Specialised Anti-Corruption Institutions

REVIEW OF MODELS

Anti-Corruption Network for Eastern Europe and Central Asia

OECD

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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 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 develops common standards concerning corruption-related offences, and requires its parties to create specialised authorities for fighting corruption.

The UN 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 implement 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: these bodies should be independent from undue interference, specialised in corruption, and have sufficient resources and powers to meet their challenging tasks.

This book analyses the main tasks involved in preventing and combating corruption, and presents practical solutions to ensure independence and specialisation of – and resources for – anti-corruption bodies. It further describes different forms of specialisation implemented in various countries around the world (*e.g.* Hong Kong, Latvia, Spain, Romania, Norway, the UK, France and Slovenia) and describes 14 anti-corruption agencies. Finally, it provides analysis of key factors which can lead anti-corruption bodies to success or failure and supplies a rich body of country-specific information, practical facts and contact details.

This book was prepared within the project on Reform of the Law Enforcement System and Strengthening Specialised Services for Combating Corruption in Ukraine, funded by the US Department of State and implemented by the OECD Anti-Corruption Network for Eastern Europe and Central Asia. Its purpose is to support anti-corruption reform in the countries in this region by examining international standards, national models and good practices for establishing institutional frameworks to combat corruption.

The OECD supports several regional anti-corruption initiatives in non-member countries. The Anti-Corruption Network for Eastern Europe and Central Asia is one such programme; it assists the countries in the region in their fight against corruption by providing a forum for exchange of experience and elaborating best practices. Information about the Network's activities is available on its Web site, www.oecd.org/corruption/acn.

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Abbreviations

ACMG	Anti-Corruption Monitoring Group (Albania)
ACPO	Special Prosecutors Office for the Repression of Economic Offences Related to Corruption (Spain)
ACU	Anti-Corruption Unit
CPC	Commission for the Prevention of Corruption (Slovenia)
CPIB	Corrupt Practices Investigation Bureau (Singapore)
EBRD	European Bank for Reconstruction and Development
KNAB	Corruption Prevention and Combating Bureau (Latvia)
GCFAC	Governmental Commission of the Fight against Corruption (Albania)
GRECO	Group of States against Corruption
ICAC	Independent Commission Against Corruption (Hong Kong)
NAD	National Anti-corruption Directorate (Romania)
NAPO	National Anti-Corruption Prosecutor's Office (Romania)
OCRC	Central Office for the Repression of Corruption (Belgium)
OECD	Organisation for Economic Co-operation and Development
ØKOKRIM	The National Authority for Investigation and Prosecution of Economic and Environmental Crime (Norway)
PACO	Programme against Corruption and Organized Crime in South-Eastern Europe
SCPC	Central Service for Prevention of Corruption (France)
STT	Special Investigation Service (Lithuania)
TI	Transparency International
UNCAC	United Nations Convention against Corruption
USKOK	Office for the Suppression of Corruption and Organized Crime (Croatia)

Executive Summary

One of the best known specialised anti-corruption institutions - the Hong Kong's Independent Commission against Corruption - was established in 1974. The Commission has contributed significantly to Hong Kong's success in reducing corruption. Inspired by this success story, many countries around the world, including in Eastern Europe, decided to establish specialised bodies to prevent and combat corruption. Establishing such bodies was often seen as the only way to reduce widespread corruption, as existing institutions were considered too weak for the task.

Recent international treaties against corruption require their member states to establish 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;
- a body, bodies or persons specialised in combating corruption through law enforcement.

