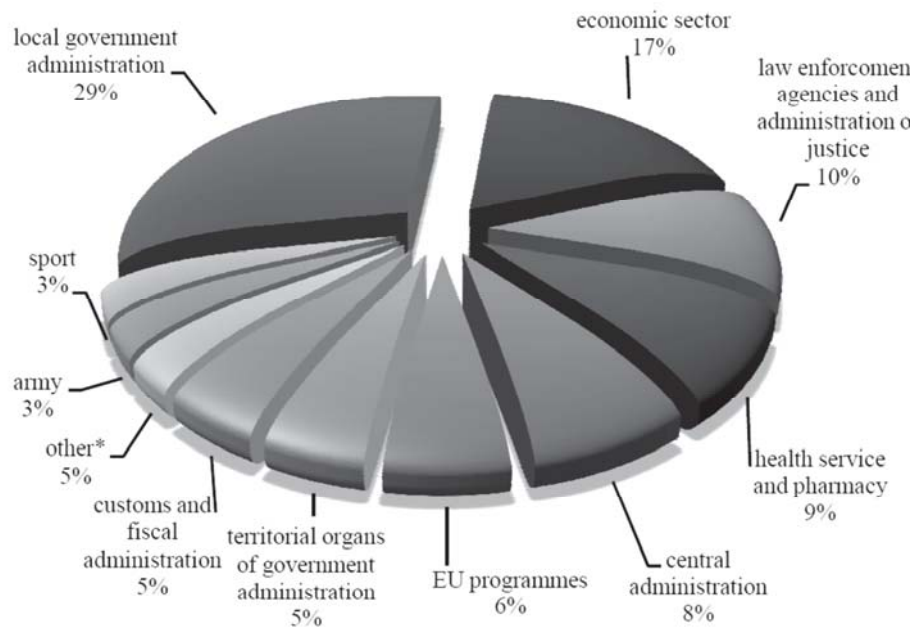
Accountability

The CBA reports directly to the Polish Prime Minister. The activities of the Head of the CBA are controlled by the Sejm, the lower house of the Polish parliament. The Head of the CBA reports, on an annual basis, to the Prime Minister and the Parliamentary Committee for Special Services, on the performance of the CBA. A performance report is also made to the Sejm (the lower house of the Polish parliament) and the Senate (the upper house); this report does not contain classified information (as defined by law).

Practice and Highlights

In 2011, the organisational units of the Central Anti-Corruption Bureau instituted 256 operational cases, and accomplished 227 ones. The total number of cases carried out was 511. In the same period, 248 investigations were instituted and 205 accomplished. 419 investigations were carried out. From among all instituted proceedings, 75 were assigned by the Prosecutor. The Bureau also continued 7 cases which had previously been suspended. The investigations related mostly to the local government administration, and subsequently to the economic sector, law enforcement agencies, administration of justice and health service.

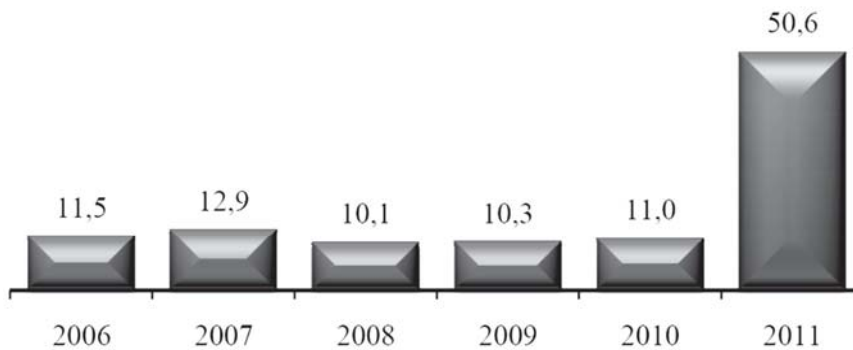
Figure 4.16. Sectors and percentages of CBA investigations in 2011¹⁵



*The category covers, among others, education and higher education.

Source: Central Anticorruption Bureau (Poland).

Figure 4.17. Approximate value of property seized in CBA investigations, in millions of Polish Zloty¹⁶



Source: Central Anticorruption Bureau (Poland).

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Indonesia: Corruption Eradication Commission

The Corruption Eradication Commission (Komisi Pemberantasan Korupsi – KPK) in an agency established in Indonesia in 2002 to investigate and prosecute corruption cases, prevent corruption and for public education. KPK has also a control function. KPK is known for its active enforcement actions, including for pursuing high profile cases.

Background Information

The KPK is investigating and prosecuting corruption; it also has a control function.

The Indonesian Corruption Eradication Commission (KPK) exists since 2002 and became operational in late 2003. It succeeds a number of anti-corruption initiatives initiated by consecutive governments of Indonesia. The KPK was an attempt to turn around these previous, by-and-large unsuccessful efforts.

KPK has targeted high-ranking public officials, members of parliament, representatives of the central bank, governors and mayors. With a 100% conviction rate, the KPK is believed to be an exceptional example of an effective law enforcement agency.¹⁷

The agency enjoys wide public support; it is being criticised, including by NGOs, for not being able to extend its effectiveness to the regional and local levels – a function of the limited resources of the KPK, and the complex administrative structure of Indonesia, itself a reflection of Indonesia's geography.

Legal and Institutional Framework

Law No.30/2002 on the Corruption Eradication Commission¹⁸ provides the legal basis for the establishment of the KPK. It is independent from the judiciary, the executive, and the legislative.

Its *mandate* reflects a comprehensive approach to fighting what is considered entrenched and systemic corruption, and is *five-fold*:

- The KPK coordinates *investigations, indictments, and prosecutions against criminal acts of corruption*;
- It has established a *reporting system* for the purpose of eradicating corruption;
- It *requests information* on acts with the purpose of eradicating corruption *from relevant institutions*;
- It arranges *hearings and meetings with institutions authorised to eradicate corruption*; and
- It *requests reports* from relevant institutions pertaining to the prevention of criminal acts of corruption.

The KPK is authorised to conduct *pre-investigations, investigations, and prosecutions of corruption cases* that: i) involve law enforcement officials, state officials, and other individuals connected to corruption acts as perpetrated by law enforcement officials or state officials; ii) have generated significant public concern and/or iii) have lost the state at least IDR 1 bn (the equivalent of USD 100 000). Prosecutions are carried out before special anti-corruption courts, or TIPIKOR.

KPK is authorised to take over investigation or prosecution of corruption cases handled by the National Police and Attorney General's Office; both institutions are obliged to hand over suspects and related evidence, dossiers and other documentation within 14 working days from KPK's official date of request. Cases are being transferred from the National Police or the Attorney General's Office based on reports from the public that these institutions do not follow up on cases, or that they handle them slowly without proper reason; that the cases are being processed improperly, thereby protecting the perpetrator; that there are indications of corruption in case processing; or when there are signs of interference from the executive, legislative and/or judicial branches during the process.

KPK has the authority to order high officials or superiors of suspects to suspend them from office; request wealth or tax data of suspects from any relevant agency; and suspend financial or commercial transactions, as well as other agreements or permits etc.

The KPK comprises of a Board of Commissioners, an Advisory Team, Deputies and the Secretariat-General, Directors and Head of Bureaus.

The Board of Commissioners has five members: 1 chairman, and four vice-chairmen. The Commissioners are state officials originating from the government, and from the general public. KPK Commissioners are shortlisted by a specific selection committee set up for this purpose by the President of Indonesia. Their candidacy is submitted to the parliament by the President; they are elected by the parliament, and sworn in by the President. The Commissioner's term is four years, and they can be re-elected for another term. The Board of Commissioners oversees the four areas of work, i.e. prevention, enforcement, information, and data, as well as internal compliance and public complaints. Each unit is headed by a deputy.

The Advisory Team is made up of four members from diverse expertise to help the Board of Commissioners in the exercise of its tasks and authorities.

The Secretariat General supports the KPK. It is appointed by the president, but is accountable to KPK.

The KPK cooperates with other law enforcement agencies internationally and nationally. KPK can request assistance from foreign law enforcement bodies to search, arrest, and confiscate evidence abroad; it can also request the police and other relevant agencies to conduct arrests, detention, searches and confiscation in ongoing corruption cases.

KPK has the authority to register and review personal wealth reports of state officials.

Human and Material Resources, Training

The KPK has 699 staff: 5 Commissioners; 2 advisors; 246 seconded civil servants, and 415 permanent and 31 non-permanent staff. 136 staff work on Prevention; 266 on Enforcement; 134 on Information and Data; 76 on Internal Supervision and Public Complaints; and 138 work in the Secretariat General.

There is a Code of Ethics for KPK Commissioners, which has been set to ensure that the KPK senior level leads by example not only its own staff, but that of other institutions as well.

The KPK budget for 2011 was IDR 576,590,708,000 (Indonesian Rupiah), most of which was received from the State Budget.

Accountability

The KPK's finances are audited by the Indonesian Supreme Audit Board. It is accountable to the public. KPK publishes Annual Reports, containing a narrative description of the areas and rationale of the KPK's work, as well as a very detailed quantitative breakdown of the KPK's work, including estimates on the prevention of potential losses the state budget; statistical and narrative information on cases investigated and prosecuted; data on complaints received; and assets recovered.

Practice and Highlights

The KPK reports to have prevented the loss of 150 trillion IDR¹⁹ to the state budget in 2011 through *prevention activities and co-ordination with relevant government agencies*, such as the Ministry of Energy and Mineral Resources, the Ministry of Finance, and the State Audit Board and others. KPK had carried out an assessment of Indonesia's Upstream Oil and Gas Executive Agency (*BP Migas*) and discovered that state assets, while being supervised by the government, were not fully controlled, resulting in the risk of the state receiving less of its share in oil and gas proceeds.²⁰

Further, KPK advised relevant state agencies on the prevention of integrity risks in the oil and gas sector and advised the introduction of an integrated online information system.

KPK works to *improve the public service*, and has identified a number of institutions as its priority for co-ordination and supervision. These are Immigration Services; Land Management; Driving License and Vehicle Registration Services; Transportation Services; Inspectorate Offices; and Regional Public Hospitals, among other. KPK works with these institutions to improve the functioning of their existing supervisory mechanisms; it identifies best practices among various agencies and uses them as a benchmark for others; and promotes the use of IT to reduce opportunities for corruption.

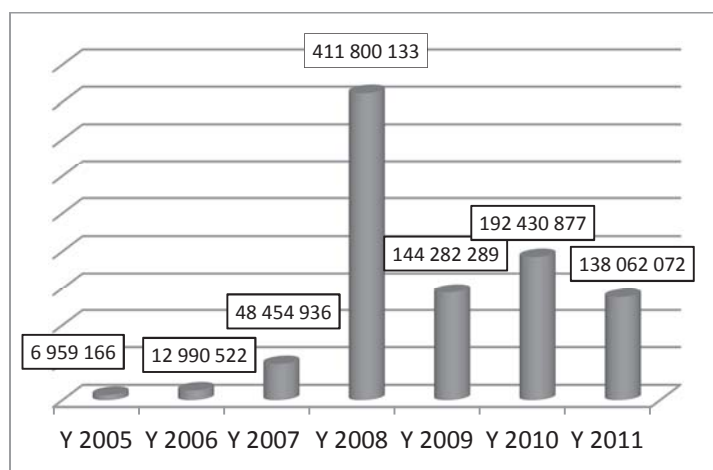
Another *prevention* effort has been started in 2010. As a result of a Presidential Instruction it was decided to establish *Corruption-Free Zones* by various government agencies. This initiative requires from the agencies to implement practical measures to improve their institutions, including their human resources. Under the initiative, district and municipality governments can put themselves forward as Corruption-Free Zones, and the KPK assesses whether the criteria are fulfilled. Among these criteria are that a) the municipality promotes anti-corruption education in schools; b) it establishes anti-corruption zones in its public services; c) the government of the region must have signed an integrity pact proposed by the KPK. To date, the KPK has started efforts with 17 municipalities to qualify as Corruption-Free Zones; only one of these has been awarded the distinction. Among the central-level institutions, only the Ministry of Agriculture and the Ministry of Law and Human Rights have declared themselves as Corruption-Free Zones.

Enforcement action. Since 2004, corruption cases that KPK investigated and prosecuted are increasing year by year. In 2011 KPK has conducted pre-investigation in 78 cases (including investigation into alleged corruption in the procurement of medical equipment; alleged corruption in the procurement procedure for IT in a state-owned company; alleged corruption in the management of social aid). A total of 45 cases were prosecuted in 2011, including 5 cases opened in 2010.²¹

Table 4.2. The number of cases handled by KPK, 2004 – 11

	2004	2005	2006	2007	2008	2009	2010	2011
Pre-trial investigation	23	29	36	70	70	67	54	78
Investigation	2	19	27	24	47	37	40	39
Prosecution	2	17	23	19	35	32	32	40
Final court judgements	0	5	17	23	23	37	34	34

Source: Corruption Eradication Commission (Indonesia).

Figure 4.18. Assets recovered from proceeds of crime by KPK, 2005 – 2011, in thousands of IDR


Source: Corruption Eradication Commission (Indonesia).

Prevention of Potential Asset Loses. In performing Co-ordination and Supervision task, KPK together with Indonesia's Upstream Oil and Gas Executive Agency (*BP Migas*), Ministry of Energy and Mineral Resources, Ministry of Finance, the Audit Board of the Republic of Indonesia (BPK), and the Finance and Development Supervisory Agency (BPKP), found potential asset losses in the upstream oil and gas sector totalling IDR 152.96 trillion. The sum is comprised of asset saved in the upstream oil and gas sector amounting to IDR 152.43 trillion and potential losses averted from transfer of state assets amounting to IDR 532.20 billion. The potential losses derived from the discovery that the state assets not fully under state control, in spite of government supervision. This gave rise to risk that state asset managed by oil and gas contractors will slip undetected and that state will receive less than its fair share in oil and gas proceeds.

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Botswana: the Directorate on Corruption and Economic Crime

The Directorate on Corruption and Economic Crime (DCEC) exists in Botswana since 1994. It was established with the Hong Kong Independent Anti-Corruption Commission as a model. Transparency International continuously rank Botswana as the least corrupt country in Africa.²² The conviction rate for cases brought to the prosecution by the DCEC is high with 70%.

Background Information

Several scandals rocked Botswana in the nineties, and a Commission of Enquiry was approved by Government to look into a tender of Primary School Books which was dubiously awarded, a tender to build houses by the Botswana Housing Corporation and allocation of plots in and around the capital city Gaborone.

Following the findings of this Commission, the government decided to form a body that will address and redress corruption related matters in the country. Therefore, the Directorate on Corruption and Economic Crime (DCEC) of Botswana was formed by an Act of Parliament in September 1994. The said Act, known as the Corruption and Economic Crime Act of 1994, mandates the DCEC to lead the fight against corruption by *investigating, preventing and educating* on matters related to corruption and economic crime.²³

Legal and Institutional Framework

The statutory mandate of the DCEC is to combat corruption, which is pursued through a three-pronged strategy of investigation, prevention and public education.

According to the Corruption and Economic Crime Act, the *tasks* of the DCEC are as follows:

Investigation

- To receive and investigate any complaints alleging corruption in any public body;
- To investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
- To investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
- To investigate any conduct of any person, which in the opinion of the Director, may be connected with or conducive to corruption;
- To assist any law enforcement agency of the Government in the investigation offences involving dishonesty or cheating of the public revenue;

Corruption Prevention

- To examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which, in the opinion of the Director, may be conducive to corrupt practices;

- To instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- To advise heads of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such public bodies which the Director thinks necessary to reduce the likelihood of the occurrence of corrupt practices;

Public Education

- To educate the public against the evils of corruption; and
- To enlist and foster public support in combating corruption.

The DCEC is an operationally autonomous body with the Director reporting directly to the President of Botswana. The Director of the DCEC is also appointed by the President. The DCEC Director cannot take orders from any person on whom to investigate, when to investigate and how to investigate. Classification of investigative matters is solely the prerogative of the Director with her/his Senior Management team.

The DCEC co-operates and has signed memoranda of understanding with such agencies as the Competition authority of Botswana, the Botswana Unified Revenue Service, The Public Procurement and Asset Disposal Board, the Office of the Auditor General and the Office of the Ombudsman. The Police and the Intelligence and Security Agency also play a pivotal role in fighting corruption since they assist with operational matters and detaining suspects caught by the DCEC.

Resources and Training

The DCEC is headed by a Director, who is assisted by one deputy. There are five Assistant Directors, each of whom heads a distinct branch responsible for a specific task.

The DCEC has four divisions:

- *Corporate Services Division* is in charge of the day-to-day running of the DCEC.
- *Public Education Division* is in charge of teaching the public country-wide.
- *Investigations Division* investigates allegations and suspicions of corruption and economic crime.
- *Corruption Prevention Division*, which analyses governmental departments and institutions for corruption risks.

The DCEC headquarters are in the capital Gaborone. There are two branch offices - in Francistown, which covers the northern part of Botswana, and in Maun, also in the North and the tourism capital of the country.

The DCEC notes that given its high caseload the Department lacks manpower, including skilled personnel and equipment, such as IT, transport, forensic or stationery. The DCEC highlights that, while the internationally recommended ratio is 10 cases per an officer, in the DCEC the average caseload is 25 cases per an officer. The funds for training are also not enough to fulfil the DCEC's training needs.

Accountability

Administratively the DCEC is a department within a Ministry, while operationally it is an autonomous law enforcement body.

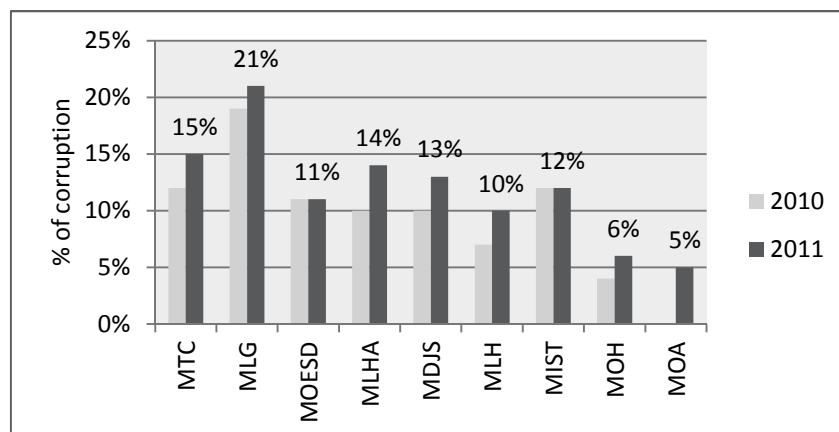
Public support to the DCEC is high, an indicator for which, according to the DCEC, is the number of reports the Directorate is receiving from citizens on corruption.

Practice and Highlights

Investigation and prosecution:

- For the past ten years the percentage of reports classified for investigation ranged between 30 – 33%, but 2010 saw that percentage increase by 8% to 41%. More complex cases were received with more companies being taken to court on various corruption offences. This increase, according to the DCEC, could be attributed to aggressive public education campaigns; Compared to when it first started operating back in 1994 the type and relevance of reports that the DCEC receives has improved;
- To effectively tackle different types of corruption, the DCEC has divided its Investigation Division into Sector Specific Units. There are now Financial Investigations, Computer Forensics, Construction and Engineering, Land and Property, Immigration and Transport units, as well as the Quick Response Team. The training plan of the DCEC has been streamlined accordingly, and officers are now empowered with relevant skills for a specific role in the investigation. In the past officers were doubling up, investigating different matters without specialization.

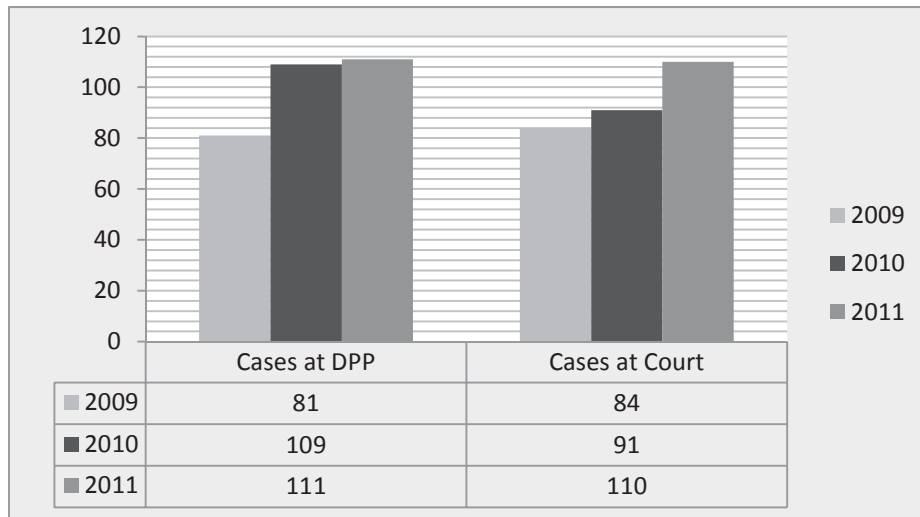
Figure 4.19. Corruption allegations received by the DCEC per ministry



<i>MTC</i>	<i>Ministry of Transport and Communication</i>
<i>MLH</i>	<i>Ministry of Lands and Housing</i>
<i>MLG</i>	<i>Ministry of Local Government</i>
<i>MIST</i>	<i>Ministry of Infrastructure, Science & Technology</i>
<i>MOESD</i>	<i>Ministry of Educations and Skills development</i>
<i>MOH</i>	<i>Ministry of Health</i>
<i>MLHA</i>	<i>Ministry of Labour and Home Affairs</i>
<i>MOA</i>	<i>Ministry of Agriculture</i>
<i>MDJS</i>	<i>Ministry of Defence, Justice and Security (mainly Botswana Police Service)</i>

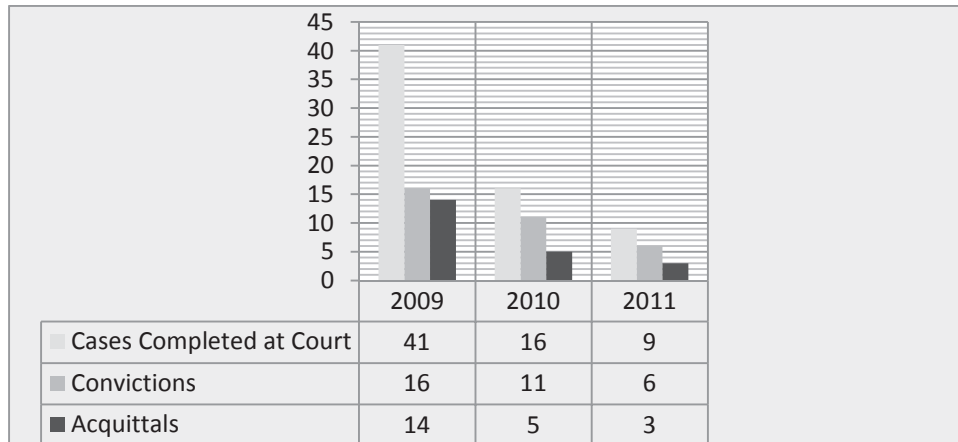
Source: Directorate on Corruption and Economic Crime (Botswana).

Figure 4.20. Number of cases at the Directorate of Public Prosecution and Courts, 2009 to 2011



Source: Directorate on Corruption and Economic Crime (Botswana).

Figure 4.21. Cases Completed, 2009 - 2011



Source: Directorate on Corruption and Economic Crime (Botswana).

Corruption Prevention:

- *Corruption Prevention Committees and Anti-Corruption Units* have been formed in all ministries and public institutions in order to assist the DCEC in addressing corruption risks and their institutions. Most senior public servants in these institutions are considered Permanent Secretaries and reviewed on their anti-corruption efforts on a quarterly base. This has enabled fighting corruption to be the responsibility of not only the DCEC, but other stakeholders as well, in particular the public institutions with high corruption risks. The DCEC highlights as one of its successes the reduction of corruption levels within institutions that earlier came out top in terms of the rate of corruption.