Both the prevention of corruption and combating corruption through law enforcement involves a large number of multidisciplinary functions. When considering establishing or strengthening anti-corruption bodies, countries need to take into consideration the full range of anti-corruption functions, including the following:

- **Policy development, research, monitoring and co-ordination.** These functions encompass research of trends and levels of corruption, and assessment of effectiveness of anti-corruption measures. They further include policy development and co-ordination, including elaboration of anti-corruption strategies and action plans and monitoring and co-ordination of implementation measures. Another important function is serving as a focal point for international co-operation.
- **Prevention of corruption in power structures.** These functions focus at promoting ethics inside public institutions and include elaboration and implementation of special measures concerning public service rules and restrictions, and administering disciplinary punishment for non-compliance with them. More specifically, these functions may include prevention of conflict of interest; assets declaration by public officials, verification of submitted information and public access to declarations. Besides, these function aim to prevent corruption through state financial control, anti-money laundering measures, measures in public procurement and licensing/permits/certificates systems. Finally, preventive functions aim to promote transparency of public service and public access to information and ensure effective control of political party financing.
- **Education and awareness raising.** This area includes developing and implementing educational programmes for public, academic institutions and civil servants; organising public awareness campaigns; and working with the media, NGOs, businesses and the public at large.

- **Investigation and prosecution.** Firstly, these functions aim to ensure a legal framework for effective prosecution of corruption, including dissuasive sanctions for all forms of corruption. Secondly, they aim to ensure effective enforcement of anti-corruption legislation throughout all the stages of criminal proceedings, including identification, investigation, prosecution and adjudication of corruption offences. In doing so, it is also important to ensure transition between criminal and administrative proceedings. Thirdly, these functions include overseeing interagency co-operation and exchange of information 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 unite (FIU), public procurement officials, state security, and others). Fourthly, 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.

The responsibility for the above anti-corruption functions must be clearly assigned to specific existing or newly created institutions. The standards established by the international conventions will probably further accelerate the creation of new anti-corruption bodies. However, there is no strong evidence that existence of anti-corruption bodies always helps to reduce corruption. In order to ensure that the specialised anti-corruption bodies are effective in their operations, the authorities must ensure that they have all the necessary means.

Both the United Nations and the Council of Europe anti-corruption conventions establish criteria for effective specialised anti-corruption bodies, including *independence, specialisation, adequate training and resources*. In practice, many countries face serious challenges in making these broad criteria operational. Available experience provides further guidance.

- **Independence** primarily means that the anti-corruption bodies should be shielded from undue political interference. To this end, *genuine political will* to fight corruption is the key prerequisite. Such political will must be embedded in a comprehensive *anti-corruption strategy*. The level of independence can vary according to specific needs and conditions. Experience suggests that it is the *structural and operational autonomy* that is 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 *appointment and removal of the director* together with 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. No single body can fight corruption alone; *inter-agency co-operation, co-operation with civil society and business* 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*. Forms of specialisation may differ from country to country; 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 be fulfilled by the creation of a special body or by the designation of a number of specialised persons within existing institutions. The study of international trends indicates that in OECD countries *specialisation is often ensured at the level of existing public agencies and regular law*

enforcement bodies. Transition, emerging and developing countries often establish *separate specialised anti-corruption bodies* due to high level of corruption in existing agencies. In addition, in these countries, creation of separate specialised bodies is often in response to pressure by donor and international organisations.

- **Resources and powers** should be provided to the specialised staff in order to make their operations effective. *Training and budget* are the most important requirements. Another important element required to properly focus the work of specialised anti-corruption bodies is *the delineation of substantive jurisdictions among various institutions*. Sometimes, it is useful to *limit jurisdiction to important and high-level cases* as well. In addition to specialised skills and a clear mandate, specialised anti-corruption bodies must have sufficient power, such as *investigative capacities and means for gathering evidence*; for instance they must be given 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* of investigators and 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 actual performance, it is difficult to identify all main functional and structural patterns. It is impossible to identify "best models" or blueprints for establishing anti-corruption institutions. Any new institution needs to be adjusted to the specific national context taking into account the varying cultural, legal and administrative circumstances. However, some trends can be established and main models identified. A comparative overview of different models of specialised institutions can be summarised and analysed according to their main functions, as follows:

- Multi-purpose agencies with law enforcement powers and preventive functions;
- Law enforcement agencies, departments and/or units;
- Preventive, policy development and co-ordination institutions.