- In September 2011 the DCEC concluded a project started in 2006 between the DCEC and Botswana Confederation of Commerce Industry and Manpower. This project led to the launching of the first ever business *Ethics Code of Conduct for private sector*. This code is meant to guide private business to avoid unfair practices and corrupt dealings when running their businesses. This is the first event of its kind in Africa, as in most countries collaboration between government and the private sector on issues of good governance is taboo.
- In working closely with other government ministries, the DCEC assisted the Ministry of Finance and Development Planning in setting up the *Financial Intelligence Agency*. This is seen as a positive development as it will assist the DCEC in analyzing the suspicious transaction reports and referring to DCEC only those that need further investigation.

Community Education:

- The DCEC's *publications* sensitize the public about issues on corruption that affect their day to day lives. Several of such publications have been distributed to stakeholders around the country for free.
- Working with *media* and the use of *Internet* are also important tools to reach out to the public and make out of corruption a topic for public debate. Currently there is an ongoing project in which the DCEC aspires to produce a 13 episode television drama, which will be an edutainment product for the population.
- Perhaps the most significant achievement on the public education front, according to the DCEC, is the *inclusion of anti-corruption concepts into the formal secondary school curriculum* starting in January 2011. This initiative complements others started some years back such as formation of anti corruption clubs in secondary schools and the usage of outdoor broadcasting van to reach rural and distant areas.
- The DCEC has helped to make *anti-corruption education available in villages* through collaboration with Village Development Committees and *Kgotla talks*.²⁴ Today the DCEC is forming Community Anti-Corruption Clubs in big villages in Botswana; thus far four have been formed, and capacitating of these clubs is ongoing.

International co-operation:

- The DCEC continues to *benchmark and study other anti-corruption institutions* within the region and internationally in an attempt to revamp the existing efforts and to keep pace with the international anti-corruption tempo. Furthermore, although Botswana is still ranked the least corrupt country in Africa, corruption continues to proliferate hence the need for the DCEC to tap into the experience of well fairing countries so as to keep to the promise of steering Botswana towards a corruption free society. Some of the countries that the DCEC has learned best practices from include Hong Kong, Singapore, Australia, Britain, Kenya, Zambia, Sweden, Norway, to mention but a few.
- The DCEC is a founding member of the *Southern African Forum Against corruption*, an association of anti-corruption agencies in Southern Africa Development Community countries, with headquarters in Botswana.
- The DCEC, in collaboration with the Commonwealth Secretariat, organized the first ever anti-corruption conference for Heads of Anti-Corruption Agencies in Commonwealth countries in Africa, in May 2011. The purpose of the conference was to share experiences among anti-

corruption agencies and discuss particular corruption challenges facing the region. At this meeting it was agreed to form an *Association of Anti-Corruption Agencies in Commonwealth Africa*. The DCEC Director was nominated as its Chair and was tasked to formulate the constitution of the association. The 2nd Conference was hosted by Zambia in May 2012.

- The DCEC also contributed to the formation of the *African Association of Anti-Corruption Authorities* formed in June 2011 in Bujumbura, Burundi. The mandate of this association is to enable an experience sharing platform for African countries and to assist in coordinating anti-corruption efforts in the region.

Contact Details

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Notes

1. Independent Commission against Corruption. Hong Kong Administrative Region (2013), *2011 Annual Report*, p.23.
2. Singapore's Prevention of Corruption Act,
<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3Aba9a8115-fb33-4254-8070-7b618d4fd8d1%20%20Status%3Ainforce%20Depth%3A0;rec=0>.
3. GRECO (2002), *First Evaluation Round. Evaluation Report on Lithuania*, adopted in Strasbourg on 8 March 2002.
4. Idem.
5. GRECO (2002), *First Evaluation Round. Evaluation Report on Lithuania*, adopted in Strasbourg on 8 March 2002.
6. Concept on Corruption Prevention adopted by the Cabinet of Ministers of Latvia on 8 August 2000.
7. KNAB (2003), *2003 Public Report*, KNAB, Riga.
8. KNAB (2003), "Activity Report 10 October 2002 – 1 April 2003", KNAB, Riga.
9. GRECO (2002), *First Evaluation Round Report on Latvia. Council of Europe*, adopted in Strasbourg on 17 May 2002.
10. For more information see www.knab.gov.lv/eng
11. See the Act on Central Anti-Corruption Bureau at www.cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf.
12. See the section "Role and Activities" on CBA's website, www.cba.gov.pl/portal/en/4/5/Role_and_activities.html
13. Idem
14. The format of these declarations is part of the Anti-corruption Bill, see www.cba.gov.pl/ftp/filmy/ACT_on_the_CBA_updated_13_06_2011.pdf, p. 100 ff.
15. Data from the 2011 CBA Performance Report, www.cba.gov.pl/ftp/filmy/Raport_2011_wangielska.pdf.
16. Idem.
17. See, for example, Bolongaita, E, *An exception to the Rule? Why Indonesia's Anti-corruption Commission Succeeds Where Others Don't*, U4, Bergen, 2010, www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the-philippines-ombudsman.
18. See at www.iaaca.org/AntiCorruptionLaws/ByCountriesandRegions/I/Indonesia/201202/t20120220_807894.shtml
19. 1000 IDR (Indonesian Rupiah) are equal to about 0,08 EUR.
20. KPK (2011), *Annual Report*.
21. KPK (2011), *Annual Report*.

22. For more information see www.gov.bw/en/News/Botswana-least-corrupt-in-Africa-Transparency-International.
23. See Corruption and Economic Crime At at www.bankofbotswana.bw/assets/uploaded/Corruption%20and%20Economic%20Crime%20Act.pdf; see more on the DCEC at www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Department-of-Corruption-and-Economic-Crime-DCEC/About-the-DCEC1/About-the-DCEC/
24. A Kgotla is a royal kraal or a traditional platform governed by the village chief.

Chapter 5

Law Enforcement Type Institutions

Spain: The Special Prosecutor’s Office against Corruption and Organised Crime

The Special Prosecutor’s Office against Corruption and Organised Crime (ACPO) was established in 1995. It is a specialised prosecution office within the State Prosecution Service with a mandate to investigate and prosecute specific bribery and corruption-related offences of “special importance”. The assigned prosecutors work directly in the ACPO unit: they supervise pre-trial investigations and conduct criminal prosecutions in courts. In addition to the prosecutors, the Office employs a number of specialists and experts in different fields relevant to its scope of work.

Background information

Corruption is considered to be a complex phenomenon in Spain. The country’s recent history and its transition to democracy explain to a considerable extent the changing perception that the Spanish society of corruption.

In Spain, corruption is perceived to be closely related to political party funding.¹ During the transition period (roughly between 1975 and 1982), political parties did not always obey the strict rules on funding, and a certain degree of political corruption was tolerated in light of the particular circumstances of that period. However, over the years, these phenomena grew and became publicly unacceptable, particularly as some notorious cases of corruption were unveiled involving senior officials, such as the Director General of the Civil Guard and the Governor of the Bank of Spain, as well as some ministers. By the early 1990s, the fight against corruption increasingly entered into the political debate, and political credibility became an overriding value.

Corruption scandals in the early nineties and growing public concern resulted in the adoption of several measures, including new criminal legislation against corruption and the setting up of a Special Prosecutor Office for the Repression of Economic Offences related to Corruption (ACPO), which is a specialised institution including several investigative law enforcement units. It plays a key role in the Spanish anti-corruption policy, namely in investigation and prosecution.

The ACPO was established in 1995 but became operational – with adequate material and human resources – only in early 1996. Formally, ACPO is a part of the State Prosecution Service (SPS), with which it shares various characteristics, including the broad legal basis of its operations as provided for by Article 124 of the Constitution and the SPS Statute. However, it differs from other public prosecution offices by its multidisciplinary character. The legislator created the ACPO Office with a view to overcoming the difficulties of gathering evidence in certain cases, and in order to guarantee a more efficient response when public interests are affected.

In 2007, it changed its name into Special Prosecutor's Office against Corruption and Organised Crime.

Legal and Institutional Framework

The ACPO is established and regulated by Article 19.4 of the Organic Statute of the Prosecutor-General's Office approved in 1981, and amended in 2003 and 2007. ACPO is part of the State Prosecution Service and is one of its integral bodies. Although ACPO independence is not formally provided by the law, the office has informal independence and national competence within the SPS.

ACPO is competent for two major *areas of offences*: economic offences and offences committed by public officials in the exercise of their official duties.²

More specifically, Article 19.4 of the SPS Statute (as amended in 2007)³ stipulates that the Special Prosecutor's Office against Corruption and Organised Crime will conduct the enquiries specified in Article 5 of this Statute⁴ and participate directly in criminal proceedings, where the Prosecutor-General deems the events involved to be of particular significance with respect to, among others, embezzlement of public funds, fraud and extortion, influence peddling, bribery, negotiation forbidden to public officials, defrauding, bankruptcy involving criminal negligence or malpractice, alteration of prices in public tendering and auctions, corporate offences, money laundering, corruption in international trade transactions, private sector corruption, etc.

ACPO has a broad competence to deal with corruption cases, regardless of the type of criminality it is associated with. In order for ACPO to intervene – in addition to falling within the above mentioned offences – the offences must be of special significance. ACPO only takes over the criminal proceeding when a particular case is of such significance (complexity, importance, damage, organised crime, etc.) that it falls under their jurisdiction.

Criteria for attribution of cases of special significance to ACPO are the following:⁵

- Offences committed by high level public officials and incompatibilities of the members of national government, high-level officials of the national, autonomous, provincial and local administrations. The Prosecutor-General can also ask to intervene in cases involving lower level officials, when the complexity, economic, and social importance of the case is high;
- Offences committed within a criminal organisation, that is to say, whenever there are several people involved, hierarchically structured and acting with a distribution of roles, certain stability in time and coordinated activity;
- Offences falling under the jurisdiction of the National Court, which is competent for most serious frauds, entailing danger to the national economy, or affecting multiple victims.

ACPO performs the following two *functions*: direct investigation and prosecution. The work of ACPO is grounded on the fundamental principle that the State Prosecution Service is the holder of penal proceedings in all cases of delinquency, according to Article 124 of the Constitution and the Criminal Procedure Law.

Prosecutorial investigations. Investigations can be commenced either *ex officio*, or as a result of a complaint of a private person or from the public administration. Article 262 of the Criminal Procedure Law and other provisions oblige public administrations to

co-operate with the administration of justice and require them to denounce alleged criminal offences. If an offence falls under the competence of ACPO, there is no need for a decision of the State Prosecutor-General to start investigations; in cases where there is a need to determine the special significance of the offence, the Chief Prosecutor of ACPO asks the Prosecutor-General to commence the proceedings.

Possible discrepancies between special and regular prosecution services regarding competence to intervene in certain cases are resolved by the Prosecutor-General. The resolution of the matter of competences should not be an obstacle in urgent cases. If, in the course of investigations, ACPO determines that the case does not correspond to circumstances that justify its intervention, the case is transmitted to the competent prosecution office. Given the nature of cases referred to ACPO, it is required to report promptly to the Prosecutor-General about all undertaken cases, as well as about eventual restitutions of competence.

Direct participation in criminal proceedings is also an essential function of ACPO. It intervenes in both first instance and appeal, as well as in the execution of sanctions. Special prosecutors can take part in proceedings selected by the Prosecutor-General. ACPO has to inform the Prosecutor-General's Office, as well as the office which would have been territorially competent, to avoid overlapping proceedings.

Human Resources, Training and Material Resources

The Prosecutor-General, head of the prosecution service in Spain, is appointed and removed by the King of Spain, based on a proposal from the Government, after consultation with the General Council of the Judiciary and having been summoned to a Chamber of Deputies commission hearing. The Government cannot give instructions to the Prosecutor-General and his service; it can only draw the attention of the Prosecutor-General to relevant legal steps to be taken. The requirement to base the Prosecutor-General's dismissal on objective grounds and the disappearance of the executive's prerogative to separate the Prosecutor General from service at the Government's discretion constitute further guarantees of independence. The Prosecution Service is based on principles of unity of action and hierarchical dependency, which means that, *inter alia*, the Prosecutor-General is empowered to give instructions to the individual prosecutors working on specific cases, including the ACPO prosecutors.

ACPO is headed by the Chief Prosecutor, who is appointed by the Government on the proposal of the Prosecutor-General, after consultations with the Prosecutor-General Council (a representative body of public prosecutors). The Chief Prosecutor of the ACPO has the same powers and duties as the Chief Prosecutors of other bodies of the Public Prosecution Service.

ACPO has nearly 100 members, 33 of which are prosecutors. ACPO prosecutors are appointed by the government, based on a proposal by the Prosecutor General, and after consultations with the Prosecutor General Council. Candidates become prosecutors are usually required to have training on economic crime and tax fraud; most of them have previous professional experience in dealing with economic offences. Prosecutors can only be removed by the Prosecutor-General as a result of disciplinary proceedings if they commit a very serious misconduct in performing their duties. They may also be transferred to another prosecution office either due to serious dissent with the Chief Prosecutor for reasons attributable to the subordinate prosecutor, or due to serious confrontations with the Court, also for reasons attributable to the prosecutor.

The Prosecutor-General may appoint public prosecutors from other public prosecution offices to join the ACPO as delegate prosecutors. These prosecutors report to the head of ACPO as far as their activity is related to ACPO cases.

In addition, the ACPO is supported by human resources from special support units assigned to it from the Tax Department, the Civil Service’s General Administrative Inspectorate, the Civil Guard or gendarmerie, and the judicial (criminal) police.

In accordance with tax legislation, the State Prosecution Service (SPS) and the judicial bodies are allowed to collect all information necessary for carrying out criminal investigations. Through the Tax Fraud Agency’s support unit, ACPO has a direct link with the Tax Inspectorate’s national database containing details of the tax returns of all individuals and legal entities in Spain over the last six years. This database also contains information of all the bank accounts held in Spain. On the basis of the general rules, the ACPO may also have access to other relevant national databases held by public authorities, including those held by the law enforcement authorities.

ACPO is financed through the budget of the State Prosecution Service by the Ministry of Justice. ACPO does not have its own annual budget. The Prosecution Service and all its bodies are financed by the Ministry of Justice as one integral entity, without any special budget items for any of its parts. The SPS has benefited from recent allocations for the administration of justice, and infrastructure and new technologies schemes and programmes for streamlining justice as a whole. The IT system was harmonised in all prosecutor’s offices and necessary training was provided for staff members.

Accountability

The ACPO is required to keep the Prosecutor-General informed about the cases it is dealing with and any relating developments, in particular possible changes in competence. The Prosecutor-General sends a six months report to the Board of Court Prosecutors (*Junta de Fiscales Jefes de Sala*) and to the Prosecutor General Council (*Consejo Fiscal*) on the proceedings in which ACPO participated.

Figure 5.1. Organisational Structure of ACPO

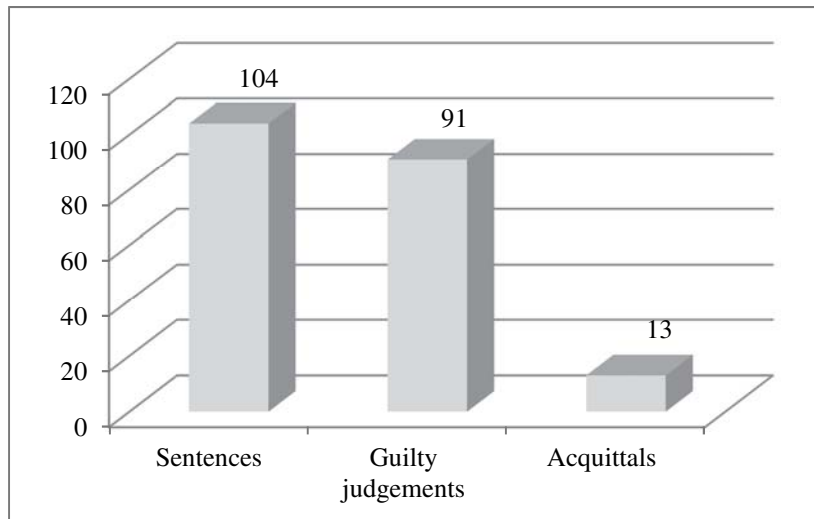


Practice and Highlights

Over the recent years, ACPO has investigated and prosecuted a number of high-profile cases. Below, there is a summary of *selected cases*:

- February 1998: A former director general of the Guardia Civil⁶ was convicted of continued offences of swindle, bribery and crime against the Treasury, and sentenced to 14 years of imprisonment. The sentence was confirmed by the *Tribunal Supremo* (High Court) in December 1999;
- March 2000: A former director of Banesto – one of the most important Spanish Banks – was convicted, after a trial lasting almost two years, on charges of swindling and undue appropriation. He was sentenced to more than 10 years of imprisonment. In July 2002, the *Tribunal Supremo* upheld the conviction and increased the imposed penalty to 20 years of imprisonment;
- January 2002: A former Secretary of the Ministry of the Interior (“number two” official at the Ministry) was convicted of the continued offence of embezzlement of public funds, and sentenced to 7 years of imprisonment. The former Minister of Interior, also accused of embezzlement of public funds by the Special Prosecution Office, was acquitted. The *Tribunal Supremo* upheld this sentence in September 2004;
- January 2005: A former member of the Supreme Council of the Judiciary was convicted on charges of breach of duty and accepting bribes, both crimes committed when he served as a judge. The Court has passed a sentence of 9 years of imprisonment. This sentence was upheld by the *Tribunal Supremo* in 2006;
- November 2007: A former Secretary of Security (“number two” at the Ministry of the Interior) was convicted of embezzlement of public funds, and sentenced to 1 year and 6 months of imprisonment. The *Tribunal Supremo* upheld this sentence in March 2009;
- December 2011: A former mayor of the town of Marbella was convicted of breaching his duty and embezzling public funds, and sentenced to 7 years and 6 months of imprisonment;
- March 2012: A former president of the regional government of the Balearic Islands was convicted of the offences of breach of duty and embezzlement of public funds, among others, and sentenced to 4 years of imprisonment.

Figure 5.2. ACPO judicial proceedings, 1996 - 2011



Source: Special Prosecutor's Office against Corruption and Organised Crime (Spain).

Contact information

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Romania: National Anti-corruption Directorate

In 2002, Romania created the National Anticorruption Prosecutor's Office, which was later reorganised, as the National Anticorruption Directorate (Directia Nationala Anticoruptie - DNA). The DNA is part of the Prosecutor's Office attached to the High Court of Cassation and Justice. It is a specialised prosecution service with a mandate to investigate and prosecute serious corruption offences. The prosecutors working within the DNA conduct pre-trial investigations, including ordering, directing and supervising pre-trial investigation activities conducted by the judicial police officers attached to the DNA. When technical assistance is needed in a particular case, DNA prosecutors request specialists in economic and financial matters, information technology and other fields appointed within the DNA to clarify technical issues during criminal investigations, and to draw up reports that can be used as evidence in court. The DNA prosecutors also conduct criminal prosecutions in courts.

Background Information

The initiative to establish a strong specialised investigative and prosecution anti-corruption service surfaced in 2000, after it was acknowledged that the different national bodies responsible for coordinating the fight against corruption had achieved limited success in curbing corruption, which remained a serious problem in Romania.

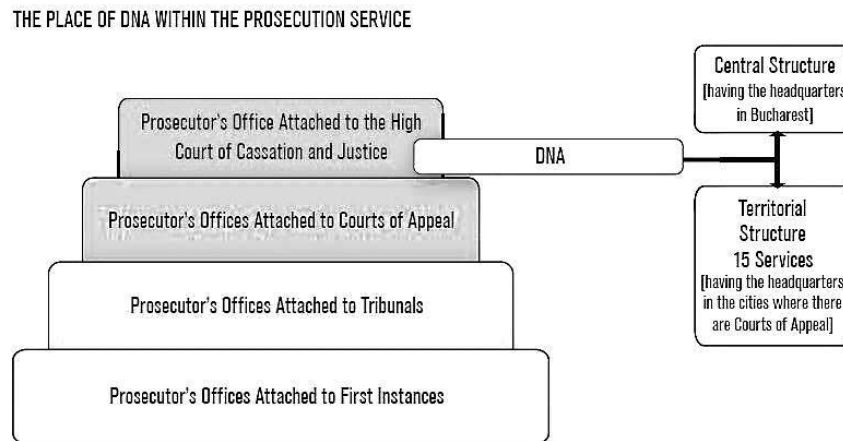
With the support of the European Commission and EU twinning, mainly with the Special Prosecutor's Office against Corruption and Organised Crime of Spain, a specialised anti-corruption prosecution structure was established in 2002. It became operational within a year of its formal set up. The monitoring and support of the European Commission continued through the years.

One of the main decisions that had to be taken when adopting the law on setting up the anti-corruption prosecution unit was to streamline its activity to the most relevant and complex corruption cases, instead of risking that the specialised prosecutors are overloaded with numerous small cases that have no impact on society. Therefore, it was decided that the anti-corruption prosecution unit will deal only with high and medium level corruption cases, and cases regarding offences associated with corruption. Several amendments regarding the jurisdiction of DNA were brought since its establishment in order to achieve that goal. Petty corruption cases remain in the jurisdiction of ordinary prosecution offices.

Another decision taken in relation with the anti-corruption prosecution unit was that it needed to have an increased level of independence with regard to other public authorities and also inside the Public Ministry (Prosecution Service). Therefore, in 2002, the National Anticorruption Prosecutor's Office was set up as an independent prosecutor's office within the Public Ministry of Romania. However, this feature proved to be unconstitutional in the sense that it prevented the anti-corruption prosecutors to investigate and prosecute Members of Parliament (the MP's can be investigated/prosecuted only by the Prosecutor's Office attached to the High Court of Cassation and Justice). Consequently, the law was amended, and the status of the anti-corruption prosecution unit became that of a special directorate within the Prosecutor's Office attached to the High Court of Cassation and Justice. At present, the DNA is headed by the Prosecutor-General of the Prosecutor's Office attached to the High Court of Cassation and Justice, through the intermediate of the Chief-Prosecutor of the DNA. Nevertheless, there are some legal provisions that preserve a special and autonomous

status of the DNA within the Public Ministry of Romania, with regard to its jurisdiction, its personnel, and its resources.

Figure 5.3. The place of DNA in the prosecution service in Romania



Source: National Anticorruption Directorate (Romania).

Legal and Institutional Framework

The DNA's legal framework is provided by Government Ordinance no. 43/2002, which was later approved by Law no. 503/2002 and subsequently amended.⁷ DNA has jurisdiction to investigate and prosecute corruption as defined in Law no. 78/2000 on Prevention, Detection and Prosecution of Corruption Offences as amended in 2003, 2004, and 2006. Law no. 78/2000 adopts a broad approach to the definition of corruption. Accordingly, DNA's substantive jurisdiction includes the investigation and prosecution of bribery offences and of certain economic-financial offences defined by the law to be corruption-related offences.

Considering that DNA carries out criminal investigations only in cases of *high and medium level* corruption, some criteria had to be defined in order to establish the jurisdiction of DNA, and these are defined by the law (Government Ordinance n° 43/2002):

- the damage caused by the offence exceeds EURO 200 000;
- the value of the bribe exceeds EURO 10 000; or
- the offence is committed by a public official falling into one of the categories explicitly listed by the law (e.g. Members of Parliament, members of the Government, specific high-level officials of central and local administration, judges and prosecutors, mayors, police officers, customs officials) as well as by persons holding a position of director and above within national companies and enterprises, commercial undertakings where the state is a stakeholder, central financial-banking units.

Furthermore, according to the law, other categories of serious economic-financial offences fall under the jurisdiction of the DNA. These are the offences of abuse of office, tax evasion, and offences against the customs regime, if the damage caused is higher than 1 million EURO.

The offence of fraud affecting European Union funds also falls under the jurisdiction of DNA, regardless of the value of the damage caused.

The legislation gives the prosecutors and investigators of the DNA a number of special powers, such as:

- Covert surveillance;
- Interception of communications;
- Undercover investigations;
- Access to financial data and information systems;
- Monitoring of financial transactions.

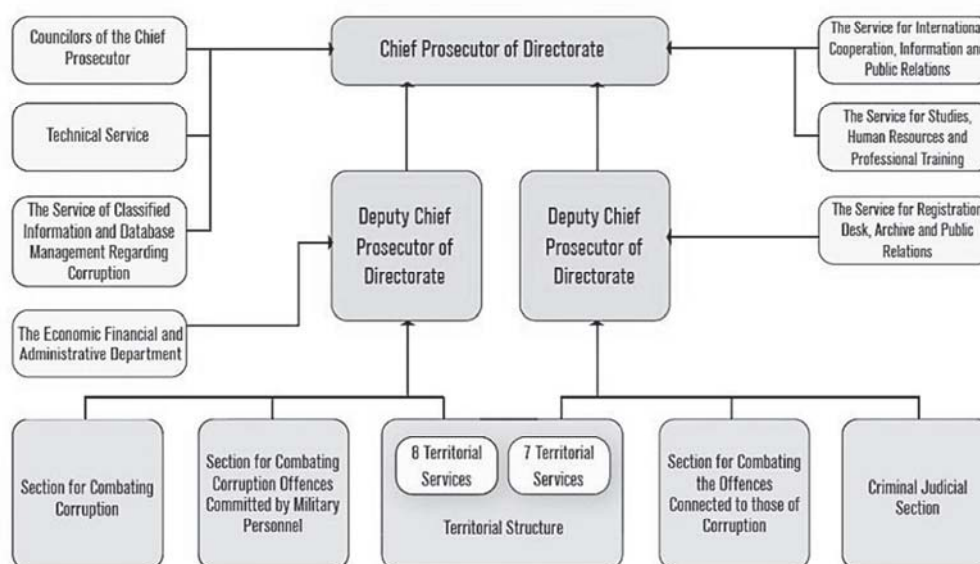
In addition, the prosecutors can order specific protective measures for witnesses, experts, and victims.

The DNA has a Central Office in Bucharest, and 15 detached regional offices territorially corresponding to the Courts of Appeal, all of them being directly subordinated to the chief prosecutor of DNA. The Central Office comprises a number of sections and services (see Figure 5.4).

The DNA is headed by the Prosecutor-General of Romania, through the Chief-Prosecutor of the DNA, who, by rank, is a Deputy of the Prosecutor-General. The Chief Prosecutor of the DNA, his deputies, and the Chief-Prosecutors of the DNA's sections are appointed by the President of Romania at the proposal of the Minister of Justice, with the prior opinion of the Superior Council of Magistracy, for a mandate of 3 years, renewable once.

Figure 5.4. Organisational Structure of DNA

ORGANIZATIONAL CHART



Source: National Anticorruption Directorate (Romania).

Human Resources and Training

The Directorate employs a high number (see below chart for a detailed breakdown) of specialised prosecutors, judicial police officers and specialists in different fields, which provides it with the capacity to independently carry out investigations and prosecutions within its jurisdiction.

The *appointing procedure* for these categories of personnel is the following:

Prosecutors are appointed for an unlimited term by order of the Chief Prosecutor of the DNA, with the prior opinion of the Superior Council of the Magistracy, among the prosecutors who fulfil the following conditions: strong professional background; blameless moral behaviour; and 6 years experience as prosecutor or judge.

Candidates have to pass an interview test organised by a commission that is set up for this purpose. The commission, appointed by decision of the Directorate's Chief-Prosecutor, consists of 3 prosecutors within the National Anti-corruption Directorate, and specialists in psychology or human resources.

The interview tests the professional knowledge, the capacity to decide and to assume responsibility, the resistance to stress, as well as specific skills.

The Chief-Prosecutor of the National Anti-corruption Directorate assesses the results obtained by the prosecutors within the Directorate and can revoke them, with the approval of the Superior Council of Magistracy, in case of inappropriate implementation of the job-specific attributions or in case of a disciplinary sanction.

When the prosecutors cease their activity with the, DNA, they have the right to return to the prosecutor's office that they came from.

Box 5.1. Engagement of Police Officers and Specialists in the work of DNA

While the DNA is a prosecutorial service, it employs a significant number of investigators (judicial police officers) and specialists in different relevant fields, who work exclusively under the authority of the prosecutors of the DNA, and are not part of the regular law enforcement hierarchy. This enables the DNA to gather evidence and conduct pre-trial investigations independently. In addition, other state bodies are required by law to report to the DNA suspicions of cases that could fall under the jurisdiction of the DNA and are, on request by the DNA prosecutors, obliged to offer their services and expertise in the investigations conducted by the DNA.

Source: National Anticorruption Directorate (Romania).

Judicial Police officers which represent the judicial police of the DNA are seconded to the DNA for a period of 6 years, with the possibility of extending this secondment.

The secondment of police officers within the National Anticorruption Directorate shall be made upon nominal proposal of its Chief-Prosecutor, through an Order of the Minister of Interior and Administrative Reform; based on that order, their appointment shall be made by decision of the DNA's Chief-Prosecutor.

The judicial police officers carry out their activity only within the Directorate under the authority of its Chief-Prosecutor and can draw up criminal investigation acts ordered by the prosecutors, their dispositions being mandatory.

During their secondment, the judicial police officers cannot receive any task from any hierarchical bodies within the Ministry of Interior.

Specialists are appointed to the National Anti-corruption Directorate by decision of the Chief-Prosecutor, with the approval of the line ministries, in the fields of economics, finance, banking, customs, IT, as well as in other fields, in order to clarify certain technical issues in the criminal investigation activity.

The above-mentioned specialists are public servants, and, like the judicial police officers, carry out their activity under the direct management, surveillance and control of the prosecutors within the National Anti-corruption Directorate.

They draw up, at the prosecutors' written request, technical and scientific reports that represent means of evidence, according to the law.

Financial Resources

The National Anti-corruption Directorate is, by law, financially independent. The funds are assured from the state budget and are distinctively earmarked within the budget of the Prosecutor's Office attached to the High Court of Cassation and Justice. The Chief-Prosecutor of the Directorate is the secondary credit accountant.

Since its establishment, the DNA has received financial resources and technical assistance through both domestic and foreign funding. Foreign assistance provided through European Union PHARE and Twinning programmes and programmes funded by bi-lateral donors was key in the first years of operations. The budget of the DNA has changed over the years, reflecting the economic situation in the country.

Table 5.1. Budget of the DNA, 2004 – 12

	2004	2005	2006	2007	2008	2009	2010	2011	2012
Millions RON	58 03	58 33	63 55	65 98	70 95	59 64	69 15	66 60	70 75
Millions EURO	14 32	16 10	18 03	19 77	19 40	14 09	16 46	15 74	16 07

Source: National Anticorruption Directorate (Romania).

Table 5.2. DNA operative personnel, as of June 2012

Category of staff	Total positions approved by the law	Total filled positions	Total filled positions at central level	Total filled positions at territorial level	Total vacant positions
Prosecutors	145	129	56	73	16
Judicial Police Officers	170	165	83	82	5
Specialists	55	52	36	16	3
Total	370	346	175	171	24

Source: National Anticorruption Directorate (Romania).

DNA's staff is trained through continuous training programmes delivered by the Romanian National Institute of Magistracy, anti-corruption training seminars and workshops specially tailored to the specific needs, and according to the specific legal attributions of the various categories of the DNA staff, including through EU- funded projects, or projects funded by other international organisations, through bi-lateral or multi-lateral co-operation programmes, as well as through a number of its own professional training schemes.

The DNA's logistical capacity is above the average of the Romanian judiciary. The DNA is the only prosecution service in Romania which has its dedicated Technical Service Unit, endowed and empowered to enforce judicial authorisations of surveillance and recording of communications, as well as to give the necessary technical-logistical support to the investigative activities performed by the DNA's police officers and prosecutors. Through various projects, the IT structure of the DNA was developed; this includes a secure data communication system between the headquarters and the 15 territorial services; access to different databases belonging to other state bodies (customs, natural persons registry, legal persons registry, motor vehicles registry etc.); electronic archive of the most important documents within the criminal cases. The DNA also developed its own database regarding its criminal cases, and its human and financial resources are also managed with the help of an integrated software platform.

The DNA has trained personnel in performing searches of digital evidence, using specialised hardware and software tools in investigations.

Accountability

As a prosecution body, the DNA is subject to the regular accountability mechanisms of prosecution services in Romania. In addition, the law requires the DNA to submit an annual report on the performance of its tasks and its activities to the Superior Council of Magistracy and to the Minister of Justice no later than by February each year. The Minister of Justice submits his/her conclusions on the report to the Parliament.

The DNA publishes its annual reports *in extenso* and in synthesis on the web page www.pna.ro, both in Romanian and in English. The current activity of DNA is also reflected on its web page, where the reader can find press releases about the cases sent to trial and the final conviction decisions ruled by the courts in these cases.

Practice and Highlights

The DNA is the main anti-corruption authority of Romania, a country with still high levels of perceptions of corruption. The activities carried out by the anti-corruption prosecutors are constantly under the scrutiny of the Romanian civil society and media. The Directorates activities are also scrutinised by the European Commission in the framework of the Verification and Cooperation Mechanism instituted for Romania and Bulgaria in 2006.

Since 2006, the European Commission in its reports has consistently appreciated progress made with the investigations carried out by the DNA into allegations of high-level corruption and has recommended, on the other hand, that court proceedings be expedited and sentences against persons convicted for corruption be more dissuasive.⁸

In 2007-2011, the DNA focused its main efforts and resources towards high profile and complex cases achieving the following results:

951 cases regarding 3678 defendants have been sent to trial;

- Among the defendants sent to trial there are: 14 Members of Parliament; 10 ministers (and former ministers); 11 directors/presidents of state agencies; 87 mayors; 24 high ranking army officers with management positions in the military structures; 14 judges and 26 prosecutors; 110 customs officers; 395 police officers;
- Out of the 3678 defendants sent to trial during the last 5 years, more than 2000 have been indicted in 2010 – 2011, which is explained by a number of cases that involved hundreds of defendants), which shows the DNA’s concern for the systemic character of corruption in some vulnerable fields (cases regarding corruption in issuing driving licenses; in issuing baccalaureate and university diplomas; corruption for protecting trans-border smuggling of goods, etc.);
- 789 defendants have been convicted with final court decisions during these last 5 years, and the number almost tripled in 2011 (298 defendants) compared with 2007 (109);
- Among the defendants who have been convicted by final court decisions there are: 6 dignitaries (1 Senator, 3 Deputies, 1 State Secretary, 1 under-prefect); 12 Mayors and Vice-Mayors; 4 Members of the Local or County Councils; 20 Magistrates (10 judges, 10 prosecutors); 3 army generals; 20 Directors of national companies and public institutions;
- The number of final acquittal decisions in DNA files is maintained constant at about 10% of the total final court decisions.

Contact Details

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Azerbaijan: Anti-Corruption Department with the General Prosecutor's Office⁹

The Anti-Corruption Department in Azerbaijan is as an autonomous department with a special status subordinated directly to the Prosecutor General and operational since 2005. The Department is the principal authority in Azerbaijan entrusted to detect, investigate and prosecute corruption crimes. Currently it is staffed with 40 prosecutors and investigators, as well as designated detectives from the Ministry of Internal Affairs and the Ministry of National Security; financial, accountancy and other specialists are also seconded to ACD. It can also engage external experts on business, accounting, IT, forensics, etc. from other specialized institutions when necessary.¹⁰

Background information

The Anti-Corruption Act of Azerbaijan became effective on 1 January 2005. It provided that all public institutions and officials are committed to fight corruption within their competence and two new specialized anticorruption institutions should be created in Azerbaijan, namely the Commission on Combating against Corruption and the Anti-Corruption Department.

The Commission on Combating against Corruption is an independent body with 5 members from the legislative, executive and judicial branches of power. It coordinates the development and monitors the implementation of national anti-corruption strategies. The working Groups under the Commission formulate drafts of the anticorruption legislation, conduct surveys and perform other activities.

The Anti-Corruption Department (ACD) within the Prosecutor General is the body specialized in combating corruption through law enforcement within the meaning of Article 36 of the UNCAC. The ACD became operational in 2005. On the 14 March 2005 the Director of the ACD was appointed. By October 2005 the staff of the ACD has almost been completed from amongst the highly qualified officers of the prosecution service and other institutions, such as Ministry of Taxes.¹¹

Legal and institutional framework

The Anti-Corruption Department within the Office of the Prosecutor General was established on the basis of the Decree of the President of the Republic Azerbaijan No. 114 adopted on 3 March 2004. The Charter of the Anti-Corruption Department was elaborated and enacted by the Presidential Decree of 28 October 2004. Finally, the Ordinance of the Prosecutor General 10/5 was adopted on 18 January 2012.

The 2012 Ordinance of the Prosecutor General delineated ACD's jurisdiction in the areas of pre-investigation, pre-trial investigation and legal assistance in criminal matters. ACD is the principal investigative authority in corruption cases, including all forms of bribery, abuse of office, embezzlement, trading in influence, money laundering, fraud by officials in public and private sector. Corruption offences are exclusively investigated by ACD if committed by law enforcement officials (all levels) or officials of the central executive authority. In case if the offence is committed by an official at a local level, but the case is of great public importance or large amount of damage was inflicted, it will also be investigated by the ACD.

The 2012 Ordinance stipulates that the ACD shall implement requests for legal assistance and asset recovery in criminal matters in corruption cases. So, the ACD is the ultimate destination for corruption-related MLA and Asset Recovery Requests.

Moreover, according to legislative amendments in March 2011, the ACD has been vested with the authority to carry out all types of special investigation means (SIM) in respect of the corruption offences. Other police and security bodies allowed to conduct SIMs can do that in corruption cases only with a written permission of the ACD.

According to its Charter, the main *functions* of the ACD's are to:

- receive and review information related to corruption offences;
- conduct pre-trial investigation and start criminal prosecution
- perform detective-search activities (SIMs) and investigate criminal cases to prevent, disclose and detect corruption offences, as well supervise the activities of detective-search bodies within the criminal cases under its jurisdiction;
- take measures for compensation of the damage inflicted as a result of commission of corruption offences and take measures, provided by the law, to secure the seizure of property;
- collect, analyse and summarize information on corruption and measures to fight against corruption, as well as formulate proposals and recommendations on the improvement of combating against corruption;
- prepare regular reports submitted by the Prosecutor General to the President and the Anti-Corruption Commission;
- cooperate with the public and other institutions in the field of fighting corruption;
- raise awareness on corruption and provide anti-corruption education and training.¹²

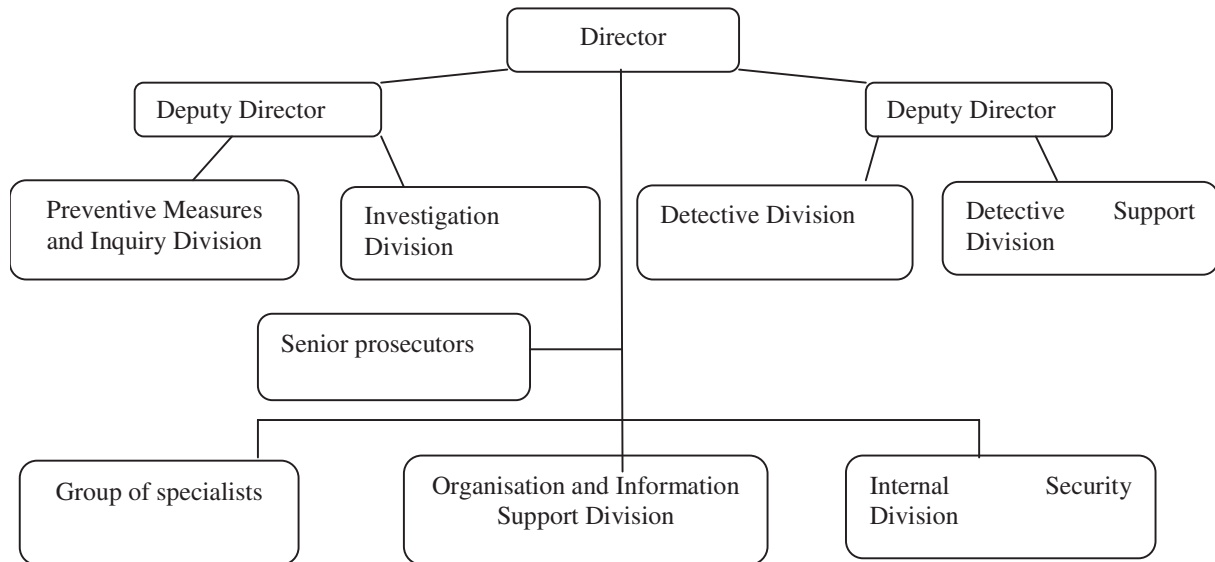
Human and Material Resources

Unlike other departments of the Prosecutor's Office, the Director of the ACD is appointed by the Prosecutor General subject to the endorsement of the President.

Initially the Department was staffed by 40 prosecutors and investigators and few technical staff. In 2011 the number of the employees was raised up to 145. The technical staff of the ACD now includes not only office assistants and logistic support officers, but also specialists trained in various areas. The ACD specialists assist the prosecutors and investigators to investigate cases by providing their expert opinion. However, the opinion of ACD experts has no effect of evidence in the court of law.

The detectives at the ACD are recruited from the law enforcement bodies with special investigatory powers, but specialists are recruited from among experienced specialists the economy, finance, banking, municipal and other areas.¹³

Wages of the employees of this Department are higher not only in comparison to the wages of other employees of the prosecution service, but also in comparison to the employees of law enforcement agencies.

Figure 5.5. Organisation structure of the Anti-Corruption Department, in 2011

Detective Division and **Detective Support Division** operate jointly to carry out SIMs. The Detective Division is entitled to look into information and materials referred to it by the ACD Director and plan operations to detect corruption offences. The detectives of this division also implement SIMs required in the course of the preliminary investigation and commissioned by the ACD Investigation Division.

Group of Specialists employs specialists from many areas, such as accounting, municipalities, construction, etc. The specialists provide expert opinion to investigators and prosecutors, as well as the Internal Security Service. Their opinions cannot be used as evidence in trial.

Organization and Information Support Division is charged, among others with analysis of the data, drafting of reports, control of the seized property, running of hot-line, international affairs, etc.

Internal Security Service looks into the allegations of corruption by the Prosecutor's Office employees and advise the ACD Director to launch criminal investigation, if there are grounds to bring criminal charges, or refrain from doing so. This division is also in charge of the safety and security of ACD employees and its buildings.

The **Investigation Division** is in charge of criminal cases:

- launched by the Prosecutor General;
- launched by the ACD Director;
- launched by the ACD Investigation Division investigators in the course of investigation of another case;
- taken from other investigational bodies and submitted for the ACD investigation, under the exclusive power, by the Prosecutor General.

Preventive Measures and Inquiry Division looks into information submitted related to corruption offences, including the information received through the *hot-line*. The prosecutors of this division make a short inquiry into these materials and advise the ACD Director to launch criminal investigation, if there are grounds to bring criminal charges or refrain from doing so. The Division is also responsible for analysis of trends in combating corruption, prevention measures and other activities.

Accountability

The ACD reports to the Prosecutor General. Twice a year, the ACD reports also to the Commission on Combating Corruption, Cabinet of Ministers and President of the Republic, via the Prosecutor General.

It is up to the ACD Director to authorize launching of and termination of a criminal investigation by the criminal investigators of the Department. Moreover, the ACD Director is the prosecutor who endorses the Bill of Indictment concluding the preliminary investigation and submission of the criminal case to court for trial. However, decisions of the ACD Director can be changed by court or the Prosecutor General on grounds provided by law.

Practice and highlights

Table 5.3. Number of pre-trial investigations finalised by the Anti-Corruption Department, 2005 – 2011

Year	Number of cases submitted to court	Number of persons prosecuted in court
2005	12	35
2006	39	79
2007	41	69
2008	70	121
2009	103	176
2010	104	188
2011	142	229

Source: Anti-Corruption Department (Azerbaijan)

ACD has seized property and means worth 7 000 000.00 Manats in 2010 and 820 000.00 Manats in 9 months of 2011.¹⁴

Access to databases. ACD is running *National Corruption Crimes Database*, which is operational since 1 January 2009. It provides for a mechanism for gathering information on corruption and corruption related offences and ultimately to monitor trends in these crimes. Moreover, the ACD has access to the integrated database in Azerbaijan covering several ministries called AMAS. Accessing databases of other ministries has been included in the national anti-corruption strategy.¹⁵

Analytical work. In addition, the ACD conducts assessments of practical application of certain aspects of material and procedural law. It has conducted a review of the application of the provisional measures by investigation institutions in Azerbaijan and based on the findings of this review, the General Prosecutor issued a Decree to endorse *Rules for Enforcement of the Provisional Measures aimed at Ensuring Confiscation* on the 24.09.2010 Ref. 10/88. The ACD together with the Ministry of Finance conducted an assessment of

Reporting of corruption. As of 2011, the ACD runs its own national toll-free hot-line (number to dial is: 161). It operates on the 24/7 basis, including holidays. It is operated by ACD's prosecutors and investigators taking 24 hour shifts. As the hot-line is placed within the ACD, it can take the reports, but also has competence and powers to take measures when elements of corruption offences are present and can also provide advice. The information on the new hotline was circulated to the press and provided at seminars

in the regions. The ACD Director has called in public to use the hot-line and report corruption, especially by public officials. Since March 2011, more than 2 000 reports were received and, according to the ACD, many served to start criminal prosecutions or sting operations. Furthermore, the ACD prosecutors initiated administrative and disciplinary proceedings against officials for omissions which did not qualify as corruption offenses. Also, the analysis of the incoming information allowed ACD to make recommendations to prevent corruption in bodies mostly addressed in the reports.¹⁶

Disseminating information. The ACD officers regularly appear on TV and radio, participate in round table and other public discussions, give interviews to mass media, issue press releases, as a measure of raising public awareness against corruption. Within the framework of the EU Twinning Project, ACD has developed its Media Toolkit to facilitate communication with media.

Co-operation with civil society. ACD more actively cooperates with civil society, in particular through the Network of Anti-Corruption Non-Governmental Organisations of Azerbaijan. In the beginning of 2012, the ACD and the Network signed a Memorandum of Understanding. As a result ACD participates in events organised by the Network; civil society representatives contribute to the training run by ACD and facilitates provision of information on corruption allegations.

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Croatia: Office for the Suppression of Corruption and Organised Crime

The Office for the Suppression of Corruption and Organised Crime (Ured za suzbijanje korupcije i organiziranog kriminaliteta – USKOK), established in 2001, is a special body within the Public Prosecutor’s Office with a mandate to direct police investigations and conduct prosecutions in corruption and organised crime cases. The USKOK has intelligence, investigative, prosecutorial and preventive functions and is responsible for international co-operation and exchange of information in complex investigations.

Background Information

The creation of the USKOK was a response to a rather high level of corruption and organised crime in Croatia, which has recently emerged from a war and going through economic restructuring. While the public opinion rated corruption as a very serious problem, few cases were reported and investigated. To address this problem, a package of anti-corruption measures was developed in Croatia. One of the first measures of this package was focused on strengthening specialised law enforcement and prosecutorial service. In early 2000 the political commitment was made to establish the Prevention of Corruption and Organised Crime – the USKOK.

The USKOK was established in 2001 by the Law on the Office for Suppression of Corruption and Organised Crime. The Law entered into force in October 2001, and the Office began with its work in December 2001.

The Government of the Republic of Croatia, with the proposal of the Law on USKOK, aimed to establish a specialised body in order to make a radical leap in the suppression of corruption. At the same time, it intended to create an efficient body that would be able to act throughout the entire country on suppression of organised crime, tracking the prevalence of organised crime, and, in co-operation with similar bodies from other countries, co-operate on the suppression of transnational crime.

USKOK was established because the existing network of the state attorney's organisation, and its competence for proceedings in corruptive criminal offences and organised crime offences was not adequate. The great danger and harmful effects of those criminal offences for society as a whole required more efficient solutions, and the establishment of a specialised body was considered to be one such key solution.

With the establishment of USKOK, the Republic of Croatia at the same time fulfilled the obligations undertaken with the ratification of the Council of Europe Criminal Law Convention on Corruption and the UN Convention on Transnational Organised Crime.