Multi-purpose 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 Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents; this model exists in Lithuania (Special Investigation Service), Latvia (Corruption Prevention and Combating Bureau), New South Wales, Australia (Independent Commission against Corruption), Botswana (Directorate on Corruption and Economic Crime) and Uganda (Inspector General of Government). A number of other agencies (*e.g.* those in Korea, Thailand, Argentina and Ecuador), have adopted elements of the Hong Kong and Singapore strategies, but follow them less rigorously.

Law enforcement type institutions. The law enforcement model takes different forms of specialisation, and can be implemented in detection and investigation bodies or in prosecution bodies. This model can also combine specialised anti-corruption detection, investigation and prosecution in one body. This is perhaps the most common model applied in Western Europe. Examples of such models include Norway (Norwegian

National Authority for Investigation and Prosecution of Economic and Environmental Crime - Økokrim), Belgium (Central Office for the Repression of Corruption), Spain (Special Prosecutors Office for the Repression of Economic Offences Related Corruption), Croatia (Office for the Prevention and Suppression of Corruption and Organised Crime), Romania (National Anti-Corruption Directorate) and Hungary (Central Prosecutorial Investigation Office). This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Two good examples of such bodies include Germany (Department of Internal Investigations) and the United Kingdom (Metropolitan Police / Anti-corruption Command).

Preventive, policy development and co-ordination institutions. 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 various bodies on risk of corruption and available solutions, and other functions. These bodies normally do not have law enforcement powers. However, they may have other specific powers, for instance agencies in charge of control of asset declarations of civil servants may have specific powers allowing them to assess confidential information. Examples of such institutions include France (Central Service for the Prevention of Corruption), "The former Yugoslav Republic of Macedonia" (State Commission for Prevention of Corruption), Albania (Anti-corruption Monitoring Group), Malta (Permanent Commission against Corruption), Montenegro / Serbia and Montenegro (Anti-corruption Agency), the United States (Office of Government Ethics), India (Central Vigilance Commission), the Philippines (Office of the Ombudsman)and Bulgaria (Commission for the Co-ordination of Activities for Combating Corruption).

As mentioned above, there is no strong evidence that the existence of anti-corruption bodies always helps reduce corruption. While the number of anti-corruption institutions worldwide is growing, a review of these institutions indicates more failures than successes. **Assessing the performance of anti-corruption agencies** is a challenging task. Many countries that face a serious corruption problem lack the expertise and resources required for this task. 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 methodology for assessing the performance of anti-corruption bodies has yet to be developed, and should be adjusted to each country and institution. The performance of an anti-corruption institution should be measured against a carefully designed set of *quantitative indicators* (statistical data and measures of public perceptions) and *qualitative indicators* (expert assessment and surveys) deriving from the functions that the institution carries out. Statistical data (*e.g.* number of complaints received, investigations and prosecutions opened and completed, convictions achieved, administrative orders, guidelines and advice issued, laws and regulations drafted or reviewed) are objective indicators that provide valuable information. However, a bit of healthy scepticism is called for in regard to such statistical data. Taken alone, these data reveal little about the quality of justice or governance. Quantitative and quantitative indicators, including statistical data, have to be complemented by monitoring evaluations from international bodies, such as the Council of Europe Group of States against Corruption (GRECO) and the OECD.

This report provides comprehensive descriptions of selected specialised anti-corruption institutions operating in different parts of the world, presented in a comparable

framework. The description includes both the formal basis for operation and main achievements in practice. The report also provides practical examples and possible solutions to common problems, based on the experience of the following agencies and countries:

- Multi-purpose bodies: Hong Kong, Singapore; Latvia and Lithuania;
- Law enforcement bodies, including specialised prosecution services: Spain, Romania, Croatia; and specialised police services: Belgium, Norway and the United Kingdom;
- Policy, co-ordination and prevention bodies: France, Slovenia, Macedonia and Albania.

The report builds on research and analysis of information gathered from public sources and input provided by the institutions themselves. Main sources of information include international conventions, recommendations, OECD and GRECO country reports, national legislation and regulation, activity reports and other information produced by participating institutions, various publicly available studies, scientific and press articles. It should be noted that the report does not provide an evaluation of the performance of the institutions presented.