Legal and Institutional Framework

According to Article 21 of the Law on Office for Suppression of Corruption and Organised Crime, the following *criminal offences* are under the competence of USKOK:

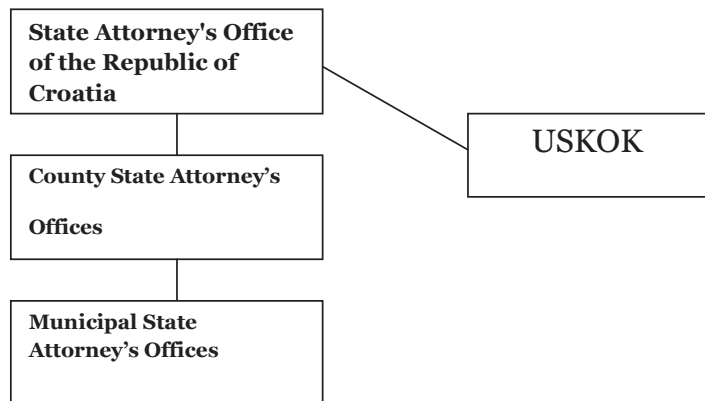
- malpractice in bankruptcy proceedings; unfair competition in foreign trade; operations abuse in performing governmental duties, illegal intercession; accepting a bribe; accepting a bribe in economic transactions; offering a bribe; and offering a bribe in economic transactions;

- abuse of office and official authority, if these offences have been committed by an official person;
- unlawful deprivation of freedom; kidnapping; coercion; trafficking in human beings and slavery; illegal transfer of persons across the state border; robbery; extortion; blackmail; money laundering; illegal debt collection, if these criminal offences have been committed as a member of a group or criminal organisation;
- abuse of narcotic drugs;
- association for the purpose of committing criminal offences, including all criminal offences committed by this group or criminal organisation, except for criminal offences against the Republic of Croatia and the armed forces;
- a criminal offence committed in relation to the activity of a group of people or criminal organisation with a prison sentence exceeding three years, and if the criminal offence was committed in the territory of two or more states or a significant part of its preparation or planning was done in another state.

USKOK also has jurisdiction to conduct criminal proceedings against the organisers of a group of people or criminal organisation for the commission of the criminal offences of illicit trade in gold, and avoiding customs control.

Further, USKOK has jurisdiction over criminal offences of money laundering, evasion of tax and other levies, obstruction of evidence, duress against a judicial official, obstructing an official in the performance of official duty, attacking an official, and the criminal offence of disclosure of a protected witness's identity, if these offences have been committed in connection with the commission of certain criminal offences as stipulated by law.

Figure 5.6. Office for the Suppression of Corruption and Organised Crime (USKOK)
part of the State Attorney's Organisation



When does USKOK act?

If police or state attorney inquiries show that there are indications of organised crime in the criminal offences of fraud, including economic fraud and insurance fraud, criminal offences of infringing intellectual property rights, criminal offences of money laundering, malpractice in bankruptcy proceedings, evasion of tax or other levies, abuse of authority in economic business operations, illicit trade, avoiding customs control and other criminal

offences committed for the purpose of acquiring large pecuniary gain, the Office shall request from the competent administrative organisations of the Ministry of Finance (Tax Administration, Financial Police, Customs Administration, Financial Inspectorate, Anti Money Laundering Department) the control of the business operations of the legal and natural person and the temporary seizure of money, securities, objects and documentation which may serve as evidence, and request information on the collected and stored data connected with unusual and suspicious money transactions. In its request, the Office may more closely mark the necessary content of the requested measure or action and request that it be informed accordingly, in order for the Head or deputy head to be present. Non-compliance with the request or a longer failure to execute the request shall represent a serious violation of official or professional duty.

If there is suspicion of money laundering, the Anti-Money Laundering Department shall inform the Office about the instruments, income or assets of which they have in any way become aware, if it is likely they have been acquired through a criminal offence; and request from the subjects obliged to implement the anti money laundering measures all data about the transactions and parties held by the subjects bound by this obligation, and to supply these data to the Office within three days.

On the request of the Office, the Anti-Money Laundering Department shall provide all available data on the transactions of the persons suspected of money laundering, and execute the necessary checks for the purpose of establishing the existence of such transactions.

The state inspectors authorised for the temporary seizure of suspicious objects, instruments or assets shall deliver to the Office, together with the notification, a report on the undertaken action and the transcript of the decision on the forfeiture or seizure.

Figure 5.7. Organisational structure of Office for the Suppression of Corruption and Organised Crime (USKOK)

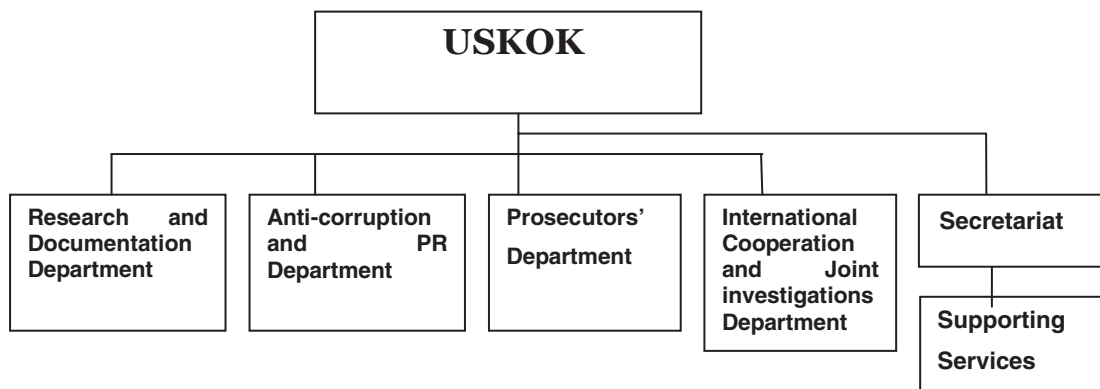
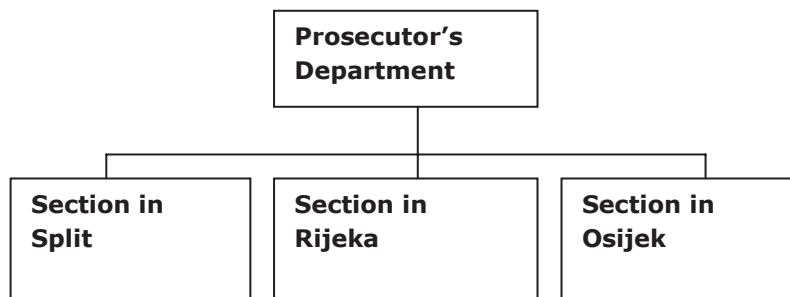


Figure 5.8. Office for the Suppression of Corruption and Organised Crime (USKOK)
sections of the Prosecutor's Department



USKOK consists of *six Departments* with the following *tasks*:

- *Research and Documentation Department*
 - Systematically collects data on instances of corruption and organised crime;
 - Establishes and keeps a database with data which may serve as a source of information in proceedings concerning the criminal offences referred in Article 21;
 - Encourages and directs co-operation between state bodies with the aim of detecting instances of corruption and organised crime;
 - Also performs other tasks pursuant to the annual schedule of work in the Office.
- *Anti-corruption and Public Relations Department*
 - Informs the public about the danger and harm of corruption and about methods and instruments for its prevention
 - Based on the authority and instruction of the Head of the Office, informs the public about the work of the Office
 - Draws up reports and conducts analyses concerning the forms and causes of corruption in the public and private sector, and may also prompt the Head of the Office to adopt new or amend old regulations;
 - Performs other tasks according to the annual schedule of work in the Office
- *Department of State Attorneys Acting as Prosecutors (hereinafter: Prosecutors' Department)*
 - Directs the work of the police and other bodies in detecting the criminal offences referred to in Article 21 herein, and requests the collection of data on these offences;
 - Proposes the application of the security measures of seizure of instruments, income, and assets which are the proceeds of crime provided for in this Act and in other regulations;
 - Performs other tasks according to the schedule of work in the Office.

- *International Co-operation and Joint Investigation Department*
 - In conformity with international agreements, cooperates with the competent authorities of other states and international organisations;
 - Assigns members to joint investigation bodies established on the basis of an international agreement or on the basis of a stipulation concerning an individual case, for the purpose of investigation, criminal prosecution or representation before the court for the criminal offences referred to in Article 21 herein, in the Republic of Croatia or in one or more other states.
- *Secretariat*
- *Supporting Services*

Human and Material Resources

USKOK currently has 57 employees: the Head of the Office; 30 Deputy Heads/Prosecutors; and 26 staff members.

The Law on USKOK lays out the requirements and procedures for the Head of the Office. A deputy of the State Attorney General of the Republic of Croatia, or a county state attorney or his deputy who meets the requirements to be appointed deputy State Attorney General may be appointed Head. The Head shall be appointed by the State Attorney General with the prior opinion of the minister responsible for judicial affairs and the opinion of the collegiate body of the State Attorney's Office of the Republic of Croatia. The procedure for the appointment of the Head shall be initiated by the State Attorney General four months before the expiration of the term for which the Head is appointed. The candidate for Head shall give written consent to be appointed to the office of Head, as well as a statement of agreement to security checks. Along with the request for opinion, the State Attorney General shall submit to the minister responsible for judicial affairs the written consent of the candidate to be appointed to the office of Head. Security checks and the checks of the assets of the Head, pursuant to the request of the State Attorney General, may be performed before the appointment and during the term for which the person has been appointed in conformity with special regulations.

The USKOK Head shall be appointed for a term of four years. After the term for which he/she was appointed has expired, the Head may be reappointed to this office. The Head shall be relieved of duty in cases of relief of duty of state attorneys prescribed in the State Attorney's Office Act. The Head shall be relieved of duty if he does not agree to the security checks or obstructs their execution. The Head shall have equal rights and duties to a state attorney.

A state attorney or deputy state attorney may be assigned to the Office as deputy head, who, after passing the judicial examination, has spent a minimum of eight years working as a judge, state attorney, deputy state attorney, attorney-at-law or as a police officer working on the suppression of crime and who has particular aptitude and competences to investigate the most difficult and most complex criminal offences. A deputy head is assigned in a manner, under conditions and according to a procedure which ensure his/her expertise, autonomy and ability to perform the duties of state attorney related to the tasks of the Office. The know-how and ability to perform the office of state attorney to work in the Office are established on the basis of an opinion on the candidate's work provided by the state attorney, an assessment of his work on complex cases, his performance in the pre-investigative procedure and during criminal

proceedings, and on the basis of an assessment of performance by the office of state attorney.

A vacancy for the position of deputy head shall be announced in a manner that is accessible to state attorneys and deputy state attorneys. The candidates may apply to the announcement within thirty days from the day of publication. A deputy head from the ranks of state attorneys and deputy state attorneys shall be assigned to work in the Office by the State Attorney General on proposal of the Head for a term of four years. After the expiration of this term, a deputy head may be reassigned to work in the Office.

If the Head is not reappointed or a deputy head is not reassigned to work in the Office, he/she shall continue to work as deputy state attorney in the state attorney office where he/she worked before arriving in the Office.

Table 5.4. Office for the Suppression of Corruption and Organised Crime (USKOK) budget 2002 – 2012

	In million HRK (Croatian Kuna)	In million EURO
2002	17.2	2.29
2003	14.2	1.88
2004	10.6	1.42
2005	8.7	1.16
2006	9.2	1.22
2007	11.3	1.49
2008	14.8	1.97
2009	19.7	2.63
2010	16.2	2.15
2011	21.9	2.92
2012	22.3	2.97

Source: Office for the Suppression of Corruption and Organised Crime (Croatia)

Contact Information

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Norway: The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime

The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Den sentrale enhet for etterforskning og påtale av økonomisk kriminalitet og miljøkriminalitet - Økokrim) was established in 1989. It detects, investigates and prosecutes all major, complex and serious cases related to economic and environmental crime, including corruption. The service is institutionally a part of the National Police Directorate, but in individual cases it can be subject to the authority of the Public Prosecution Service. It is noteworthy that Økokrim has evolved from two independent institutions and today represents an integral part of them – it is a special police agency and a specialised prosecution service.

Background information

Norway is regarded as one of the countries with the least corruption in society and business life in the world. It is believed that in everyday life, expectations or demands for bribes from public officials are not encountered, and that businessmen do not offer bribes. In almost all cases, offers or expectations of graft are likely not only to cause offence, but also to attract openly negative reactions. Transparency International's Corruption Perception Index places Norway among 10-14 least corrupt countries in the world, with a score ranging from 7.9 in 2008 to 9.0 in 2011 out of a possible score of 10 over the last 5 years.¹⁷

The most frequent explanations given to the low level of corruption are: the high moral standards of Norwegian civil servants; their independence in the exercise of their duties; the monitoring systems built into public administration; and, above all, the transparency of Norwegian institutions. It was acknowledged that the media has an important role in maintaining the high level of transparency by searching, scrutinising and disseminating information about suspicious economic activities.¹⁸ The Norwegian government has also prepared national action plans against economic crime, including corruption; the last action plan was issued in March 2011.

The aim pursued by the creation of *Økokrim* in 1989 was to better enable the police and the prosecution authorities to fight serious and complex economic and environmental crime, including corruption, by providing a central, national-level organisation with a high level of competence and an emphasis on multi-disciplinary co-operation and targeted investigation. *Økokrim* evolved from two independent institutions. Today, it has the status of a special police agency and a prosecution authority at the same time. In 1994, the Norwegian authorities decided that *Økokrim* should have national responsibility in the fight against corruption. In the same year, the Anti-Corruption Team was established within *Økokrim*.

Legal and Institutional Framework

Økokrim is the central body for investigation and prosecution of economic and environmental crime. It is both a special police agency and a prosecution authority. *Økokrim* has national jurisdiction, and investigates and brings to trial major, complex and serious cases and/or cases of principle relating to economic, environmental and computer crime throughout the whole of Norway.

Economic crime includes:

- gross fraud;
- social security fraud/misuse of governmental subsidies;
- violation of the Accounting Act;
- violation of the Insolvency Act;
- tax evasion;
- offences related to stock market and securities trading;
- violation of the Competition Act;
- corruption, breach of trust, and embezzlement;
- money laundering (handling of stolen property).

Økokrim has a dual role being both a specialist agency within the police and a national prosecuting authority. Chapter 35 of the Prosecution Instructions sets forth the following *tasks* for *Økokrim*:

- to detect, investigate and prosecute crimes, and appear for the prosecution in court;
- to assist domestic and foreign law enforcement agencies and prosecuting authorities;
- to increase the level of expertise among the employees of the police and prosecuting authorities in Norway, and to disseminate information;
- to gather criminal intelligence and to receive and process suspicious transaction reports;
- to act as a consultative body for national and supervisory authorities;
- to participate in international co-operation initiatives.

Økokrim is subordinated to the Police Directorate. It is subject to the authority of the Director of Public Prosecutions in relation to individual cases. The Director of *Økokrim* may, on his/her own initiative, launch an investigation of a case. An investigation may also be started at the request of a local chief of police and public prosecutor, of an official supervisory body, or on the orders of the Director of Public Prosecutions. Chief public prosecutors are each heading a separate, specialised investigation team. These investigation teams are multidisciplinary; they usually consist of special investigators with police experience and special investigators with experience in business administration or accountancy.

Økokrim conducts investigations, prosecutes and to some degree provides assistance to police districts. The procedure to investigate and prosecute corruption in Norway is the same as for any other criminal offence. All local police forces can handle such cases. Therefore, all usual provisions regarding the investigation of criminal cases apply, as provided for under the Criminal Procedure Act. Basically, standard investigative methods are used for corruption cases, including possibilities of arrest and remand in custody, search and seizure and concealed search and seizure, interception of communications, administration of the property of the person charged, ban on visits, tracing devices, undercover agents, etc., all with the approval of a court. Different investigating tools are, however, available, depending on the seriousness of the offence, this seriousness being determined according to the sanctions provided for under the relevant Penal Code sections.

Box 5.2. Composition of *Økokrim* Multidisciplinary Investigation Teams

- a team leader (senior public prosecutor);
- a police prosecutor;
- investigators with police training;
- investigators with qualifications in finance (auditors, commerce graduates);
- an executive officer.

Before the entry into force of the anti-corruption amendments to the Penal Code in July 2003, the full range of investigative tools could only be used when investigating bribery offences under the offence of aggravated breach of trust (Penal Code, section 276), since corruption offences as defined under section 128 only provided for a maximum of one year imprisonment.¹⁹

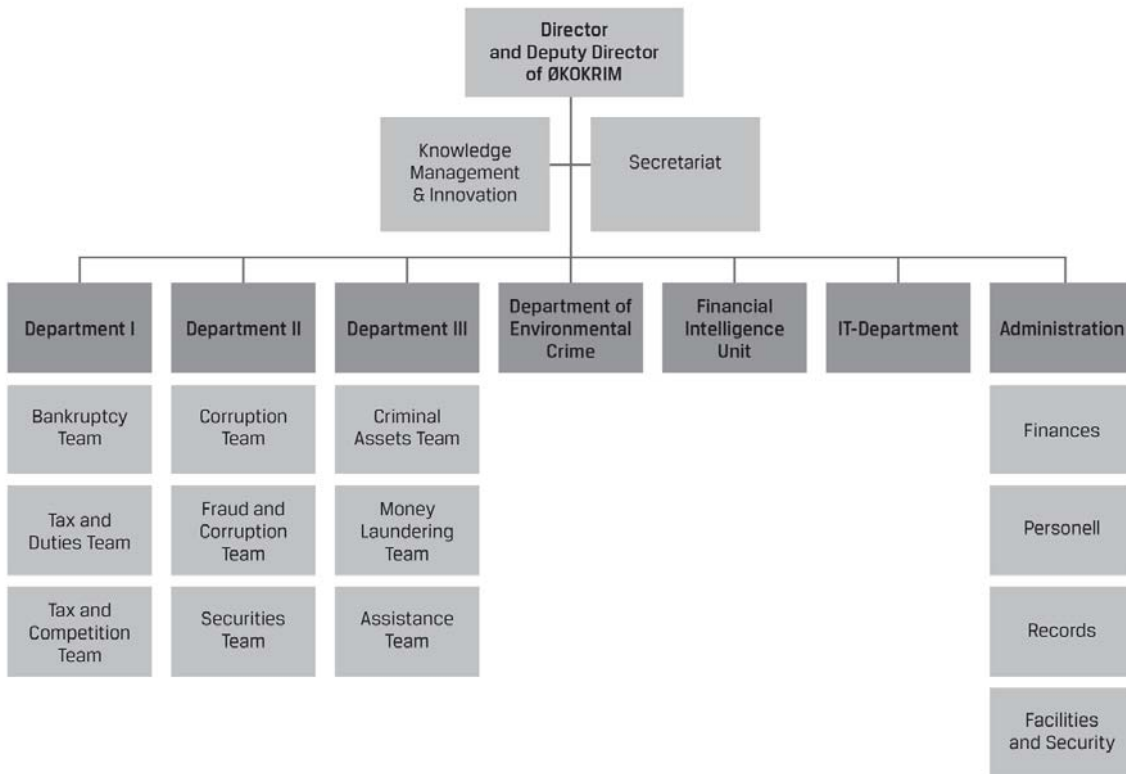
With the introduction of the amendments to the Penal Code pertaining to corruption, the range of investigative tools available to law enforcement authorities when investigating alleged corruption cases have been broadened. Thus, whereas investigations of cases of basic corruption, which are punishable by up to three years' imprisonment (section 276a), only allow for the use of a limited range of investigative tools, investigations of cases of aggravated corruption, with penalties of up to ten years' imprisonment (section 276b), allow for the use of the full range of available investigative tools. Most notably, interception of telecommunications, which is not available for basic corruption, can be used when investigating cases of alleged aggravated corruption (Criminal Procedure Act, section 216a). Furthermore, broader possibilities are available to law enforcement authorities with respect to arrest and remand in custody (Criminal Procedure Act, section 172), as well as search and seizure (Criminal Procedure Act, section 194).

Usage of special investigative tools is available only under the offence of aggravated corruption. Regarding the use of special investigative tools at the beginning of an investigation, when it may still be unclear whether a case will involve an offence of basic or aggravated corruption, a request must be presented before the courts. If that request was granted, the evidence obtained through these special tools would be considered admissible in court in relation to that conduct, even if the offence were to be subsequently reclassified (either at the prosecution or trial stage) as basic corruption. In addition, it has to be said that bugging is provided for in some instances as a measure to prevent crime, namely where there is reason to believe that somebody might commit acts of terrorism, homicide to obstruct justice or as part of organised crime, aggravated robbery or particularly aggravated drug crimes committed as part of the activities of an organised crime group; for triggering this special (preventive) "investigation" tool, police may use information obtained from anonymous sources. However, anonymous witnesses are not allowed in corruption cases.²⁰

One of *Økokrim*'s tasks is also to receive and process suspicious transaction reports pursuant to the Money Laundering Act. Undertakings and legal persons obliged to report to *Økokrim* are financial institutions (such as banks, stock-broking firms, insurance companies), lawyers, estate agents, state authorised and registered public accountants, bookkeepers, and dealers in valuable objects who receive cash payment of NOK 40,000 or more. *Økokrim* and the rest of the police force use these reports for intelligence purposes in their investigative work.

Organisationally, *Økokrim* is one of six specialist agencies within the police, and one of twelve public prosecutors' offices. *Økokrim* has a flat organisational structure (see Figure 5.9). The Director and Deputy Director are supported by the executive group, which consists of the head of the Administration Department, the head of the Press and Information Department, a chief superintendent, a senior adviser with qualifications in finance, and a senior public prosecutor.

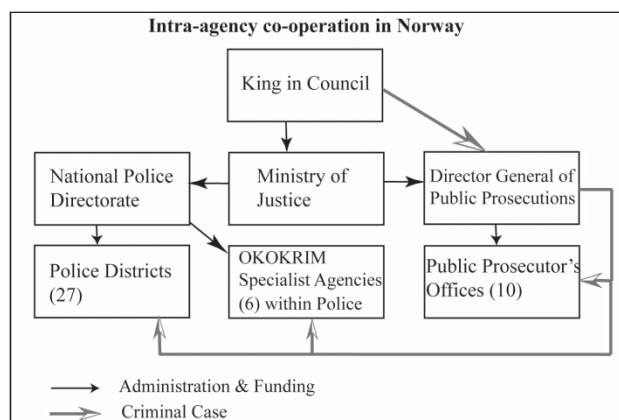
Figure 5.9. Organisational structure of *Økokrim*



Source: www.okokrim.no

Investigations are conducted by fixed, multidisciplinary teams. Each team has its special area of responsibility. The main task of most of the investigation teams is to investigate and prosecute cases initiated by *Økokrim* itself. The Assistance Team offers assistance to the police districts. Other teams – particularly the Environment Team and the Assets Confiscation Team – also offer assistance within their special fields. The Financial Intelligence Unit (former Money Laundering Team) receives and processes reports on suspicious transactions and other intelligence information.²¹

In addition to the investigation teams, *Økokrim* has two advisers working on organisational development, a press and information department, an IT department and an administration department. The Administration Department consists of three sections: the Personnel Section, the Finance Section, and the Records Section.

Figure 5.10. Inter-agency co-operation in Norway

Accountability

As a police agency, *Økokrim* reports to the National Police Directorate regarding administration and funding. When it comes to prosecution of criminal cases, *Økokrim* reports to the Director General of Public Prosecutions. The police districts are not subordinate to *Økokrim*, which means that *Økokrim* cannot direct a police district to investigate a case.

Human, Training and Material Resources

The Director of *Økokrim* holds the rank of both chief constable or a police officer (*politimester*) and chief public prosecutor (*førstestatsadvokat*).²²

The number of *Økokrim* staff is about 120. *Økokrim*'s Anti-Corruption Team was established in 1994 with national responsibility. It consists of 1 chief public prosecutor (heading the team), 1 police prosecutor, 2 special investigators with business administration background, 4 special investigators with police background and 1 executive officer. In addition to purely investigative work, the team is involved in prevention (visiting companies and institutions, participating in conferences and workshops, giving lectures at the Police Academy etc.) and the gathering of criminal intelligence to combat corruption.

Practice and Highlights

Økokrim investigates cases that are substantial, complex, serious and of a fundamental nature. Many of these cases have ramifications for other countries. Cases of fundamental nature are those that lead to development of case law within a certain area. *Økokrim* handles a limited number of such cases. In recent years, most corruption cases have been associated with the offshore oil industry in the North Sea. In 1998, *Økokrim* began working systematically with the business sector to combat corruption. The collaboration covers in the first instance preventive measures and assistance in specific cases where the company suspects corruption is taking place.

A company itself can help reduce opportunities for corruption through its choice of leadership style, working environment, administrative procedures and guidelines, internal information and reactions in the event cases are discovered. External factors beyond the

control of the company can also create a climate for corruption in an organisation. These include general attitudes in the industry, competitive conditions, forms of communication between the players in the industry, the number of international transactions etc. *Økokrim* gives support within the fields of economic crime – also in the cases of corruption handled by the local police – where special expertise is needed.

Most cases regarding economic crime and environmental crime are investigated by the police districts. On request from the police districts in Norway, *Økokrim* offers assistance in the investigation of criminal cases. The type of assistance varies from a few hours' advice by a single *Økokrim* employee to several months' investigation assistance from several *Økokrim* employees. *Økokrim* also assists police districts in assessing whether to institute criminal proceedings. In a few cases, *Økokrim* appears for the prosecution in court on behalf of police districts. Furthermore, *Økokrim* offers assistance in other criminal cases where financial investigation is relevant, *inter alia* in order to ensure that the proceeds from criminal offences be confiscated. *Økokrim*'s assistance also includes executing rogatory letters and providing such assistance as requested by police authorities in other countries. In assisting the police districts in their investigative work, *Økokrim* contributes to developing their expertise, thereby increasing their ability to handle a wider range of cases independently. *Økokrim* has offered assistance to many police districts in establishing multi-disciplinary teams, tasked with investigating economic crime.

Økokrim's director and deputy director decide which cases should be handled by *Økokrim*. *Økokrim* and other police units co-operate with the surveillance authorities, the business sector and others in combating economic and environmental crime. The cases are reported to *Økokrim* by:

- Surveillance authorities (e.g. the Inland Revenue Service, the Banking, Insurance and Securities Commission, the Norwegian Competition Authority, the Customs Service, the Directorate for Nature Management, the Norwegian Pollution Control Authority);
- Other public authorities;
- Local police/prosecuting authorities;
- Director General of Public Prosecutions;
- Trustees in bankruptcy;
- Private individuals.

Økokrim may also institute criminal proceedings on its own initiative or on the basis of suspicious transaction reports received from banks and other financial institutions.

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United Kingdom: Serious Fraud Office

The Serious Fraud Office (SFO) was established in 1988 as an independent public institution under the superintendence of the Attorney General and within the criminal justice system of the United Kingdom. Its mandate is to investigate and prosecute cases of serious or complex fraud and corruption, particularly offences which could undermine confidence in the integrity of business and financial services in the United Kingdom. The distinctive feature of the SFO's approach to investigations is the use of multidisciplinary teams. Each case is allocated to a team of lawyers, financial investigators, specialist accountants, information technology specialists and other support staff.

Background Information

The 1970s and 1980s saw considerable public dissatisfaction in the United Kingdom with the system for investigating and prosecuting serious and complex fraud. In 1983, the government established the Fraud Trials Committee, an independent committee of inquiry chaired by Lord Roskill. The committee considered the introduction of more effective means of fighting fraud through changes to the law and criminal proceedings.²³

The report produced by the Fraud Trials Committee, commonly known as the Roskill Report, was published in 1986. It provided the key impetus for creating the SFO, as one of its main recommendations was to examine the case for a new unified organisation responsible for the detection, investigation and prosecution of serious fraud cases.

The SFO was established in April 1988, by the Criminal Justice Act 1987, as an independent government department headed by a Director, appointed by and accountable to the Attorney General. The present Director is David Green CB QC, whose term of office began on 23 April 2012.

Legal and Institutional Framework

The SFO operates only in England, Wales and Northern Ireland. It does not have jurisdiction in Scotland, the Isle of Man, or the Channel Islands. The SFO's mandate is to direct investigations and prosecute cases of serious or complex fraud and corruption. The types of fraud and corruption it has investigated have been as varied as the victims of economic crime and include major corporations, small businesses, individual investors, state-funded schemes and overseas exchequers. David Green has stated that under his leadership, the SFO will focus on only the most difficult fraud and corruption cases, such as serious frauds which could undermine confidence in the City of London and serious and complex cases of bribery and corruption, whether committed in the UK or abroad. The SFO's remit to investigate and prosecute foreign offences of bribery and corruption has been widened by the broad extra-territoriality provisions of the UK's Bribery Act 2010 (which came into force on 1 July 2011).

The Bribery Act 2010 does not operate retrospectively, however, so some domestic and foreign offences falling within the SFO's jurisdiction will continue to be prosecuted as offences which the Act abolished or repealed with effect from 1 July 2011 (including the offences in the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906).

Criteria for accepting a case

Various reports and cases of suspected frauds are referred to the SFO from members of the public, other agencies, the police or other organisations. These are all carefully assessed against a set of published criteria. These criteria assist the SFO in determining whether a fraud or corruption offence is serious or complex and should be investigated by the SFO, rather than another law enforcement body. A key criterion is whether the Director considers that the suspected offence is sufficiently serious or complex to warrant the use of the specialised powers provided by the Criminal Justice Act 1987.

Box 5.3. Main factors considered by the Serious Fraud Office (SFO) when deciding whether to accept a case

- Is the value of the alleged fraud/corruption over 1 million GBP?
- Is there a significant international dimension?
- Is the case likely to be of widespread public concern?
- Does the case require specialised knowledge, for example, of financial markets?
- Do the SFO's powers provided by section 2 of the Criminal Justice Act 1987 need to be used?

Source: www.sfo.gov.uk

The SFO has two main methods of receiving information to determine if a suspected offence meets its strict acceptance criteria. Both methods require a referral to the intelligence and open source research unit, who ensure any information received (or identified) is subjected to an intensive vetting process, with continual management oversight and set timescales. The intelligence and open source research unit obtains additional information and intelligence from a variety of sources as necessary to determine if a recommendation should be made to accept a referral as a formal criminal investigation. If accepted, the case is allocated to a case manager to investigate and (where appropriate) prosecute.

SFO cases often come from referrals from a partner government or law enforcement agency, non-government agency, professional body (solicitors, accountants, etc.) or from victims/witnesses. Cases also come from self-generated, proactive horizon scanning, (deep internet mining), conducted by the open source research section of the SFO's Intelligence Unit.

The SFO may request additional information from other sources to help inform its decision on whether a case should be accepted. Cases recommended by the vetting team for a formal investigation are submitted to the Director for final acceptance. Cases not accepted by the SFO are referred back to the originating body to carry forward. Each year the police's regional fraud or commercial squads investigate and the Crown Prosecution Service (CPS) prosecutes a large number of economic crimes that do not fall within the SFO's remit. Other government departments also investigate and prosecute specific types of fraud.

Collaborative working

The SFO works closely with other agencies, both within the UK and overseas, in order to investigate and prosecute offences of serious or complex fraud and corruption. In particular, it works closely with UK external agencies and organisations, including law enforcement agencies such as the Serious Organised Crime Agency, Her Majesty's

Revenue and Customs and police forces (particularly the City of London Police, the leading police force for economic crime). The SFO also works closely with various other UK government departments and NGOs.

The Criminal Justice Act 1987 allows the SFO to work with the police on investigations, but the constitutional independence of the police, their accountability and their command structure are retained. The police fraud squads have their own specialist expertise to deal with corruption-related criminal offences. The SFO cooperates extensively with the police, and police officers are often involved in an SFO case team. Police involvement produces real benefits, providing skills, experience and local knowledge which complement the SFO's own legal and financial investigation capability.

The SFO also works collaboratively with a number of organisations and agencies in other jurisdictions to assist in the prevention and detection of crime across borders. Examples are the US Department of Justice, *Eurojust*, and the Council of Europe.

SFO powers

Once a case has been investigated, but before criminal proceedings are instituted, the SFO considers whether, on the evidence against each potential defendant, there is a realistic prospect of securing a conviction and (if so) whether the public interest requires a prosecution. The SFO follows the principles set out in the Code for Crown Prosecutors, which also applies to the CPS.

The SFO's principal powers are provided by the Criminal Justice Act 1987. Other statutory powers are also available to the SFO, including powers in the Police and Criminal Evidence Act 1984, the Regulation of Investigatory Powers Act 2000, and the Proceeds of Crime Act 2002.

Section 2 of the Criminal Justice Act 1987 gives the SFO's Director extensive powers of investigation. These powers, commonly referred to as "section 2 powers" are used to:

- require persons to answer questions or furnish information in other ways;
- require the production of documents;
- obtain search warrants.

Section 2 powers are designed to obtain information to assist an investigation. They may only be used to investigate a suspected offence which appears (on reasonable grounds to the Director) to involve serious or complex fraud and where there is good reason to investigate the affairs, or any aspect of the affairs, of any person. Section 2 powers are known as "compulsory" powers because:

- failing to comply with a Section 2 notice, without a reasonable excuse, is an offence (Section 2(13));
- giving false or misleading information in response to a Section 2 notice is an offence (Section 2(14));
- the "right to remain silent" does not apply to information required under Section 2 (although self-incriminating information obtained under compulsion cannot ordinarily be used in evidence against the provider).

Section 2 powers are exercised by a written notice, known as a "Section 2 notice". Many Section 2 notices are issued to banks, financial institutions, accountants and other

professionals who may, in the ordinary course of their business, hold information or documents relevant to a suspected fraud. In most instances, these institutions and individuals owe duties of confidence to their clients. Whether or not they are willing to assist while these duties of confidence remain, they are unable to do so. Issuing them with Section 2 notices lawfully compels them to provide the information that is required.

Because Section 2 powers are intrusive, it is important that care is taken when:

- deciding whether to use them;
- determining the manner in which they are exercised.

Care is also needed to ensure that all statutory preconditions are satisfied, and that the powers are used only when it is necessary, reasonable and proportionate to do so, in accordance with the Human Rights Act 1998.

Section 2 notices may be issued and signed by any employee of the SFO (or other investigator) who has been authorised by the Director. Notices that require the production of banking information require the additional authority of the Director. SFO lawyers and investigators may be given a general Section 2 authority for a specified period of time. Others may be authorised on a case by case basis. Police officers working with the SFO retain all their own constitutional, common-law and statutory powers, and may not be authorised to use Section 2 powers.

Section 2A of the Criminal Justice Act 1987 enables the Director to use Section 2 powers at a “pre-investigation” stage in relation to overseas bribery and corruption cases.

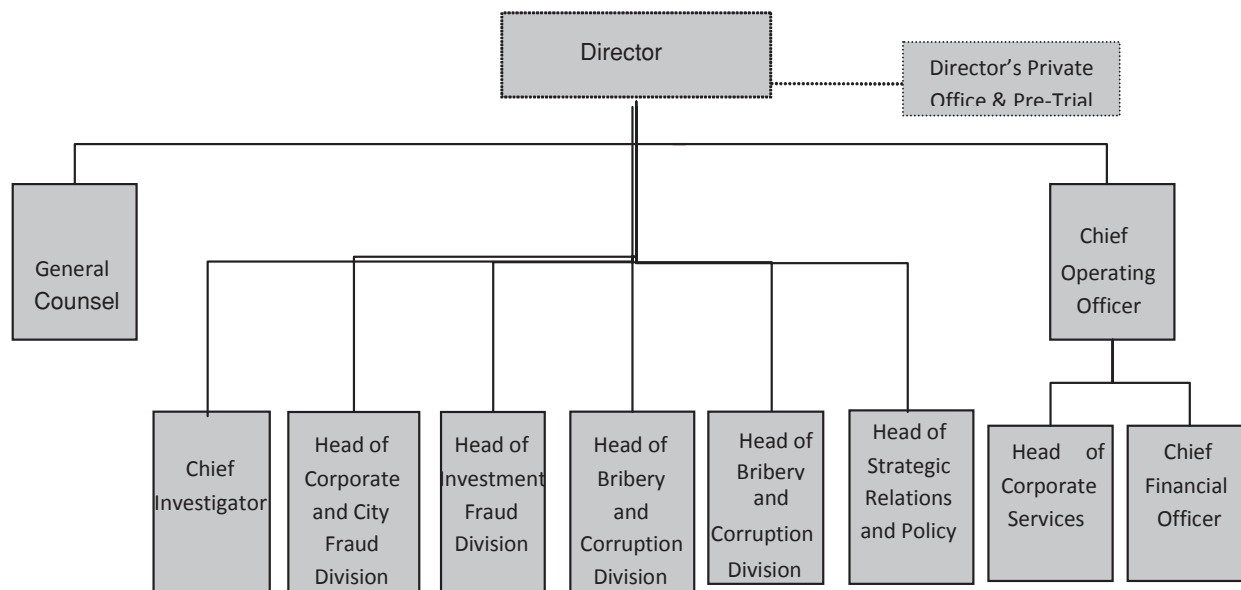
SFO Proceeds of Crime Unit

The SFO established a Proceeds of Crime Unit (POCU) in 2009 to use its powers under the Proceeds of Crime Act 2002. Confiscation enquiries are commenced alongside criminal investigations and, generally speaking, they are carried through to the confiscation order being satisfied. This approach incorporates a standard financial investigation into suspects/defendants, but is extended to include potential contempt of court proceedings (for breaches of restraint orders) through the appointment of management or enforcement receivers, and the activation of the default sentences for those who fail to comply with their orders.

A prime objective of the POCU is to facilitate the payment of compensation to victims of cases prosecuted by the SFO. The Unit also has the secondary role of addressing the financial aspects of cases reviewed by the SFO which are not deemed to be capable or suitable for prosecution, but which can be resolved through action under Part 5 of the 2002 Act 2002 (civil recovery). Further roles include the monitoring of costs orders and the execution of incoming letters of request insofar as restraint orders and associated litigation are concerned.

Accountability

The SFO’s Director is appointed by, and accountable to, the UK’s Attorney General. The Attorney General, in turn, is appointed by the Prime Minister, and is held to account by Parliament. The Director is obliged to present an annual report to the Attorney General on the progress of the SFO throughout the financial year. This report is subsequently provided to Parliament and published. The SFO’s annual reports are available at: www.sfo.gov.uk/publications/annual_report.asp.

Figure 5.11. Management structure of the Serious Fraud Office

Human and Material Resources

The SFO has just over 300 members of staff, 45 of whom are lawyers. Over 90% of SFO staff are deployed on operational work. The remainder fill various corporate service and support roles.

Senior lawyers define the strategy for investigation, prosecution and asset recovery at appropriate stages of each case. Investigative lawyers contribute to the investigative stages of allocated cases, including the case strategy and planning activities, searches and case conferences. They also interview witnesses and suspects, take statements and analyse evidence. They may need to liaise with other agencies, advise on difficult legal or practical issues, or obtain foreign or expert advice.

The SFO has four investigation and prosecution divisions, each headed by a Head of Division. Each Division comprises case teams, made up of investigators, lawyers, and support staff.

Some lawyers work separately from case teams, providing guidance on new legislation and procedures.

The SFO also has a number of specialist units which assist case teams at various stages during an investigation. These include a Digital Forensics Unit, International Assistance, and the Intelligence Unit. The Proceeds of Crime Unit combines 13 accredited financial investigators, eight lawyers and two support staff.

The SFO is funded by the UK Government. A small fraction of its resources comes from incentivisation receipts from the proceeds of crime which the SFO helps recover, and from civil recoveries.

Practice and Highlights

Investigating and prosecuting fraud cases: The SFO is responsible for the investigation and prosecution of the most serious and complex frauds in England, Wales and Northern Ireland. Approximately 20 new cases are accepted by the SFO each year. In 2011–12, there were about 100 cases under investigation or going through the courts at any one time. Cases may include investment frauds, banking or corporate frauds, frauds on the UK government or European Union, and frauds involving the manipulation of financial markets. Most cases have an international dimension, and many require the SFO to work closely with other agencies, as mentioned above.

In the financial year 2011–2012, 20 cases were concluded. Out of the 52 defendants who were tried, 38 were convicted (see Figure 5.12).²⁴ The SFO's actions secured prison sentences averaging 55 months for each convicted fraudster. In one case, a defendant was sentenced to 10 years' imprisonment. In the same year, the SFO also completed three civil settlements worth a total of GBP 16.2 million; and the Proceeds of Crime Unit recovered assets worth more than GBP 50 million from the proceeds of crime, building on the GBP 42.5 million recovered in the previous year.

In March 2012 a GBP 29.5 million *ex gratia* payment was made by *BAE Systems* to benefit the people of Tanzania pursuant to an SFO settlement agreement.

Figure 5.12. Overview of Serious Fraud Office (SFO) cases, 2011-12

Total number of defendants tried	52
Number of not guilty pleas	34
Percentage of defendants convicted	73
Average length of conviction (months)	55
Number of civil settlements	3
Total value of civil settlements	GBP 16.2 million

Source: Serious Fraud Office

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Notes

1. GRECO (2001), *First Evaluation Round. Evaluation of Spain*, Strasbourg, 15 June 2001, p.3.
2. GRECO (2001), *First Evaluation Round. Evaluation of Spain*, Strasbourg, 15 June 2001
3. Act 24/2007 amending Act 50/1981 of 30 December Regulating the Organic Statute of the Public Prosecution Service.
4. The SPS Statute, Article 5:

“1. Reports of wrongdoing may be addressed to prosecutors and referred thereby to the judicial authority or dismissed when the prosecutor finds no grounds for action, in which case the party concerned must be notified accordingly.

2. Similarly, to clarify events occasioning charges or that appear in the reports of the cases assigned thereto, prosecutors may conduct or order any enquiries for which they are empowered under the Code of Criminal Procedure, none of which entail the adoption of interim measures or the curtailment of rights. Prosecutors may, however, order preventive detention.

All the enquiries conducted by the Prosecution Service or under its supervision will be granted the benefit of authenticity.

Such enquiries will be informed by the principles of contradiction, proportionality and defence.

To this end, prosecutors will take the suspect’s statement. Suspects must have legal counsel and may demand to be fully informed of the content of the proceedings conducted. The duration of such proceedings must be in proportion to the nature of the event investigated and may not exceed six months, barring an extension approved by a duly justified order issued by the Prosecutor General. Enquiries to investigate offences referred to in Article nineteen, item four of the present Statute may be conducted for a maximum of twelve months, barring an extension approved by a duly justified order issued by the Prosecutor General.

3. Regardless of the status of the enquiry at the end of the time limit, if the investigation finds evidence of events with criminal significance, prosecutors will proceed to bring the case to trial, lodging the respective charge or complaint, unless dismissal is in order.

Prosecutors may also conduct pre-trial enquiries intended to facilitate fulfilment with other duties attributed thereto by law.”
5. Instruction 4/2006, of 12 July, about Competences and Organisation of ACPO.
6. Spanish police force with military structure and civilian functions; similar to Italian *Carabinieri* and French *Gendarmerie*.
7. The main amendments of the G.E.O. no. 43/2002 were issued in April 2003, in April 2004, December 2004, July 2005, October 2005 and March 2006.
8. See, for instance, http://ec.europa.eu/cvm/progress_reports_en.htm

9. This section is mainly based on the following publication: Anti-Corruption Department (2012), *Combating Corruption through Law Enforcement Measures in Azerbaijan*, Baku, 2012.
10. OECD (2010), *Istanbul Anti-Corruption Action Plan. Second Round of Monitoring Report on Azerbaijan*, OECD, 31 March 2010, p.25
11. OECD (2010), *Istanbul Anti-Corruption Action Plan. First Round of Monitoring Report on Azerbaijan*, OECD, October 2005, p.3
12. OECD (2010), *Istanbul Anti-Corruption Action Plan. First Round of Monitoring Report on Azerbaijan*, OECD, October 2005, p.3; Anti-Corruption Department (2012), *Combating Corruption through Law Enforcement Measures in Azerbaijan*, Baku, 2012, p. 27 – 29.
13. “Progress update by Azerbaijan”, Report presented at the Istanbul Anti-Corruption Action Plan Monitoring meeting, OECD, 22 – 24 February 2012, p.7
14. 1 Azerbaijani manat is about 1 EUR.
15. “Progress update by Azerbaijan”, Report presented at the Istanbul Anti-Corruption Action Plan Monitoring meeting, OECD, 22 – 24 February 2012, p.7
16. “Progress update by Azerbaijan”, Report presented at the Istanbul Anti-Corruption Action Plan Monitoring meeting, OECD, 22 – 24 February 2012, p.15-16
17. See Transparency International, TI Corruption Perception Indexes, www.transparency.org/policy_research/surveys_indices/cpi
18. GRECO (2002), *First Evaluation Round Report on Norway*, Council of Europe, Strasbourg, 11 July 2002, p.6.
19. OECD (2004), Report on the Application of the Convention and 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions, 12 April 2004.
20. Idem.
21. For more information see www.okokrim.no/artikler/in-english.
22. GRECO (2002), *First Round Evaluation Report on Norway*, GRECO, Strasbourg, 11 July 2002.
23. For more information see www.sfo.gov.uk/about-us.aspx.
24. For more information see SFO Annual Reports, www.sfo.gov.uk/about-us/annual-reports--accounts/annual-reports.aspx.

Chapter 6

Corruption Prevention Institutions

Specialised anti-corruption policy and corruption prevention bodies

France: Central Service for Prevention of Corruption

The French Central Service for the Prevention of Corruption (Service Central de Prévention de la Corruption – SCPC) was established in 1993. It is attached to the Minister of Justice and is a relatively small body, dedicated to analyse and legal advice. Since its inception, the SCPC mission has evolved. While originally the work of the SCPC was limited to gathering information from public authorities in France concerning corruption, disseminating information on corruption prevention or providing information to support judges and prosecutors, for several years the SCPC has expanded its missions. It is now also a service that conducts advocacy and training and is increasingly involved in international co-operation and intergovernmental activities.

Background information

In late 1980s and early 1990s, an increasing number of political scandals emerged in France in relation to illicit financing of political parties and campaigns. In this context, on January 29th, 1993, the French Parliament adopted law N° 93-122 “On Preventing Corruption, Transparency in Business and Public Procedures”. This law provides a series of measures, including the creation of the Central Service for the Prevention of Corruption (SCPC), tighter and more transparent rules for financing electoral campaigns and political parties and awarding public procurements and more rigorous control over local authorities.

The Constitutional Council was requested to review the law, including the SCPC mandate, and in a decision of the 20th of January 1993, it concluded that “assimilating powers of an administrative service with judicial police means ignoring the principle of separation of powers, as well as respect of individual freedoms established by the Declaration of Human and Citizen Rights; in addition, conditions to communicate all kinds of documents to this service violate the right to property”.¹

As a result, some articles of the law in relation to the SCPC had to be cancelled. The service was not granted investigatory powers and it was denied the right to obtain mandatory response to its requests.

It is considered that investigatory powers could have helped the SCPC to carry out its mission more efficiently. This was one of the weaknesses pointed out by research few years later, stating that “no relevant case has been disclosed or investigated by this new institution”.² At several occasions, in its Annual Reports, the SCPC had suggested that

the right to request administrative documents should be attributed to it in the future, as it is already the case for many other public administration bodies.³

Legal and institutional framework

Law n° 93/122 of January 29th, 1993 “On Prevention of Corruption and Transparency of Economic Life and Public Procedures” and decree n° 93/232 of February 23rd, 1993 constitute the SCPC’ legal and regulatory basis. The law establishes the SCPC as an administrative body under the responsibility of a senior judicial officer (either prosecutor or judge).

The law sets forth the mandate and main functions of the SCPC to:

- Centralise information necessary for the detection and the prevention of passive and active corruption offences, trading in influence, concussion, illegal use of public function, failure to respect open and equal access to public procurement. In the implementation of its mission, the SCPC must inform public and private persons on the situation and the evolution of corruption in the country.
- Offer assistance to judicial institutions investigating, prosecuting and adjudicating corruption cases, upon their request;
- Provide advices to administrative bodies for preventing corruption, upon their request.

For instance, the SCPC can present opinions on draft laws upon request of the minister of Justice about any question related to corruption.

The SCPC has no powers to investigate administrative or criminal cases. When the Service reveals facts that may cover an offence, it immediately refers the matter to the public prosecutor (*Procureur de la République*). Once an investigation is opened by judicial authorities, the SCPC cannot be involved in the case anymore.

The SCPC does not provide legal advice to individuals or private parties. It does not either determine liability or impose administrative or disciplinary sanctions to public officials, but it can refer information to other public authorities that can lead to an enquiry.

The SCPC can collect information from all individual and legal persons but the law does not establish an obligation to provide it.

Further to the law, decree N° 93/232 of February 23rd, 1993, lists those administrative authorities that can request an opinion from the SCPC, including:

- state administrative services (ministers, prefects, state treasury, public accountants, public bodies);
- administrative and judicial control commissions (National Commission of Election Accounts and Political Financing, Commission for Transparency of Political Life, the French Financial Investigation Unit (FIU) TRACFIN, Interministerial Task Force of Inquiry into Public Procurement; Competition Commission, Financial Markets Authority);
- regional and local authorities (city mayors, presidents of regional, departmental and local councils); audit and control bodies (Courts of accounts, other control and inspection bodies);

- private enterprises with missions of public services.