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 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 corruption[1]

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 Corruption[2]

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 Corruption[3]

Article 6 – Preventive anti-corruption body or bodies

1. 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.
2. 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.
3. 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 Corruption[4]

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 Corruption[5]

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 Corruption[6]

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 convention, 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, adopted by the Committee of Ministers of the Council of Europe on 6 November 1997.
[2] Adopted: 4 November 1998; entered into force: 1 July 2002.
[3] Adopted: 31 October 2003; entered into force: 14 December 2005.
[4] Adopted: 11 July 2003; entered into force: pending.
[5] Adopted: 14 August 2001; entered into force: 6 July 2005.
[6] Adopted: 29 March 1996; entered into force: 6 March 1997.
[7] GRECO has in the first evaluation round between 2000 and 2002 focused on compliance with Guiding principles 3, 6 and 7. A review of the evaluations and recommendations is presented in Esser, Albin & Kubiciel Michael (2004), *Institutions against Corruption: A Comparative Study of the National Anti-corruption Strategies reflected by GRECO's First Evaluation Round*. Public reports of the evaluation for all member states can be accessed at www.greco.coe.int.

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; forms of specialisation; independence, autonomy and accountability; adequate material resources, specialised and trained staff; adequate powers; co-operation with the civil society and the private sector; inter-agency co-operation.

Main anti-corruption functions

International instruments identify the following main anti-corruption functions: *investigation and prosecution; prevention; education and awareness raising; co-ordination; and monitoring and research.* These functions are reflected in the following anti-corruption tasks: receive and respond to complaints; gather intelligence, perform monitoring, and conduct investigations; conduct prosecutions; issue administrative orders; implement preventive research, analysis, and technical assistance; provide ethics policy guidance, compliance review, and scrutiny of asset declarations; provide public information, education; ensure international co-operation and outreach; and other tasks. These tasks can be assigned to one or more specialised institutions.

The mandate of investigation and prosecution provide for the enforcement of anti-corruption legislation, with the focus at the 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 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 the 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.

Another 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 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 give 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 the 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 so numerous and diverse, covering all aspects of good governance, that they cannot be performed by a single institution. A usual range of corruption prevention topics (as addressed in the UNCAC) consists of: *prevention of the conflict of interest, declaration of assets, ethics and transparency of public service, prevention of money laundering and financial control over the use of public funds*. Consequently, in various countries, many of those functions are already performed by the auditing institutions, ombudsman, public administration agencies, ethics commissions, commissions for the prevention of the conflict of interests, specialised services or departments for the prevention of corruption and anti-money laundering bodies. There is a broad range of other tasks, such as *developing educational and training programmes; organising public awareness campaigns; working with media, civil society and business; serving as focal points for international co-operation*, which are often dispersed among many institutions, but require adequate attention as well.

Co-ordination, monitoring and research are three additional functions which are considered necessary for comprehensive national anti-corruption strategies and require institutionalisation through specialised bodies. Co-ordination is required at two levels: policy co-ordination and co-ordination of implementation measures. Monitoring and analysis of implementation and research are vital supporting functions, which are required for the success of anti-corruption policy and 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 would also include civil society representatives.

Forms of specialisation

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.[2] 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 concentrated on 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*. The 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, a designation of an adequate number of specialised persons within existing structures 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 encompasses a multitude of approaches and solutions. Various approaches can be summarised and analysed according to their main functions, as follows:

- Multi-purpose agencies with law enforcement powers and preventive functions;
- Law enforcement agencies, departments and/or units;
- Preventive, policy development and co-ordination institutions.

The first model is possibly the only one that would – strictly speaking – live up to the name "anti-corruption agency" as it combines in one institution a multifaceted approach of prevention, investigation and education. For this reason, a multi-purpose single-agency model has attracted most visibility and triggered discussions in international arena. Normally, when literature and reports refer to specialised anti-corruption agencies it is this model that they have in mind.