The decree establishes the obligation for the SCPC to present an annual activity report to the Prime Minister and to the Minister of Justice. Afterwards the report is made public. The report also includes suggestions of measures to be taken to prevent irregularities reported to the SCPC.

Human and material resources

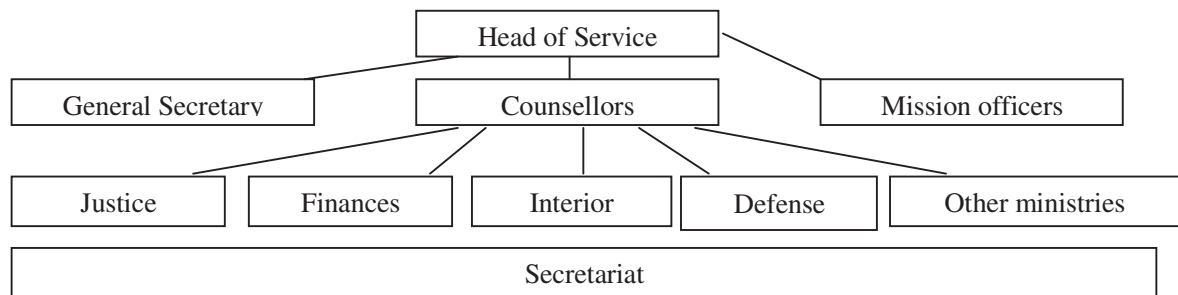
At the beginning of 2012, the SCPC is firstly staffed by 3 magistrates from the Judiciary: the head of the Service, the general secretary and 1 counsellor. The other counsellors working at the SCPC are public servants. In all, the SCPC is composed of 8 people. The counsellors are seconded by various state institutions, be it judicial or state administration. There are also 2 assistants in the Service. The head of the Service and the general secretary are both nominated by President of the Republic's decree for four years; the head of the Service cannot be dismissed in the interim. The current head of the Service was appointed in 2011; he was previously General Advocate at the Court of Cassation (French Supreme Court).

The counsellors are experienced professionals, coming from the judiciary and from state administrations, such as the Police, the Gendarmerie, the Tax administration, the Chambers of Accounts, Competition, Repression of Fraud, Interior and Education ministries.

The head of the Service selects the staff members. At any moment, he can decide to return them to their administrations. The staff members remain judiciary personnel, or civil servants of their administrations, which continues to pay them their wages.

In 2011, SCPC's own budget was approximately of EURO 50 000. *Prima facie*, this amount could seem limited. Nevertheless it is necessary to considerer that the SCPC's staff is directly paid by several administrations and standing expenses and running costs are supported by the Ministry of Justice, such as accommodation, maintenance, etc.

Figure 6.1. Organisational structure of the Central Service for the Prevention of Corruption (SCPC)



Accountability

The SCPC is attached to the Minister of Justice and reports to him/her. Neither the Government nor the Minister of Justice can give instructions to the SCPC and its members. According to its regulation, the SCPC presents an annual report to the Prime

Minister and the Minister of Justice which could integrate any concern about its autonomy.

The report examines the main issues of corruption and contains analysis about selected economic sectors, as well as practical and legal notes on criminal offences. This document is often related to issues covered by the opinions provided by the SCPC. It is published by the *Documentation française* and available on the SCPC website at www.justice.gouv.fr/minister/minscpc.htm.

Box 6.1. Themes of SCPC Annual Reports, 2006 - 2011

Besides, the analyses of data corruption in France, the following topics were discussed.

2006: different approaches to the phenomenon of corruption in France; inclusion of prevention in the CAC 40 companies annual reports; for a transparent approach to lobbying; fraud, false invoices, corruption and software manipulation; the role of subsidiaries in the globalized economy; urban planning and corruption risks; handout: the search for fraud: from direct evidence to presumptions.

2007: games, money gambles, internet and corruption: the need for regulation; audit of corruption in public procurement: a methodological guide; fraud and corruption in the economy: how did the crime go in the business world? International conventions to fight against corruption and accountability of the corporation; a need for transparency, the independent expert: myth or reality? Analysis of law cases.

2008: the subprime crisis and the resurgence of fraud in global finance; the Madoff's case or the controls bankruptcy ; the independent expert, the role of conflict of interests in the finance crisis; tax havens; investigation into public procurement; the seizure of criminal assets in France; the French courts have jurisdiction in international criminal corruption; elements of jurisprudence.

2009: lobbying: is French timidity justified? Corruption risks associated with international transactions.

2010: cassation court's cases (2008-2010); a mission of co-operation with different stakeholders involved in the prevention and fighting against corruption; the national and international partnerships; administrative judge's consideration of integrity violations through the study of jurisprudence from 2000 to 2010; the conflict of interest or the gradual emergence of a new legal standard; an example of foreign anti-corruption agency (Catalonia, Spain).

2011: prevention of corruption in France; the evaluation by international organizations of the French anticorruption legal and institutional setup; the whistleblowing; an example of foreign anti-corruption agency (Morocco).

Source: Central Service for the Prevention of Corruption (SCPC) annual reports, available at www.justice.gouv.fr/publicat/scpc.htm

Practice and highlights

The centralisation of information is the main activity of the SCPC – to collect data, to analyse corruption risks and to develop preventive measures in different economic sectors. This task covers both private and public areas.

Information handled by the SCPC comes from national and international sources, open and restricted ones. The restricted sources are taken in the criminal records and other judiciary documents, or given by public administrations or independent agencies, such as general inspectorates.

The SCPC does not focus on specific cases or particular persons; it rather aims at developing the understanding of situations and mechanisms leading to different type of corruption. For the past few years, the SCPC has made significant efforts to increase the number and the quality of information sources.

Inquiries: On average, the SCPC receives 20 requests per year from judicial or administrative authorities to provide either an independent, expert opinion or assistance in a specific case under investigation. The SCPC considers that it is still a lot below its actual operational capacity and modest if compared to the number of court convictions.

Opinions to public administrations: Following up the requests, the SCPC provides in average 10-12 opinions to public administrations every year. Most of the time, the opinions are requested by local officials, mainly mayors of towns. In 2010, 8 advices were given on their request to local officials. The main reason for contacting the SCPC is that the local officials do not have their own legal services, while they may need a discrete and independent opinion in specific situations. Most of the opinions concern the “illegal taking of interest” (decision-taking involving personal interests). Essentially, the SCPC responds to enquiries on whether a public contract can be signed or a public service outsourced to relatives or close friends of a local official.

Assistance to judicial authorities: The SCPC provides advice to proceed with investigation of specific cases. The number of requests from prosecutors, judges and judicial experts remains one of the least developed areas of activity, despite the fact that the Service is attached to the Minister of Justice and headed by a magistrate. The SCPC points out that a bigger number of tribunals, especially of small and average size could benefit from its assistance, but sometimes they lack knowledge about its existence and mandate.

The SCPC cooperates with other State institutions: It works with judicial and administrative bodies, such as the French Financial Intelligence Unit TRACFIN, the Ministry of Justice and the Anti-corruption Brigade (BCLC) of the national Police.

The SCPC assists public administration. It works in strong relation with other State administration such as the Ministry of Foreign Affairs or the Ministry of Economy for preventing national and international corruption. For instance, the SCPC helps control officers or general inspectorates to determine a risk mapping in the institutions they need to monitor. In 2008, the SCPC and TRACFIN jointly drafted a manual entitled "Guide to aid in the detection of transactions that could be related to corruption". This document informs and trains professionals involved in suspicious transaction reports to the risks of money laundering in France, including the integration of funds from international corruption (especially by politically exposed persons). A new edition of this Guide is to be published in 2012.

Indicators: The SCPC also assists supervisory and control bodies to develop indicators helping to identify the main forms of financial manipulations and how to prevent them;⁴

Training and awareness-raising: in addition to its tasks explicitly set forth by the law, the SCPC also increasingly provides professional training courses. These activities aim at preventing corruption and better detecting cases of corruption and fraud. The courses are drawn on legal and technical expertise of SCPC members and on collected data.

The SCPC has developed training in various areas, for instance, fraud and corruption risks in public works, public contracts or health sector. The SCPC provides training courses to:

- Police, prosecution and courts on detecting and sanctioning fraud and corruption;
- Public administrations facing risks of corruption and fraud (i.e. ministries that are considered vulnerable to corruption or are represented at the SCPC - equipment, housing, transport, interior, economy, - control, audit and anti-fraud specialists, local officials, e.g. Training Centre for Public Territorial Agents);
- Public and private enterprises (e.g. training courses for senior company auditors run by the French Institute of Internal Audit and Control⁵);
- Students (e.g. universities, *Ecole Nationale d'Administration* (for High public officials), *Ecole Nationale de la Magistrature* (for judges and prosecutors), Police, Customs, HEC School of Management) and general public.

The members of the SCPC dedicate about 15% of their time to the training and awareness-raising activities. The SCPC cooperates with training centres, schools and universities. In 2011, the SCPC provided around 200 hours of training.⁶

Box 6.2. Example of SCPC Training Module for Police on Public Procurement

- Day 1.** Presentation of the SCPC and the Anti-Corruption Brigade of Judicial Police
Offences of Corruption and trafficking in influence
- Day 2.** Notion of public procurement and phases to award a public contract
Glossary of terms
Common practice
Favouritism, illegal taking of interest, informal agreements
- Day 3.** Methodology
Double bills
Analysis of Accounts
Shell companies
Commentary on Financial reports of companies paying tax on companies
Commentary on two recent scandals
- Day 4.** Case study (an existing case where there was a court verdict, analysis of documents relevant for the investigator during the search, preparation of questionings, etc)

Source: Central Service for the Prevention of Corruption (SCPC).

Partnerships with enterprises: the SCPC supports private initiatives for preventing and fighting corruption. It has developed a number of partnerships with public and private enterprises. These partnerships are based on agreements negotiated with each enterprise and usually provide for co-operation in the following 4 areas:

- exchange of information ;
- issues of ethics and development or improvement of codes ;
- compliance programmes ;
- training of staff members, especially to the most vulnerable to corruption ones.

As of 2006, the SCPC has developed partnership agreements with 15 enterprises. Partnership agreements have been signed with leading French enterprises, including public companies, such as *EDF* (Electricity of France) or the *SNCF* (National railroads), as well as private companies, for instance, *Dassault Aviation*, *Vivendi Environment* or *Accor*. Besides, partnerships are developed with professional associations, such as the Association of Private Enterprises, the Employer's Federation (MEDEF), the Association of Chambers of Commerce and Industry. Co-operation has also been developed with business management schools (see above "Training and awareness raising"). Some of those partnerships have expired and some have been extended: notably, the partnership with the ADIT has been concluded in 2012 to associate more closely the SCPC to the procedure of certification of the anti-corruption references that enterprises use in their conformity activities.

International activities: The SCPC has become an international and multilateral stakeholder and expert in the fight against corruption and the prevention of corruption.

At the multilateral level, the SCPC is statutorily present in numerous international forums and is called on for activities carried out by the OECD, the Council of Europe (GRECO), the European Union, the United Nations, the World Bank, the G-20 Anti-Corruption Working Group and the International Monetary Fund. The SCPC takes part in international negotiations and preparatory works led by different international organisations in the area of fighting and preventing corruption.

The SCPC is part of the French delegation in the OECD Working Group on Bribery, the Council of Europe delegation in GRECO and is in charge to oversee proper application of the Council of Europe's anti-corruption conventions. SCPC has been designated as point of contact in the French network against corruption of the judicial co-operation unit of the European Union (*EUROJUST*) and in the European Anti-Corruption Network (EACN). The SCPC attends the UNCAC Prevention and Asset Recovery Working Group and the UNCAC Conference of the State Parties meetings. As Party to the UNCAC, France has designated the SCPC as the authority that may assist other States Parties in developing and implementing specific measures for the prevention of corruption (Article 6-3 of the Convention). In addition, the SCPC is in France one of the "bodies or persons specialized in combating corruption through law enforcement" (Article 36).

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Slovenia: Commission for the Prevention of Corruption

The history of specialised anti-corruption bodies in Slovenia dates back to 2002, when the Government's Office for the Prevention of Corruption was established. The current Commission for the Prevention of Corruption of the Republic of Slovenia (Komisija za preprečevanje korupcije – CPC) has been established following the adoption of the Integrity and Prevention of Corruption Act of 2010. The CPC is an independent state body (like the Human Rights Ombudsman, the Information Commissioner, or the Court of Audit) with a mandate in the field of preventing and investigating corruption, and of breaches of ethics and integrity of public office. Although part of the public sector, the CPC is not subordinate to any other state institution or ministry, and does not receive direct instructions from the executive or the legislature.

Background Information

The history of specialised anti-corruption bodies in Slovenia dates back to 2002, when the Government's Office for the Prevention of Corruption was established (following a direct GRECO recommendation on this matter), followed by the creation of an independent Commission in 2004 based on the Prevention of Corruption Act of 2004. The Commission had preventive and coordinative functions but lacked investigative and enforcement powers, and was throughout its existence plagued by a lack of financial support and staff, while, at the same time, enjoying significant public support. In 2007, the Government passed legislation aimed at abolishing the institution; a move that was eventually stopped by the Constitutional Court.

In June 2010, the Integrity and Corruption Prevention Act was adopted. The Act has retained the name of the CPC, but significantly expanded its mandate, functions and powers. It also strengthened its independence and introduced additional safeguards and objectivity in the procedure for appointment and dismissal of its leadership. Most importantly, it expanded some of the investigative and sanctioning powers of the CPC and made it not only the national focal point for prevention of corruption, but also for lobbying oversight, whistleblower protection, and integrity of the public sector, and expanded its reach beyond the public into the private and business sector. The amendments to the Act adopted in June 2011 further strengthened the powers of the CPC to subpoena financial documents for the public and private sector, and to hold accountable magistrates, officials, public servants, management and boards of public enterprises for corruption, conflict of interest or breach of ethics.

Legal and Institutional Framework

The legal and institutional framework of the CPC is determined by the following documents:

- the Integrity and Corruption Prevention Act, 2010;
- Rules of Procedure of the Commission for the Prevention of Corruption, 2012;
- Resolution on the Prevention of Corruption in the Republic of Slovenia (the National Anti-Corruption Strategy), 2004.

Organisationally, the CPC is an independent constitutional body (similar to an office of Human Rights Ombudsman) which only reports to the Parliament. Such an independent status enables it to exercise its tasks towards all public institutions in Slovenia, including courts and the parliament. The CPC has a central office located in Ljubljana.

Although part of the public sector, the CPC is not subordinate to any other state institution or ministry, and does not receive direct instructions from the executive or the legislature. To strengthen its independence, the law provides a special procedure for the appointment and dismissal of the leadership of the CPC. The Chief Commissioner and two deputies are appointed by the President of the Republic of Slovenia following an open recruitment procedure and nomination by a special selection board. Candidates, which must meet high professional and integrity standards, are interviewed and screened by a selection board comprising a representative of the Government, the National Assembly, non-governmental organisations, the Independent Judicial Council, and the Independent Council of Officials. The Chief Commissioners' term of office is six years, the deputies' five. They can serve up to two terms in office. Prior to the expiration of the mandate, they can only be dismissed from office by the President (on his/her own motion or on the motion of the Parliament) if they act in breach of the Constitution or the law.

The CPC has a wide *mandate* in the field of preventing and investigating corruption, breaches of ethics and integrity of public office. Moreover, the CPC is responsible for:

- conducting administrative investigations into allegations of corruption, conflict of interest and illegal lobbying;
- protection of whistleblowers;
- monitoring the financial status of high-level public officials in the executive, legislature and judiciary through the assets declaration system;
- maintaining the central register of lobbyists;
- adopting and coordinating the implementation of the National Anti-corruption Action Plan;
- assisting public institutions in the development of integrity plans (methodology to identify and limit corruption risks) and monitoring their implementation;
- designing and implementing different anti-corruption preventive measures (awareness raising, training, etc.);
- serving as the national focal point for international anti-corruption co-operation at the systemic level (GRECO, OECD, UN, EU, etc.).

The CPC is not part of the law enforcement or prosecution system of Slovenia, and its employees do not have typical police powers. They do, however, have legal *powers* to:

- access and subpoena financial and other documents (notwithstanding the confidentiality level) from any state authority or private entity;
- question public servants and officials;
- conduct administrative investigations and proceedings;

- request different law enforcement authorities (e.g. the Anti-Money Laundering Office, the Tax Administration) to gather additional information and evidence within the limits of their authority;
- request different supervisory bodies to initiate internal review, disciplinary, internal or external audit procedures in public entities, including companies and corporations in which the State or local self-government hold a predominant share of ownership;
- issue fines for different violations under its jurisdiction to natural and legal persons in the public and private sectors.

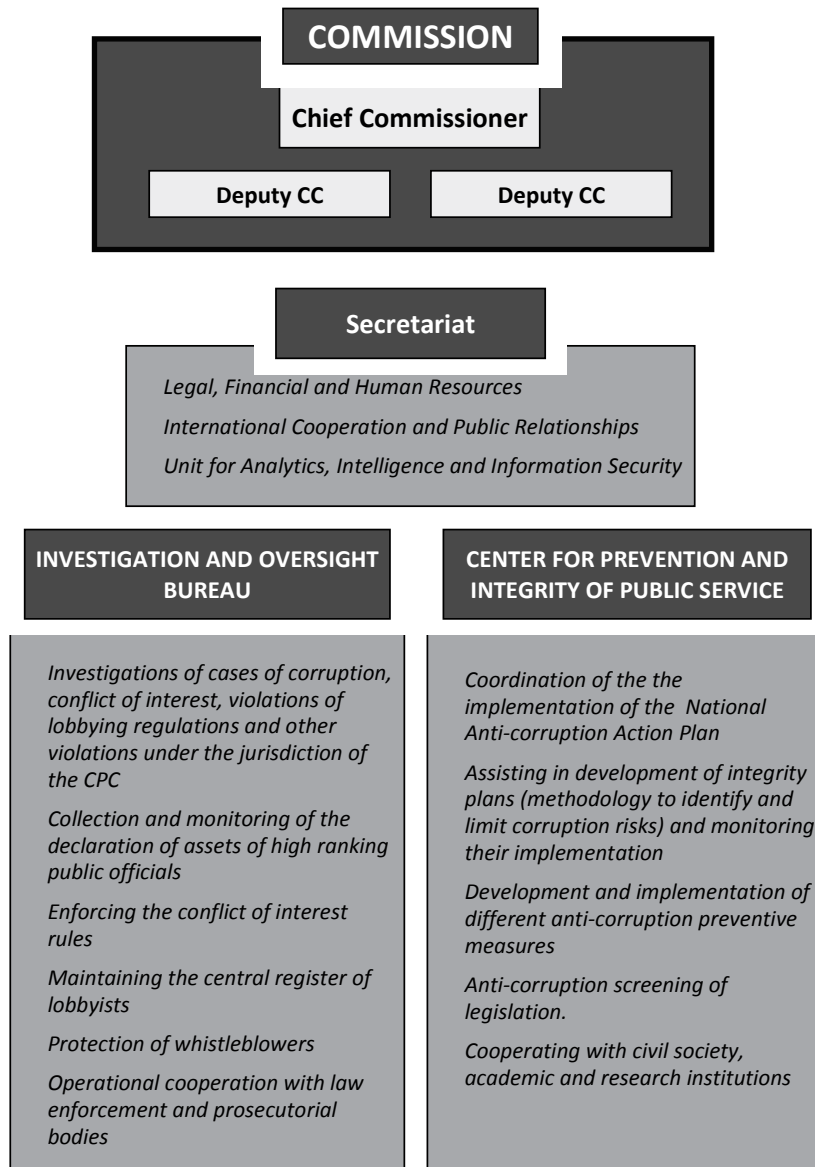
The CPC's legal powers and duties in strengthening integrity and preventing and eliminating the risks of corruption in the public and private sectors encompass preparation of expert groundwork for strengthening integrity and training programmes, preparation of models of integrity plans, and advising.

The CPC in the strict sense consists of three members – the Chief Commissioner and two deputies. They decide on substantial matters (ruling on corruption, conflict of interest, breach of ethics, adopting recommendations, etc.) as a collegial body with a majority of votes. The CPC is further organised as appropriate to its jurisdiction and tasks, which are preventive and regulatory/investigative. It follows a two-pillar approach.

The first pillar – *the Investigation and Oversight Bureau* – has an eight-year history of specialised anti-corruption bodies, and it collects and monitors the declaration of assets of high-ranking public officials, investigates cases of corruption, conflict of interest, violations of lobbying regulations, and other violations under the jurisdiction of the CPC.

The second pillar – the *Centre for Prevention and Integrity of Public Service* – includes, *inter alia*, the analysis of corruption phenomena, the development and implementation of various preventive measures, raising public awareness and enhancing integrity, including activities related to preparation of integrity plans, analysis and identification of corruption risks and factors, cooperating with civil society, academic and research institutions, etc.

The *Secretariat* is responsible for the systemic development of the doctrine of anti-corruption and ethics of the public sector, undertakes analysis and research on corruption with the use of information technologies, carries out anti-corruption screening of legislation, is responsible for international activities of the CPC and public relations, as well as performing administrative, personnel, logistical and financial functions for the CPC.

Figure 6.2. Organisation and functions of the Commission for the Prevention of Corruption (CPC)

Human and Material Resources

The CPC employs staff with different expertise (in the field of law, economics, audit, social sciences, information technology, conducting investigations, etc.) working in the CPC three main departments (see Figure 6.2.).

Employees of the CPC are recruited directly by the CPC in an open and competitive recruitment procedure or seconded from other state institutions; they are public servants and are bound by the salary scheme and regulations governing the public service.

The budget of the CPC is determined yearly by the Parliament, and the CPC is autonomous in allocating and organising its financial and human resources and priorities within its budget.

While the legal framework safeguarding the independence of the CPC, and the material conditions for its work (facilities, information technology, etc.) are generally satisfactorily, the CPC - due to fiscal restraints - remains understaffed - in particular given the broad new mandate under the Act of 2010.

Since its inception, the CPC has been facing budgetary restraints and lack of staff. In the last two years (2010-2012), the annual budget of the CPC was approximately 1,8 million EURO; it employs 40 staff.

Accountability

Substantive decisions of the CPC (ruling on corruption, conflict of interest, violations of lobbying regulations etc.) are subject to judicial review of the Administrative Court. Under the Act, the CPC must be the subject to periodic external audit, the reports of which are submitted to the Parliament and the President, and which are publicly available. The CPC is also required to present yearly reports to the Parliament for elaboration. In addition, by Act, decisions of the CPC (with few exceptions) must be published on the internet, and various provisions require the CPC to publicise its work and its findings.

Practice and Highlights

In addition to carrying out various *training* (120 training events in year 2011) and *preventive activities* in relation to corruption and integrity of the public service, the CPC yearly *investigates over 1.300 cases* under its jurisdiction; approximately 30% of them are referred for further criminal investigation and prosecution. The CPC keeps and monitors the *declarations of assets* of over 8 000 officials.

Project “Transparency”. Transparency of state functioning and functioning of local communities increases the level of responsibilities of public office holders for their decisions and efficient use of public resources. Public accessibility to information facilitates debate on matters of public concern in a more informed way, decreases risks for illicit management, abuse of functions and helps to limit systemic corruption, unfair competition and clientelism.

Therefore, the CPC has designed a project called “*Transparency*”, which is open to the public, the media, the professionals and different supervisory bodies. At its initial phase, the project provides three different services:

- “*Supervisor*” – an online application for monitoring expenses of public bodies;
- *Contacts with lobbyists* – a list of reported contacts with lobbyists;
- *Financial status of the leadership of the CPC*.

“*Supervisor*” – *monitoring public expenditure*. “*Supervisor*” is an online application, conceptually designed and prepared by the CPC and launched by it in August 2011. This data base provides information on business transactions of all public sector bodies – all direct and indirect budget users (the bodies of all three branches of power, judicial and other state institutions, local communities, public institutes, public funds, etc.). The data is updated monthly.

“*Supervisor*” allows oversight over the average EURO 4.7 billion a year used for goods and services by the public sector. The application indicates contracting parties, the largest recipients of funds, related legal entities, date and amount of transactions and also

purpose of money transfers (for all services and goods payments over EURO 4 000). It also enables presentation of data using graphs as well as printouts for specified periods of time and other.

“*Supervizor*” combines relevant data from different sources (the Ministry of Finance, the Public Payments Administration, the Agency of the Republic of Slovenia for Public Legal Records and Related Services, etc.) in a more user-friendly format. “*Supervizor*” did not require any law modifications. It represents an important step towards more transparent state operations, and will be further upgraded and improved by the CPC in cooperation with other bodies. The application enables insight into financial flows among the public and the private sector not only to the public, the media and the profession, but also to other regulatory and supervisory bodies. “*Supervizor*” is not only a tool for responsible journalism and responsible citizenship; it is also a valuable source of information for law enforcement authorities.

Moreover, the application shows the ownership and management structure of Slovenian companies, as well as some data from their annual reports. Since financial transactions and financial flow analyses are a vital part of the evidence-gathering process when investigating economic crime, public finance crime and corruption, the use of a tool where information on business transactions of public sector bodies as well as other information regarding recipients of public funds is in one place is extremely useful.

“*Supervizor*” allows the CPC to achieve its primary purpose: to strengthen the rule of law, integrity and transparency, and mitigate corruption risks and conflicts of interest.

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Serbia: Anti-Corruption Agency

Anti-Corruption Agency in Serbia is one of the most recent dedicated corruption prevention bodies. Established in 2010 the Anti-Corruption Agency in Serbia is led by a 9 member board and is an autonomous body reporting to the Parliament. it co-ordinates national anti-corruption strategy and has a range of other preventive functions, including integrity plans in public administration and control of financing of political parties.

Background Information

Serbia's Anti-corruption Agency (ACA) was established in 2010. The Agency is the result of Serbia's 2005 Anti-corruption Strategy and the Strategy's 2006 Action Plan.

Legal and institutional framework

The Serbian Anti-corruption Agency's has been established by Law, where its *functions* are laid down as follows:⁷

- co-ordination of the implementation of the Serbian National Anti-corruption Strategy, and its corresponding Action Plan, as well as sector anti-corruption and integrity plans;
- monitoring and co-ordination of the state bodies in the fight against corruption;
- resolving conflict of interest cases;
- adherence to rules governing the financing of political parties;
- initiatives for amending and enacting regulations in the field of fighting corruption;
- keep a register of public officials;
- keep a register of property and income of officials (hereinafter *Property Register*);
- expert assistance in the field of combating corruption;
- drafting regulations in the field of fight against corruption;
- guidelines for developing integrity plans in the public and private sector;
- education programs concerning corruption;
- corruption complaints by legal and natural persons,
- research, monitoring and analysis of statistical and other data on corruption phenomena;
- monitoring of international co-operation in the fight against corruption.

The *structure* of the SACA is as follows.

It consists of a Board and the Director. The responsibilities of the *Board* are to:

- Appoint the Director;
- Appeal against the Director's decisions;
- Adopt the Annual Reports that are being submitted to the parliament;
- Supervises the work of the Director.

The *Director*:

- Represents the Agency;
- Manages its operations;
- Organises and ensures the Agency's work in compliance with the requirements set out by Law;
- Issues decisions on violations of the Laws;
- Pronounces measures;
- Prepares annual reports;
- Drafts proposals of budget funds for the Agency;
- Decides on the rights and duties of Agency staff;
- Enforces Board decisions.

Serbia has an elaborate anti-corruption infrastructure. Since 2001, an Anti-corruption Council has been in place, which acts as an advisory body to the government.⁸ The Commission for the Protection of Rights in the Public Procurement Procedure provides checks and balances over the regularity of the public procurement process;⁹ the Information Commissioner acts as the oversight institution for the freedom of access to information legislation. The tax administration and the state audit institution also play a role in addressing corruption. A Special Prosecutor for Combating Organised Crime also deals with corruption cases; the Ministry of Finance's Department for the Prevention of Money-Laundering (Serbia's Financial Intelligence Unit) oversees the implementation of the Law on the Prevention of Money-Laundering and Terrorist Financing; the Directorate for the Management of Seized Assets is part of the Ministry of Justice oversees the implementation of 2009 Law on Seizure and Confiscation of Proceeds from Crime.

The Director of the SACA is appointed by the Board. The Board consists of 9 members, each of whom is elected for a four-year term that can be renewed once. The Board members are elected by the National Assembly from nominees of the following institutions:

- The Administrative Committee of the National Assembly
- The President of Serbia
- The Government of Serbia

- The Supreme Court of Cassation
- The State Audit Institution
- The Protector of Citizens and Commissioner for Information of Public Importance
- The Social and Economic Council
- The Serbian Bar Association
- The Associations of Journalists of Serbia¹⁰

The members of the Board receive a monthly remuneration for their work (twice the amount of the net average monthly salary). The Chairman of the Board is being elected by the Board members. Board members cannot be members of political parties. A Board member can be dismissed; the dismissal procedure can be initiated by the Chairman of the Board; at least three members of the Board; the Agency Director; and/or the institutions which had nominated the member. The dismissal has to be approved by the National Assembly. The Board decides on a majority vote basis.

The term of office of the Director is five years, and he/she cannot be elected more than twice. The position of Director is part of a public call for applications; candidates for the position of Director have to have a law degree; nine years of professional experience; he/she cannot be member of a political party. The Director can be dismissed; the dismissal procedure has to be initiated by the Agency's Board. Reasons for dismissal can be negligent performance of duties; membership in a political party; political partiality; a criminal conviction incompatible with the reputation and standards of the SACA (see Article 20 of the Anti-corruption Agency Act). The Director has a Deputy; he/she is also elected through a public competition.

The Director and the Deputy-Director are receiving remuneration equal to that of a state minister and that of a state-secretary, respectively.

A Secretariat assists the work of the Agency on a day-to-day basis. The Director is in charge of the internal organisation and structure of the work of the Agency, and according rules and regulations have to be approved by Parliament.

Accountability

The Agency is an autonomous and independent body, which is accountable to the Serbian National Assembly (the Parliament), to which it reports annually on the operations of the Agency, as well as on the status of the implementation of the National Anti-corruption Strategy and the Action Plans; specific reports can be submitted to, or requested by, Parliament.

Human and Material Resources, Training

The funding of the Agency is provided through the national budget and upon proposal from the Agency.

In its second Annual Report (submitted to parliament in March 2012, and covering the Agency's work in 2011), the ACA stated to have adequate office premises, as well as sufficient IT infrastructure.¹¹

In 2011, the ACA conducted an assessment of training needs of the staff of the Agency; this resulted in the development of a training plan, the implementation of which started in 2012. The training comprises an Anti-corruption Training package, a General Training package; and a package on training methodologies. The Anti-corruption Training Package consists of: Leading Principles and Legal Instruments (2 modules), Institutional Forms (2 modules) and Anti-corruption Policies and Measures (3 modules). The General training package consists of: Leadership and Management Skills (2 modules); Strategic Planning (3 modules); Policy Development (2 modules); Human Resources Management and Development (2 modules); Communication skills (1 module); Training for Trainers (1 module). All staff are obliged to undergo training.

The Agency employs 60 staff on a permanent, and two staff on a temporary basis; one staff is hired through a special service agreement. The 2011 Annual Report points out that the recruitment of qualified staff is a challenge, as the recruitment procedures are determined by the civil service law, while career advancement opportunities are not sufficiently developed, thereby not necessarily attracting the right calibre of staff.

The 2011 state budget provided funds for the work of the Agency in the amount of 152 million Serbian dinars. The spending until the end of 2011 amounted to 121 million Serbian dinars, or 79.7% of the total allocated funds.

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The Former Federal Yugoslav Republic of Macedonia: State Commission for Prevention of Corruption

The State Commission for the Prevention of Corruption (Државната комисија за спречување на корупција) was established in 2002. It is an independent body composed of experts with legal and economic background appointed by the Parliament. The members of SCPC meet at regular sessions. The Commission is responsible for prevention of corruption and conflict of interests in the public administration, the State Programme for Prevention and Repression of Corruption and Conflict of Interests. The Commission reviews cases of conflicts and monitors asset declarations and statements of interests.

Background Information

By the end of the 1990s, the extent of corruption in the Former Federal Yugoslav Republic of Macedonia (FYROM) was perceived as widespread among public administration, judiciary, local administration, customs administration and other state institutions. As a result, corruption was threatening the rule of law, democracy and economic development in the country. In a bid to confront corrupt behaviour, in April 2002, the Parliament passed the Law on Prevention of Corruption.

The law foresaw the establishment of the State Commission for Prevention of Corruption (the Commission), and approximately six months later, such a Commission was set up and became operational. On 12 November 2002, the first members of the State Commission were appointed by the Parliament. The newly established State Commission took a number of immediate steps to finalise its status and to define its working procedures.

A number of major difficulties were identified in the area of the fight against corruption in FYROM. These include an insufficiently developed system of separation of powers; absence of independent institutions for the prevention and repression of corruption; lack of a system of mutual checks and balances among institutions; little or no engagement of civil society and media in strengthening public awareness about corruption; very limited involvement of the international community in supporting anti-corruption activities; the need to harmonise national legislation with international standards, and others. The State Commission was expected to address these issues in its everyday work.

Legal and Institutional Framework

The key legal document, defining the work of the Commission is the Law on Prevention of Corruption, adopted by the Parliament in 2002.¹² It was further amended in 2004, providing the Commission with the status of legal entity, and increasing the office term of its members from 4 to 5 years.¹³ Several amendments to the Law on Prevention of Corruption aimed to improve the Law especially regarding the monitoring of the assets declarations of the public officials and the status of the members of SCPC have been made since 2004. The last amendments, in 2010, introduced professional (full-time) engagement of the members. The legal mandate of the SCPC includes prevention of corruption and of conflict of interest in the public service. In 2007, the Parliament enacted

the Law on Prevention of Conflict of Interests; the competent authority for the implementation of this Law is the Commission.

The Commission is autonomous and independent in the performance of its legal competences under Article 50 of the Law. Although the Parliament elects the members of the Commission, the Commission is an independent statutory institution and is neither a parliamentary, nor a governmental body. The Commission is responsible for the development and the adoption of the State Programme for the Prevention and Repression of Corruption and Conflict of Interests. In addition, the Commission is legally bound to adopt annual programmes and plans for monitoring of the implementation of the State Programme. The Commission receives complaints from the public, and can initiate cases for investigation by the prosecutorial bodies.

Article 49 of the Law on Prevention of Corruption and Article 21 of the Law on Prevention of Conflict of Interests set forth the following *main functions* of the Commission:

- Adopt the State Programme for the Prevention and Repression of Corruption and Conflict of Interests and annual programmes and plans for the implementation of the State Programme;
- Give opinions on proposed laws relevant for corruption and conflict of interests prevention;
- Take initiative before the competent bodies regarding control of income and property of political parties, trade unions, and citizens' associations;
- Take initiative before the competent bodies to institute and conduct proceedings for dismissal, assignment, removal, criminal prosecution or other measures against elected or appointed civil servants and public officials and civil servants or responsible person in a public enterprise or in another legal entity managing state funds;
- Review cases of conflicts between public and private interests;
- Centralise and monitor information on the property situation and additional profitable and other activities of elected and appointed civil servants, public officials, managers of public enterprises and other persons managing state funds;
- Education activities for institutions in charge of detecting and prosecuting corruption.

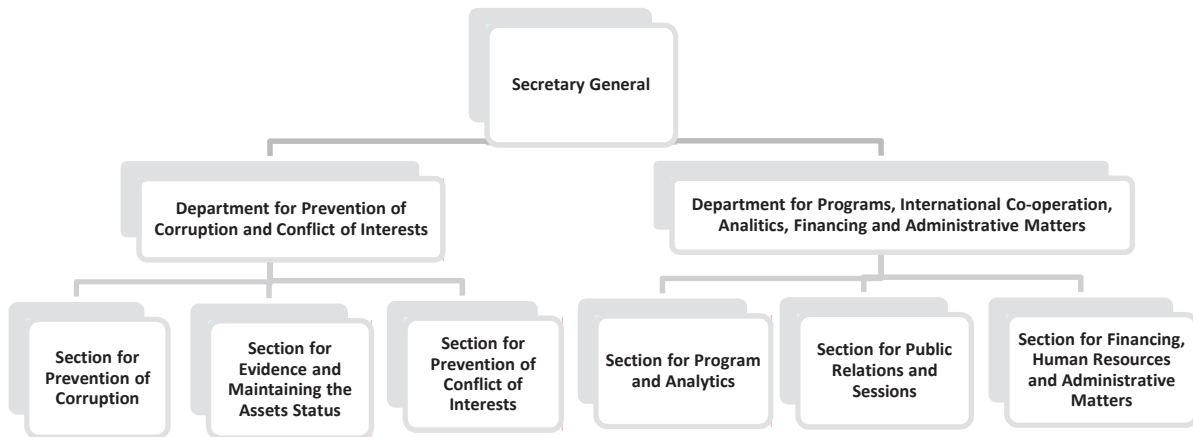
The Commission operates through regular sessions. In 2010, the Commission held 72 sessions; in 2011 – 62 sessions. Decisions are taken by vote at the session of the Commission, at which more than half of the members are present. Decisions are taken by absolute majority of all members. Experts may be invited to take part at specialised sessions of the Commission. At some sessions, a person suspected of corruption may be summoned with an aim to clarify certain issues important for the decision-making as to whether or not to initiate a procedure before other bodies.

The Commission has also the power to request public officials or responsible persons in public enterprises to submit to the Commission information about his/her assets or other data relevant for the application of the provisions of the Law on Prevention of Corruption.

Once the information is requested by the Commission, competent bodies and legal persons have the obligation to provide it without any delay; this cannot be influenced by considerations of state, official, or other secrets. In the performance of its tasks, the

Commission may request to make direct inquiries into the spending of the funds of bodies and legal persons managing state funds.

Figure 6.3. Organisational structure of the Secretariat of the Commission



Human and Material Resources

The Commission is composed of seven members. The members are appointed by the Parliament of the Republic of Macedonia for a term of four years, with the possibility of re-appointment (Amendments to the Law on Prevention of Corruption from 2010). The members shall be appointed from among distinguished experts in the legal and economic field and who fit the profile for the office. The Commission elects a Chairman from among the members, for a term of one year, with the possibility of re-election.

Expert, administrative and technical support to the SCPC is provided by its Secretariat.

The Commission is financed from the state budget. Every year, the Commission prepares a budget estimate, the final approval for which is given by the Minister of Finance. Its annual budget is then adopted by the Parliament during the adoption of a national budget for the coming year. In 2011, the annual budget of the Commission amounted to 300,000 EURO; in 2012, to 350,000 EURO.

Accountability

The Parliament announces the competition for appointment of Commission's members. The competition shall be open for 15 days from the day when it was published in the "Official Gazette". The Commission for Election and Appointment in the Parliament shall draft a proposal list of candidates that have applied and shall submit this list to the Parliament. If a member of the Commission is also employed elsewhere, this employment shall be suspended during the period from the appointment to the Commission until the expiration of the member's term of office.

The Commission, therefore, is answerable to the Parliament for its work. The Law provides that the Commission informs the public of the measures and activities taken, and of the results of its work through regular annual reports and any other time when it is necessary to inform the public. The Commission also submits an Annual Report of its work, measures and activities undertaken to the Parliament, and forwards it to the President of the Republic, the Government, as well as the national media.¹⁴

Practice and Highlights

The State Programme for the Prevention and Repression of Corruption: According to its statutory obligations, in 2003, 2007, and 2011, the Commission developed and adopted the State Programme for the Prevention and Repression of Corruption. The recent one adopted in December 2011, contains measures to be taken in order to establish an efficient system for the prevention and suppression of corruption and conflict of interests.

When drafting the 2011 State Programme, the Commission *was guided by the analysis of the activities carried out in accordance with the previous State programmes*, expressed in the conclusions and recommendations from the annual conferences for evaluation of the implementation level of the State Programmes. Furthermore, the GRECO recommendations from the third evaluation cycle have been taken into account as well as the European Commission Progress Report for 2011, the Strategy for the Reform of the Public Administration in the Republic of Macedonia 2010-2015, the National Programme for Approximation to the European Union Acquis 2011-2013 (NPAA), as well as some other documents related to the fight against corruption, reduction of conflict of interests, and strengthening of personal and institutional integrity.

The State Commission for Prevention of Corruption accepted also the European Commission suggestion to base the Action Plan on prioritisation of the sectors along with evaluation of the risks for corruption and conflict of interest in each of the sectors. In the process of drafting of the State Programmes, the SCPC, together with wide representation from all structures of the government, private sector, and civil society established eleven priority sectors.

The Action Plan matrix includes efficiency indicators that will be used to monitor the effect from the implementation of the specific activities during a particular time period.

Asset declarations: Once a public official is elected, appointed, terminates his/her functions, or there is a significant change in his or her financial situation, he or she has the obligation to submit an asset declaration to the Commission. According to the Amendments to the Law on Prevention of Corruption of 2006, all civil servants are obliged to submit property declarations in the institutions where they are employed. In addition, the Commission publishes the data from the asset declarations of appointed or elected public officials on its webpage (www.dksk.org.mk). According to the Law, the SCPC can request the State Revenues Office to check the legality of the property situation of officials.

Corruption Complaints and Inquiries: Citizens and legal entities can file complaints with corruption allegations to the Commission. It will then examine whether the complaint is pursuable. The Commission may also open a case based on its own initiative. The Commission can request additional information from relevant state bodies – or forward the complaint to competent state bodies. In 2010, the Commission received a total of 457 complaints referring to suspicions of corruption from different

areas. In the reporting period, the Commission took action with respect to 1342 cases, and finished the procedure in 1043 cases (includes cases received in the previous years). In 2011, the Commission took action on 1357 cases and finished the procedure in 1157 cases. In the field of conflict of interest, the Commission, in 2011, processed 78 cases and finished a total of 128 cases (includes cases opened in the previous year).

Table 6.1. Results of the State Commission for Prevention of Corruption in processing asset declarations

CHART ASSETS DECLARATIONS
December 2002 - December 2011

YEAR	ASSETS DECLARATION SUBMITTED DURING THE ELECTION / APPOINTMENT	ASSETS DECLARATION AFTER THE MANDATE	NOTIFICATION FOR CHANGE OF FUNCTION	NOTIFICATION FOR RE-ELECTION	NOTIFICATION FOR CHANGE OF PROPERTY STATUS	NUMBER OF MISDEMEANOUR PROCEDURES INITIATED BY SCPC FOR NON-SUBMITTAL OF ASSET DECLARATIONS	COURT DECISIONS UPON MISDEMEANOUR PROCEDURES	INSTIGATED PROCEDURES FOR INVESTIGATION OF THE PROPERTY SITUATION	CONCLUDED PROCEDURES FOR INVESTIGATION OF THE PROPERTY SITUATION (PUBLIC REVENUE OFFICE)
2002	79	0	0	0	0	0	0	0	0
2003	2742	0	0	0	26	78	8	4	2
2004	91	0	0	0	33	33	21	6	3
2005	157	18	29	5	74	45	50	13	7
2006	303	18	42	32	86	34	30	6	6
2007	294	71	31	5	153	55	44	23	2
2008	357	204	40	10	197	33	41	19	1
2009	694	100	24	35	146	58	31	29	6
2010	541	57	47	11	164	28	51	19	9
2011	346	132	93	94	235	11	17	48	54
TOTAL	5604	600	306	192	1114	375	293	167	90

Opinions on draft legislation: One of the competences of the Commission is to give opinions on draft legislation related to the prevention of corruption and conflict of interest, as well as to prepare draft laws. Until this moment, the State Commission has given 45 opinions on draft laws, including the draft Law on the Prevention of Money-Laundering, the Law on the Public Prosecutor's Office, the Law on the State Audit, the Law on the Courts, and others, and participated in the preparation of the draft laws on Financing of Political Parties, Free Access to Information of Public Character, the Elections Code, Prevention of Conflict of Interest, etc.

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Other state institutions with corruption prevention functions

The United States: Office of Government Ethics

The Office of Government Ethics (OGE) in the United States was established in 1978 by the Ethics in Government Act. OGE provides leadership to the executive branch of the Federal Government to prevent conflicts of interest on the part of executive branch employees and resolve those conflicts of interest that do occur. In partnership with executive branch departments and agencies, OGE fosters high ethical standards for executive branch employees who, in turn, strengthen the public's confidence that the Government's business is conducted with impartiality and integrity

Background Information

Prior to the 1960s, the United States addressed conflicts of interest of its federal officers and employees almost exclusively through criminal statutes. Over time, new conflict of interest laws were passed to address specific issues as they arose.

In an effort to address not only actual conflicts of interest but also activities that give rise to the appearance of such conflicts, a 1965 Executive Order¹⁵ set forth six basic principles of public service and some specific restrictions regarding gifts and other issues. Based on this model, each executive branch agency was then responsible for adopting its own standards and for interpreting and enforcing those standards through discipline. At that time, there was essentially no centralized authority responsible for ensuring consistency of the program throughout the branch. The 1965 Executive Order also required high level executive branch officials to file confidential financial disclosures with the Civil Service Commission and for the Commission to issue regulations requiring confidential financial disclosure reports from other agency employees in order to help determine potential, actual, or apparent conflicts of interest of the officers and employees.

During the 1970s, after the Watergate scandal, a number of good governance measures were enacted in an effort to help restore the public's confidence in the Government. One such measure was the 1978 Ethics in Government Act. This Act created the Office of Government Ethics (OGE). OGE was given the responsibility for the overall direction of executive branch policies relating to preventing conflicts of interest. In addition, the Act created the public financial disclosure system.

In 1989, the President issued a new Executive Order that replaced the 1965 Order and that set forth fourteen fundamental principles of ethical service. The Executive Order directed OGE to write "a single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable."¹⁶ These standards became effective in 1993.

Legal and Institutional Framework

The Ethics in Government Act charged OGE with providing "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency."¹⁷ As part of this mission, OGE fosters high

ethical standards for executive branch employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.

While OGE sets policy for the executive branch ethics program, the head of each agency has primary responsibility for the ethics program in that agency. To support the day-to-day activities of the ethics program, each agency head selects an individual to serve as the agency's designated ethics official. Depending on the size of the agency, there may be additional professional ethics support staff. Currently, there are approximately 5,700 ethics officials working across 133 agencies. OGE works with this ethics community by setting overall policies and providing oversight, advice, and training.

More specifically, OGE carries out the following *activities*:

- Develops, publishes, and provides advice on enforceable standards of ethical conduct for over 4 million civilian employees and uniformed service members in 133 federal-level executive branch agencies. These ethical standards – issued by OGE as an enforceable regulation – include provisions on gifts from outside sources and between employees; conflicting financial interests; impartiality in the performance of official duties; seeking other employment; misuse of position; and outside activities;¹⁸
- Issues explanatory and binding regulations and advice on the criminal conflict of interest statutes and the civil outside employment and activity statutes;¹⁹
- Establishes the procedures for and oversees two systems of financial disclosure, one for more than 28,000 public filers and one for approximately 325,000 confidential filers. The financial disclosure systems are designed so that agencies can spot and prevent conflicts of interest; the systems are not designed to detect illicit enrichment. Each agency reviews and certifies all forms filed by its officers and employees. OGE does a second-level review and certification of the financial disclosure reports for the most senior executive branch officials, including all Presidential appointees confirmed by the Senate and the most senior White House staff members;
- Ensures agency compliance with the executive branch's ethics program requirements.²⁰ OGE regularly reviews agency ethics programs to ensure that each agency has an effective ethics program tailored to its mission. The reviews cover areas such as ethics agreements, written advice and counselling, education and training, financial disclosure and agency-specific requirements, and enforcement. The reviews are accomplished in accordance with detailed review guidelines and are scheduled in advance as part of an annual program plan. Through the reviews, OGE also seeks to identify and share model practices throughout the executive branch;
- Provides education and training to the approximately 5 700 individuals who serve as ethics officials,²¹ and, in some instances, to employees of the executive branch. By targeting its training to ethics officials, OGE ensures that those in charge of ethics in the executive agencies are in a position to effectively carry out their duties. Training focuses on understanding and applying the criminal conflict of interest statutes, civil ethics statutes, the standards of ethical conduct, and the financial disclosure regulations, as well as the tools required to run an effective ethics program. OGE also develops training programs that can be used by ethics officials to conduct training for employees in their agency;
- Provides informational outreach to the public, the private sector, and civil society; and

- At the request of United States foreign policy agencies, provides technical assistance to foreign governments and international organizations and shares good practices with national and international partners and stakeholders. OGE represents the United States in relevant organisations and bodies, such as the Council of Europe’s Group of States against Corruption.