The law enforcement 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 the latter from the first model is the level of

independence and visibility as it is normally placed within the existing police or prosecutorial hierarchy.

The last model from the above list is the most diverse one and covers a variety of institutions with various degrees of independence and organisational structure. Within this model additional sub-categories could be identified: services responsible for conducting and facilitating research in the phenomena of corruption, reviewing and preparing relevant legislation, assessing the risk of corruption, being the focal point for international co-operation as well as proving a link with the civil society; control institutions with responsibilities related to the prevention of the conflict of interest and the declaration of assets; commissions tasked with monitoring and co-ordination of the implementation and update of the national and local anti-corruption strategic documents and action plans. Many such institutions do not even have terms "corruption", "integrity" or "ethics" in their name (e.g. National Audit Office, Ombudsman, Inspectorates of Government, Public Service Commission).

Independence and accountability

Independence of a specialised anti-corruption institution is considered a fundamental requirement for a proper and effective exercise of its functions. Reasons why the independence criteria rank so high on the anti-corruption agenda are closely linked with the nature of the phenomena 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.[3] 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 though institutional and legal mechanisms aimed at preventing undue political interference as well as promoting "pre-emptive obedience"[4]. 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 with

preventive functions[5]; 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 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. 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 the 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 from 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 that 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 and removal of the director[6]

The symbolic role played by the head of an anti-corruption institution should not be underestimated. In many ways the director represents a pillar of the national integrity system. – The selection process for the head should be transparent and should facilitate the appointment of a person of integrity on the basis of high-level consensus among different power-holders (*e.g*. the President and the Parliament; appointment through a designated multidisciplinary selection committee on the proposal of the Government, or the President, etc.). Appointments by a single political figure (*e.g.* a Minister or the President) are not considered good practice. The director's tenure in office should also be protected by law against unfounded dismissals.

- Selection and recruitment of personnel

The selection and appointment of personnel should be based on an objective, transparent and merit-based system; 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 duress on the law enforcement staff and their family members should be in place.

- Budget and fiscal autonomy

Adequate funding of a body is of crucial importance. While full financial independence cannot be achieved (at 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

The "independence criteria" prescribed by different international instruments varies significantly and remains highly controversial. 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. All anti-corruption bodies do eventually depend on and are accountable to those in power, and few, if any, have constitutional status equivalent to that of the judiciary or an ombudsman – such a level of independence is not required, nor advocated by the international standards.

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 prosecutors office. The level of independence required for these specialised services is the one that is necessary to perform properly their functions."[7]

Independence should not amount to a lack of accountability: in the discharge of its duties and powers, specialised services should strictly adhere to the principles of the rule

of law and internationally recognised human rights. 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 high-level executive and legislative body and enable and proactively facilitate public access to information on their work.[8] 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 and civil society bodies.

Accountability and independence reinforce each other. Practice in many countries attests that the support of the public, which in turn is conditioned by the integrity of the anti-corruption institution, is crucial in times when the body comes under politically-motivated attacks.

Adequate resources and powers

Setting up and sustaining specialised anti-corruption institutions are 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 and their *personnel with adequate training and sustainable financial resources* is an obligation included in all international legal instruments cited in the previous section. 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. For instance, enforcement bodies should not only employ prosecutors and/or investigators, but also forensic specialists, financial experts, auditors, information technology specialists, etc.

While this seems an obvious requirement, in practice many institutions face serious difficulties with recruiting adequate numbers of staff and/or 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 the phenomena of corruption.

Special professional training is one of the most crucial requirements for the successful operation of a anti-corruption body, whether it is newly established or already existing.[9]. 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 a norm. International exchange of best practices is often a valuable source of know-how for newly established bodies.

International standards on adequate training and resources apply also to the institutions generally excluded from specialisation – the *courts*. Specialisation of courts needs to be approached with great caution so as not to open the door for "special" courts with double standards of justice. Some countries choose to establish specialised panels for complex economic offences, presided by experienced judges trained in relevant areas. However, in many countries this solution cannot be used as it may contradict constitutional norms. Therefore, adequate efforts and resources are required to devise and implement corruption-offences specific training programmes for judges normally presiding over such cases. It is of little effect if only one institution (*e.g.* the police or the

prosecution) is properly equipped and trained; if the carefully prepared and investigated case falls apart due do to lack of know-how and resources at the level of prosecution or because of backlogs in the judicial system.

With regard to the law enforcement bodies, the UNCAC and the Council of Europe conventions underline the need for *effective means for gathering evidence* (including different forms of covert measures / special investigative means, access to financial information, efficient measures for identification, tracing and seizure of proceeds from corruption), for *protecting the persons who help the authorities in investigating and prosecution corruption* (procedural and non-procedural witness protection measures), and for *raising the incentives for persons to report corruption and co-operate with the authorities* (ranging from whistleblowers' protection to the possibility of granting limited immunities and reduction of punishment to collaborators of justice). Specialised law enforcement institutions for the fight against corruption are often granted even more extensive and intrusive powers that regular police. Such broad and intrusive powers, 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, hearings, etc.) is also relevant for preventive bodies, which have certain *control functions in such areas as prevention of the conflict of interest, political party financing, and the declaration of assets of public officials*.

Co-operation with civil society and private sector, inter-agency co-operation

Even comprehensive institutional efforts against corruption are prone to fail without the active involvement of the civil society and the private sector. Accordingly, one of the important features of specialised bodies promoted by different international instruments is co-operation with civil society. This standard applies not only to the preventive and education bodies, but also to the law enforcement bodies.

An anti-corruption body cannot function in a vacuum and none can perform all tasks relevant for the suppressions and prevention of corruption alone. Efforts to achieve an adequate level of *co-ordination, co-operation and exchange of information* 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 agency 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, (financial) 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.

Strong and well-functioning inter-agency *co-operation and exchange of information among different state law enforcement bodies and control institutions* (*e.g.* financial control institutions, tax and customs administration, regular police forces, security services, financial intelligence units, etc.) are among the last, but important, features defined in international standards. Problems in this area are plentiful and 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.

Sometimes law enforcement officials, especially in countries with a centralised prosecution office, believe that the code of criminal procedure provides sufficient framework for co-ordination of investigation and 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.

Notes

1. On this subject see also the introductory chapters of the following publications: Council of Europe (2004); UNDP (2005).
2. Council of Europe, Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173), par. 96.
3. Meagher, Patrick (2004).
4. Esser, Albin & Kubiciel Michael (2004), p. 37.
5. Council of Europe (2004), p. 17; UNDP (2005), p.5.
6. UNDP (2005), p.5; Transparency International (2002).
7. Council of Europe; Explanatory report to the Criminal Law Convention on Corruption (ETC no. 173), par. 99.
8. UNDP (2005).
9. Esser, Albin & Kubiciel Michael (2004), p. 48.

Chapter 3
Models of Specialised 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 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.

Responding to this challenge, various anti-corruption bodies, agencies, commissions and committees 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. Not surprisingly, today there are only a few specialised anti-corruption institutions in Western Europe, while most transition and developing countries have one or many – most of them with questionable performance profile.

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. These models and presented below.

Multi-purpose agencies with law enforcement powers

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 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 Singapore Corrupt Practices Investigation Bureau. It has inspired the creation of similar agencies on all continents; this model exists in Lithuania (Special

Investigation Service), Latvia (Corruption Prevention and Combating Bureau), New South Wales, Australia (Independent Commission against Corruption), Botswana (Directorate on Corruption and Economic Crime), and Uganda (Inspector General of Government). A number of other agencies (*e.g.* those in Korea, Thailand, Argentina and Ecuador), have adopted elements of the Hong Kong and Singapore strategies, following them less rigorously.[1]

Law enforcement type institutions

The law enforcement model takes different forms of specialisation, and can be implemented in detection and investigation bodies, in 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 is perhaps the most common model applied in Western Europe.