OGE’s mandate does not extend to the judicial or the legislative branch, nor does OGE have jurisdiction over state or local level governments. Designed as a prevention agency which coordinates with enforcement authorities, OGE has no investigative authorities.

Structure

OGE is divided into five Offices, as follows:

1. The *Office of the Director* (OD) provides overall direction to the executive branch ethics program and is responsible for ensuring that OGE fulfills its Congressional and Presidential mandates.
2. The *Office of International Assistance and Governance Initiatives* (OIAGI) coordinates the Office’s support of U.S. efforts in promoting international anti-corruption and good governance programs. It also coordinates the Office’s domestic good governance initiatives.
3. The *Office of General Counsel and Legal Policy* (OGC&LP) is responsible for establishing and maintaining a uniform legal framework of Government ethics for executive branch employees. This Office develops executive branch ethics program policies and regulations, interprets laws and regulations, assists agencies in legal and policy implementations, and recommends changes in conflicts of interest and ethics statutes. This Office directs OGE’s program of review and clearance of Presidential nominee financial disclosure reports. It also responds to requests for information from the media, such as newspapers and wire services, and similar other news organisations. In addition, this Office is the liaison to the Congress and to the Office of Management and Budget.
4. The *Office of Agency Programs* (OAP) is responsible for monitoring implementation of and providing day-to-day services to Federal executive branch agency ethics programs. This Office works closely with the 133 agencies of the executive branch to identify model practices and to resolve challenges in program administration and implementation, provide guidance on the standards of conduct regulations and conflict of interest laws, develop and deliver training courses and materials, and identify emerging issues. In addition, this Office ensures public financial disclosure reports filed by approximately 1,200 of the highest ranking executive branch officials are properly completed and conflict of interest issues are resolved. This Office organizes a national ethics training event every 18 months as well as topic-specific events throughout the year. This Office’s responsibilities are carried out through the closely coordinated activities of its two divisions: The Program Review Division and the Education and Program Services Division.
5. The *Office of Administration* (OA) has program responsibilities for the following: personnel, payroll, facilities and property management, travel, procurement, and the publishing and printing of materials.

Human Resources and Training

OGE is led by its Director, who is appointed by the President for a 5-year term with the consent of the Senate.

OGE's Director is supported by a team of career Senior Executives that include the General Counsel, who also serves as the Principal Deputy Director, the Deputy General Counsel, and Deputy Directors responsible for executive branch agency ethics programs, international assistance and government initiatives, and OGE administration.

OGE has approximately 80 staff comprised of attorneys, ethics, finance, and technology experts, and support staff. In 2012, the operating budget of OGE (including salaries and expenses) was approximately 14 Million US dollars.

OGE educates and trains its employees to improve organizational and individual performance. OGE leadership is primarily responsible for identifying training needs, selecting employees for training, and determining and scheduling training deemed appropriate to each employee's professional development.

Accountability

The Director reports to the President and interacts with the most senior executives of the executive branch. OGE is subject to the same fiscal and human resource requirements as any other executive branch agency. As with other agencies, OGE is subject to oversight by authorizing and appropriating committees of Congress.

OGE submits an annual budget request and a Performance and Accountability Report (PAR) to the Office of Management and Budget of the White House.²² The PAR presents performance and financial data covering the previous fiscal year. The detailed budget request is for the next fiscal year. OGE has multi-year and annual strategic objectives and corresponding performance targets. OGE uses a variety of sources, including surveys on satisfaction with OGE's support to agency ethics officials and questionnaires on the effectiveness of training, to assess progress towards these targets and objectives. The PARs are published on OGE's website.²³ OGE's budget request for appropriations is submitted to the Congress as a part of the President's budget for the executive branch and it has its own clearly identified entry.

Practice and Highlights

Using Financial Disclosure for Prevention and Education:

Individuals who serve in the most senior positions of all three branches of Government are required to file a public personal financial disclosure report. In the executive branch, less senior employees who hold positions which have a heightened risk for conflicts of interest, for example, employees exercising regulatory, investigative, or contracting functions with limited supervisory oversight are required to file confidential financial disclosure reports with their employing agency. Unlike the public disclosure reports, these reports are not available to the public.

In the executive branch, both the public and confidential financial disclosure reports are reviewed by the agency in which the individual serves, primarily for purposes of identifying potential or actual conflicts of interest. When information on a report indicates a potential conflict of interest, the agency works with the individual to

determine appropriate steps he or she must take in order to avoid engaging in an activity that will change the potential for a conflict into an actual conflict. Such steps may include: divestiture of an asset, resignation from an outside position, termination of an outside activity, recusal from certain Government matters, change of official assignments or duties, written waivers, or the creation of a blind trust. When information on a financial disclosure report indicates an actual conflict of interest may have occurred, that matter is referred for further investigation and possible prosecution and/or administrative sanction.

This screening process is more formalized for the highest officials of the executive branch, i.e., individuals appointed by the President to positions requiring Senate confirmation. Before individuals are nominated for these positions, The White House, the agency in which the individual would serve, and OGE review the financial disclosure reports of individuals being considered for these positions. They determine, if the individual were to be appointed, what steps that individual must take to avoid conflicts with the financial interests, outside positions, and relationships and activities listed on the report. If the individual agrees to these steps, these actions are reduced to writing in an “ethics agreement.” Upon nomination, both the financial disclosure report and the ethics agreement are transmitted to the Senate and made public. If the individual is appointed, OGE, with the agency in which the person now serves, monitors this agreement to ensure that the steps agreed upon have been taken by the individual including the divestiture of any conflicting financial interest.

This process ensures that the future, most senior officials in the executive branch have a personal and direct understanding of how the conflicts of interest requirements affect them. It also serves as a personal and positive introduction to the agency ethics official and to the existence of the ethics program in the department or agency in which the individual may serve. Equally important, through this process the ethics program gains continued support from the leadership of the department or agency.

Requiring Training and On-Demand Counselling:

OGE regulations require that each executive branch agency have an ethics training program that promotes the understanding and application of ethics laws and rules and that informs employees of the availability of personal, on-demand, ethics advice. Agencies must provide every new employee with an *initial* ethics orientation consisting of verbal training or at least one hour of official duty time to review the Standards of Ethical Conduct for Employees of the Executive Branch and any agency-specific supplemental standards (or summaries of each). In addition, employees who are in sensitive positions requiring that they file financial disclosures (whether public or confidential) are required to receive *annual* ethics training that must cover the Standards of Ethical Conduct for Employees of the Executive Branch, any agency supplemental standards, and the Federal conflict of interest statutes. The annual training must also include the contact information for agency ethics officials available to advise on ethics issues.

As a model practice, several executive branch agencies require that all employees receive annual ethics training, regardless of whether they file financial disclosures. Many agencies tailor the annual ethics training for at-risk employees such as procurement officials or for supervisory employees who are in positions to spot and address problems. To encourage employees to seek ethics advice, agencies may hang posters in the workplace that provide the agency ethics official contact information. Agencies also

create a variety of ethics on-line and in-person training and counselling resources for their employees, including agency-specific ethics websites.

An important role of OGE is to “train the trainers”, for example, OGE trains ethics officials who in turn train their employees. By targeting its training to ethics officials, OGE ensures that those in charge of ethics in the executive branch agencies are in a position to accurately provide advice to employees about the standards of conduct regulations and conflict of interest laws and otherwise carry out their duties. OGE training focuses on the substantive issues of applying the ethics and conflict of interest laws and regulations as well as logistical issues related to running an effective ethics program.

OGE develops tools that ethics officials can use to conduct training for employees in their agencies. These include pamphlets, videos, crossword puzzles, and posters, many of which are customizable so that agencies can adapt them to their specific needs.

Sharing Model Practices:

One of OGE’s responsibilities is to review ethics programs in public institutions to ensure they are in compliance with the laws and regulations. OGE uses the review process to identify and disseminate *model practices*. This approach encourages cooperative work among ethics offices and promotes dialogue with institutions under review as well as within the broader ethics community. Model practices are showcased at OGE’s national ethics conference, on its website, and in written materials.

OGE also shares model practices through its “*Program Excellence and Innovation Awards*”, which recognize institutions that demonstrate ethics program success as a result of excellent or innovative program efforts. Recipients demonstrate a strong commitment to excellence in ethics program management; employ innovative approaches to teach employees about ethics; use model practices to encourage understanding and awareness of ethical behaviours; and, create a stronger ethical culture as a result of these efforts.

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Brazil: The Office of the Comptroller General

The Office of the Comptroller General (CGU) in Brazil is an agency of the Federal Government with its main focus being on public resources management. The CGU is entrusted with a variety of functions, including audit, inspection, disciplinary actions against federal public officials, ombudsman and also prevention of corruption.

Background Information

The Office of the Comptroller General (CGU) was initially called Federal Inspector General's Office. In 2003, the Comptroller General became of Minister of State for Control and Transparency. The CGU has 26 regional units across Brazil.

Legal and Institutional Framework

The CGU was created by the Law N° 10,683 adopted on 28 May 2003. The CGU is responsible for directly assisting the President of the Republic in matters which, within the Executive Branch, are related to the protection of public assets, internal control, public audits, corrective and disciplinary measures, corruption prevention and fighting, ombudsman's activities and to the enhancement of management transparency.

In order to properly perform all these activities, *CGU* was structured around four *high-level units*, according to their respective area of expertise:

- Federal Secretariat for Internal Control (SFC);
- Corruption Prevention and Strategic Information Secretariat (SPCI);
- National Disciplinary Board; and
- National Ombudsman's Office (OGU).

Besides, the Council on Public Transparency and Corruption Fighting (CTPC) is another part of *CGU's* structure, serving as a collegiate and advisory board.

The attributions of *CGU's areas of expertise* are as follows:

Internal Control

The Federal Secretariat for Internal Control is in charge of performing audits and inspections in order to check how public funds are being spent and allocated. SFC assesses the implementation of the Government's budget, as well as the implementation of Government programs, and performs audits on the management of federal public funds either directly applied by public and private bodies and entities or under their responsibility. The outcomes/findings are submitted to the Prosecution Office and to the Office of the Attorney-General, which are to adopt the appropriate measures (punishment and asset recovery) before the Judicial Branch. These outcomes/findings are also submitted to the National Disciplinary Board.

Preventive anti-corruption actions

Besides monitoring and detecting frauds related to the use of federal public funds, *CGU* is also responsible for the development of prevention mechanisms with the aim of avoiding corrupt practices. Transparency enhancement is a critical tool to support *CGU's*

ongoing strategies. This activity is performed by the Secretariat for Corruption Prevention and Strategic Information.

Disciplinary administrative actions

The Office of the Comptroller General also fights against impunity in the federal government, promoting, coordinating and monitoring the implementation of disciplinary actions aimed at ensuring the administrative accountability of public servants. Additionally, it monitors companies that perform irregular activities which may cause damage to the Federal Government. The National Disciplinary Board also receives the outcomes of the audits performed by the Federal Secretariat for Internal Control in order to apply the penalties within the remit of the Federal Government.

Ombudsman's activities

The National Ombudsman's Office is responsible for the technical supervision and guidance of all ombudsman's units in the Executive Branch on the federal level. It examines claims related to the delivery of public services; suggests disciplinary measures and works to prevent faults and omissions of managers responsible for the inadequate delivery of public services. Additionally, it contributes to the dissemination of new forms of popular participation in monitoring and supervising the delivery of public services; and promotes capacity-building actions related to ombudsman's activities. It also coordinates the Information Access System established by Law N° 12,527.

CTPCC – Council on Public Transparency and Corruption Fighting

The Council on Public Transparency and Corruption Fighting is a collegiate and advisory body linked to the CGU. The Council comprises an equal number of representatives from the government and the civil society, and aims to discuss and suggest measures to improve activities related to public resources control, transparency promotion within the government, corruption and impunity fighting.

Institutional co-ordination has been an emphasis of the CGU's work since 2003; as a result, it has established working relations with the Ministry of Justice and the Federal Police Department; the Federal Prosecutor General; the Financial Intelligence Unit; the Federal Court of Accounts; the Office of the Attorney-General; The Federal Internal Revenue Secretariat; the Department for Asset Recovery and International Cooperation.

Practice and Highlights²⁴

Promotion of public transparency and social control:

The typical activities of an anticorruption agency are carried out by the Secretariat for Corruption Prevention and Strategic Information (SPCI), which is responsible for anticorruption activities to promote the enhancement of public transparency; produce, disseminate and encourage the exchange of strategic information related to corruption prevention and fighting and foster the social control as a corruption-preventing tool. Additionally, SPCI is also in charge of monitoring the asset evolution of government officials on the federal level of the Executive Branch and representing the CGU in national and international forums or organisms which work to prevent and fight corruption.

Transparency Portal:

The Transparency Portal of the Federal Government is an initiative that was launched by the Office of the Comptroller General in November 2004, with the aim of ensuring the proper and lawful allocation of public funds. Its objective is to increase transparency in the public administration, enabling citizens to track the allocation of public money and play a monitoring role in this process.

The Portal was developed under the belief that transparency is the best antidote to corruption, as it is a mechanism that encourages public managers to act responsibly, and provides information to the society, enabling it to help control its government actions and monitor if public funds are being spent wisely.

The Transparency Portal at www.portaldatransparencia.gov.br provides information on the Federal Executive Branch, disclosing, *inter alia*, the data listed below:

- Direct spending of the Federal Government;
- Fund transfers to states and municipalities;
- Contracts signed with individuals, legal entities or government bodies;
- Estimated and Collected Revenue; and
- Federal Government staff, including information on staff compensation

The *Transparency Portal* also publishes three registration programs established to coordinate information on the sanctions imposed to federal public servants, suppliers of goods and services and not-for-profit private entities. These registries consolidate useful data to be further accessed by federal managers and provide for increased transparency to the control and inspection activities performed by the Federal Government.

National Debarment List (Ceis): it lists the companies that are forbidden to either participate in public biddings or execute contracts with the Federal Government because of embezzlement or unlawful practices occurred in public contracts or biddings.

Registry of Suspended Not-for-Profit Private Entities (Cepim): it lists the not-for-profit private entities that are forbidden to either celebrate contracts, transfer contracts or partnership agreements with the Federal Government or receive transfer of funds because of their participation in embezzlement or unlawful practices.

Registry of Federal Government's Dismissed Staff (Ceaf): it comprises the dismissal sanctions (discharge, cancellation of retirement pension, removal from position of trust or function held in commission) applied to public servants within the Executive Branch at the federal level.

It is worth noting that the Transparency Portal features data which are under the custody of the CGU, the control authority of the Executive Branch at the federal level. Thus, data related to other branches (Judicial and Legislative) and to other levels of government (State and Municipal) are not available at the Portal and should be searched in the official website of each government body.

Citizen use of the portal has grown since its launch from approximately 700,000 hits per month to approximately 3,4 million hits per month in May 2012, with the number of users growing from approximately 10 000 per month to 380,000 per month. These numbers, due to the publication of individualized salary of civil servants on June 2012, are growing dramatically, reaching 28,2 million hits and 1,3 million users in July 2012. The overall amount of public spending published is US\$ 5 Trillion.

Promoting access to Information:

As of May 16, 2012, Law Nr. 12,527/2011, Brazil's Access to Public Information Law entered into force. The CGU has the authority to monitor the implementation of this Law within the Federal Executive Branch. The CGU has built capacity of approximately 700 public servants working in the Citizen Information Service (SIC) offices at each government body. Additionally, it has developed an electronic system that registers information access requests entries and replies, besides providing a standard request form. The system, which is called e-SIC, is of critical relevance to public managers, as it helps them manage the incoming requests and the time it takes for requests to be properly answered.

National Conference on Transparency and Social Control (Consocial):

The conferences called upon the Federal Government are a public tool to foster social participation and consist of initiatives organized with the aim of institutionalizing popular participation in activities related to the planning, management and control of a certain public policy or a set of public policies. The Federal Government has called upon and organized 87 conferences on numerous areas (Education, Healthcare etc.) between 2003 and 2011.

The *First National Conference on Transparency and Social Control (Consocial)* was designed with the aim of promoting public transparency and engaging the society to monitor public management, which adds to a more effective and democratic social control, providing for the correct and efficient use of public funds. The civil society demanded increased and more active participation in these activities and this was the first conference, held in Brazil, with the purpose of specifically addressing this matter.

The First *Consocial* was coordinated by the CGU in partnership with the Secretariat-General of the Presidency of the Republic, and was convened by a presidential decree issued in December 2010. From July 2011 – May 2012, when the national chapter took place in Brasília, conference proceedings comprised the participation of 1 200 elected delegates in preparatory stages (1023 municipal/regional conferences, 26 state conferences, 1 district conference, 302 free conferences and 1 virtual conference).

The discussions were divided into four thematic axes: promotion of public transparency and access to public information and data; social control mechanisms; engagement and building capacity of the society to control public management; the controlling role of public policy councils; guidelines for corruption fighting and prevention.

The national chapter of the First *Consocial* formulated 80 guidelines in order to ensure the effectiveness of public policies that provide for the promotion of transparency and social participation in the planning, management and control of public funds on the municipal, state, district and national levels.

Other activities to promote social control

Programme “*Keeping an Eye on Public Money*” was designed to change attitudes in the society through education, access to information, and social control. A guidebook for societal control over public spending has been distributed in 2,7 million copies. It targets municipal policy makers, local leaders, students, and the general public. CGU has also developed online trainings, which cover such topics as internal control and social control,

public procurement and public contracts. By September 2012, 5 538 public agents, 16 972 council members and 9 570 municipal leaders have been trained.

The Pro-Ethics Company List

CGU created a “clean list” of private companies committed with ethics and integrity: *the Pro-Ethics Company List* (Pro-Ethics). It includes companies committed to implementing integrity measures and promoting a healthy business environment. The list can be accessed at www.cgu.gov.br/empresaproetica. There have been several rounds of evaluation in 2011 – 2012, and 10 companies have had their requests approved.

Public Spending Observatory

The Public Spending Observatory is a permanent unit of the CGU in charge of monitoring of public spending. Its objective is to contribute to the improvement of internal control and to serve as a supporting tool for the government. Unit’s outcomes support CGU’s audits and inspections and supply the managers with managerial indicators related to public spending, enabling them to make comparative analyses and supporting decision-making procedures related to the improvement of public resource allocation.

The Observatory relies on a highly qualified team of experts in investigative intelligence and uses Business Intelligence tools, on-line analytical processing, statistical processing and investigative analyses.

Thus, the Observatory seeks to identify, through the issuance of systematic warnings, the signs of potential misuse of public funds, events that require further investigation to be carried out by CGU’s expert auditors.

Sanctions to public servants and suppliers

Fighting impunity is the core objective of the disciplinary measures developed by the National Disciplinary Board, a division within the CGU which performs disciplinary actions of repressive nature.

The enactment of Decree N° 5,480/2005 provided for the establishment of an organized system of disciplinary activities, coordinated by the Office of the Comptroller General. The CGU then embraced the mission of promoting the co-ordination and standardization of all activities related to the prevention of embezzlement and unlawful practices within the Executive Branch at the federal level, which is made through the implementation, conduction and monitoring of disciplinary proceedings.

Disciplinary boards

Aware of the relevant role played by the sectional units, which operate as the foundations for the Disciplinary System of the Executive Branch at the federal level, the National Disciplinary Board promotes, on a continuous basis, the establishment of such disciplinary boards within such government bodies, either because of the complexity of the activities they perform or because of their institutional relevance, as such instances need to rely on a specific disciplinary core.

Simplified investigation proceedings for minor offenses

CGU has published Administrative Ruling No. 04 (IN 04), of 02/17/2009, an initiative which was widely appraised in the disciplinary field, seeking to simplify the investigation proceedings of cases related to minor damages or loss within the public administration. IN 04 has provided for the use of the Administrative Report of a Minor Offense (TCA) in the investigations of loss or damage of minor financial impact.

This measure is an alternative to costly and lengthy disciplinary proceedings, as it provides for expressive red tape cuts, saving time and money by adding to the solution of cases which involve small amounts of money and where the agent has no damaging intent, as such cases are then handled within the same public department where they arose. The quick solution for such cases also allows the disciplinary system to target its efforts towards relevant cases which involve major financial impact.

Capacity-building for internal control units

CGU's strategy to enhance the capacity to investigate unlawful practices within the Executive Branch includes staff training so as to have servants capable of performing their duties at occasional administrative-disciplinary proceedings. The Office of the Comptroller General counts on a group of highly qualified officials responsible for teaching Disciplinary Law with the aim of building capacity of Government's officials enabling them to participate in disciplinary committees.

Management System of Disciplinary Proceedings

The Management System of Disciplinary Proceedings is a computer program that was developed in mid-2007. It aims to secure safe and quick storage and availability of information on disciplinary proceedings carried out in the Executive Branch at the federal level. This system allows government bodies to monitor existing disciplinary proceedings, identify critical vulnerabilities, build risk maps and develop guidelines for the prevention and curbing of corruption and other similar offenses.

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Notes

1. Constitutional Council, Décision N° 92-316 DC du 20 Janvier 1993 (Decision No 92-316 of 20 January 1993)
2. Pujas (2000).
3. SCPC (2010), *Annual Report 2010*, SCPC, Paris.
4. GRECO (2004)
5. GRECO (2004)
6. SCPC (2003), *Annual Report 2003*, SCPC, Paris, p. 229.
7. See www.acas.rs/sr_cir/zakoni-i-drugi-propisi/zakoni/zakon-o-agenciji.html.
8. See <http://antikorupcija-savet.gov.rs>
9. See www.kjn.gov.rs/html.
10. See the Anti-corruption Agency Act of Serbia, Article 9, www.acas.rs/sr_lat/zakoni-i-drugi-propisi/zakoni/zakoni-o-agenciji.html
11. Serbian Anti-corruption Agency (2011), *Annual Report 2011*, www.acas.rs/images/stories/Annual_Report_of_the_Agency_2011.pdf, p. 95.
12. *Official Gazette of the Republic of Macedonia*, No. 28, 28 April 2002
13. *Official Gazette*, No.46, 12 July 2004
14. GRECO (2002), p.22.
15. Executive Order 11222 (May 8, 1965), *Prescribing Standards of Ethical Conduct for Government Officers and Employees*, [www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-11222-\(May-8,-1965\)--Prescribing-Standards-of-Ethical-Conduct-for-Government-Officers-and-Employees](http://www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-11222-(May-8,-1965)--Prescribing-Standards-of-Ethical-Conduct-for-Government-Officers-and-Employees).
16. Executive Order 12674 (April 12, 1989): *Principles of Ethical Conduct for Government Officers and Employees*. [www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-12674-\(Apr--12,-1989\)--Principles-of-Ethical-Conduct-for-Government-Officers-and-Employees/](http://www.oge.gov/Laws-and-Regulations/Executive-Orders/Executive-Order-12674-(Apr--12,-1989)--Principles-of-Ethical-Conduct-for-Government-Officers-and-Employees/).
17. Ethics in Government Act of 1978, 5 U.S.C. app. www.gpo.gov/fdsys/pkg/USCODE-2009-title5/html/USCODE-2009-title5-app-ethicsing-titleIV.htm
18. The Standards of Ethical Conduct for Employees of the Executive Branch are codified at 5 C.F.R. 2635. <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=eaab3e76921028ab2de631c3f4b0f8a0&rgn=div5&view=text&node=5:3.0.10.10.9&idno=5>
19. The conflict of interest statutes are found in 18 U.S.C. §§ 201-209. The limitations on outside income and activities are contained in 5 U.S.C. §§ 501-505.
20. Agency ethics program responsibilities are found in 5 C.F.R. 2638.
21. Of the 5 700 ethics officials, some may have ethics program responsibilities only as part of their official duties.
22. www.whitehouse.gov/omb

23. *www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/*
24. This section covers only the work of the Office of the Comptroller General in the area of prevention of corruption.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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Specialised Anti-Corruption Institutions

REVIEW OF MODELS: SECOND EDITION

ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE
AND CENTRAL ASIA

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