Examples of such model include: Norway (Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime - Økokrim), Belgium (Central Office for the Repression of Corruption), Spain (Special Prosecutors Office for the Repression of Economic Offences Related Corruption), Croatia (Office for the Prevention and Suppression of Corruption and Organised Crime), Romania (National Anti-Corruption Directorate), and Hungary (Central Prosecutorial Investigation Office). This model could also apply to internal investigation bodies with a narrow jurisdiction to detect and investigate corruption within the law enforcement bodies. Two good examples of such bodies include Germany (Department of Internal Investigations) and the United Kingdom (Metropolitan Police / Anti-corruption Command).

Preventive, policy development and co-ordination institutions

This model includes institutions that have one or more corruption prevention functions. They can be responsible for research in the phenomena of corruption; assessing the risk of corruption; monitoring and co-ordination of the implementation of the national and local anti-corruption strategies and action plans; reviewing and preparing relevant legislation; monitoring the conflict of interest rules and declaration of assets requirement for public officials; elaboration and implementation of codes of ethics; assisting in the anti-corruption training for officials; issuing guidance and providing advise on issues related to government ethics; facilitating international co-operation and co-operation with the civil society, and other matters.

Examples of such institutions include France (Central Service for the Prevention of Corruption), "The former Yugoslav Republic of Macedonia" (State Commission for Prevention of Corruption), Albania (Anti-corruption Monitoring Group), Malta (Permanent Commission against Corruption), Montenegro / Serbia and Montenegro (Anti-corruption Agency), the United States (Office of Government Ethics), India (Central Vigilance Commission), the Philippines (Office of the Ombudsman), and Bulgaria (Commission for the Co-ordination of Activities for Combating Corruption).

Assessing the performance of specialised anti-corruption institutions

Researchers and practitioners are still struggling with the crucial question: "How can we determine with any confidence the value-added of any anti-corruption institution (let alone of a particular model of such institutions) in carrying out its mission to contribute towards reducing corruption?" No anti-corruption institution, notwithstanding its mandate, functions, powers and management will succeed alone to eradicate corruption in a given country. Its purpose is, however, to play a leading role in the reduction and control of corruption.

Linking the success of an anti-corruption institution with the level of corruption in a given country entails a number of risks. With regard to measuring corruption, we primarily rely on perception studies (such as the well-known Transparency International Perception Index). On the other hand, the World Bank has developed and has been using the Governance Measurement System which includes a Rule of Law Index. Both produce rigorous, comparable scores, but do not provide much information about the performance of a single institution. Measuring performance of an anti-corruption institution is a complex task. Many countries facing a serious corruption problem lack expertise and resources to carry out this task. 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 of politically-motivated attacks.[2]

The performance of an anti-corruption institution should be measured against a carefully designed set of *quantitative indicators* (statistical data and measures of public perceptions) and *qualitative indicators* (expert assessment and surveys) based on the functions that the institution carries out. Statistical data (*e.g.* on number of complaints received, investigations and prosecutions opened and completed, convictions achieved, administrative orders, guidelines and advice issued, laws and regulations drafted or reviewed) is an objective indicator that provides valuable information. However, there is a need for a grain of healthy scepticism in regard to such statistical data as they reveal little about the quality of justice or governance. Accordingly, this quantitative information has to be complemented with public perception and attitude studies, independent expert surveys, and monitoring evaluations from international bodies, such as the GRECO and the OECD.

Even an incomplete inventory of different existing models illustrates that anti-corruption institutions worldwide are numerous and their ranks are growing; recently adopted international treaties requiring state parties to establish such institutions will likely accelerate the growth in numbers. At the same time, reviews of these institutions indicate more failures than successes. Analysts of anti-corruption institutions worldwide have identified various reasons why many initiatives to set up and administer specialised anti-corruption institutions fail.[3] While the reasons differ in depth and length, they generally refer to a list of political, economic, governance, legal, organisational, performance and public confidence factors, also known as "Seven Deadly Sins"[4]:

Political sins A lack of genuine political commitment (rather than supporting the anti-corruption agenda to appease the donor community, international monitoring bodies, foreign investors or domestic public) will hamper either the establishment or the proper functioning of any anti-corruption institution.

Economic sins These include a variety of factors on the macro- and micro-economic level--the institution will more likely fail if it is operating in an environment of endemic corruption, in a highly state-controlled economy, or in an environment that lacks basic

macro-economic stability and a transparent tax system. Similarly, under-funding the institution would obviously thwart its effectiveness due to lack of adequate resources.

Governance sins No anti-corruption institution can work in a vacuum. An institution's effectiveness is closely linked to the overall performance of other institutions. If other public institutions are highly deficient or defective, the anti-corruption institution, even when perceived as an "island of integrity" will likely fail to carry its burden.

Legal sins These include a number of factors related to the general state of the Rule of Law in a particular country, the functioning of the criminal justice system, and in particular the courts – all of which has an indirect impact on the performance of any anti-corruption institution. Similarly if an institution's status, responsibilities and powers are determined by an inadequate legal basis, the institution vulnerable to pressure.

Organisational sins Inappropriate organisational structures (*e.g.* modelled on foreign models without adequate appreciation of local specificities), priorities and focus can significantly contribute to the failure of anti-corruption institutions. As mentioned above, there no one-size-fits-all solution. Often focus on investigation is detrimental to important preventive, analytical and educational measures.

Performance sins Anti-corruption institutions often become victims of their own promises and public expectations. The establishment of an institution raises expectations and links its effectiveness to the questionable short-term perception of the rise or drop of the level of corruption, or is evaluated against unrealistic benchmarks and objectives. The performance is likewise often undermined by the lack of staff with relevant skills and experiences.

Public confidence sins In the first place, the public should be aware of the existence, mandate, functions and performance of an anti-corruption institution. Well-established civil society organisations, free media and a relatively high level of public confidence in the institution as well as the institution's openness to and co-operation with the civil society, are considered important barriers against improper political attacks.

Assessment of the performance of specialised anti-corruption institutions needs to take into account the broader context in which they operate. Therefore, qualitative and quantitative indicators of the performance of a given institution, have to be complemented by indicators assessing "Seven Deadly Sins" in a given country.

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 the 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

among existing institutional framework do 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."[5]

In 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) its 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.[6]

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 centralised 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 an always endemic one, at a particular stage of democratisation, transition and integration into the global markets). 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.[7] 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. Low integrity of existing institutions may require higher level of independence of the new anti-corruption institution as an "island of integrity" or "island of competence".
- *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 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, decide on where it wants to go, and finally 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 prerequisites 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, prerequisites for the establishment of the specialised institution) does sometimes present a problem, but should not present an excuse.

As stated above, the proper establishment of a new body should start with the elaboration of an anti-corruption 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 head of the institution 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 come next. Staff training is a very important factor for a success of an anti-corruption body, including initial and in-service training.

The box below presents one of the most recent examples of establishing a new anti-corruption agency. While it is too early to describe this newly emerging body in the study, it is interesting to observe how countries can learn from the vast experience of anti-corruption agencies operating worldwide.

Box 1. New Central Anti-corruption Office in Poland

On 12 May 2006 the Lower Chamber of the Parliament voted in the law establishing the *Central Anti-corruption Office* (Centralne Biuro Antykorupcyjne - CBA) in Poland.

In Poland, prevention of corruption falls within a scope of activities of a dozen institutions, including the Ministry of Interior and Administration; the Ministry of Finance; the Supreme Chamber of Control (NIK); the Commissioner for Civil Rights Protection; the Office of the Civil Service; the Public Procurement Office; and the Police and Internal Security Agency. Attention should be drawn to the fact that after the establishment of the CBA, Internal Security Agency will no longer be charged with powers to combat corruption.

In previous years, a number of important changes aimed at strengthening the anti-corruption legislation have been introduced in Poland. The Law on Countering the Introduction to the Financial Circulation of the Assets Coming from Illegal or Undisclosed Sources, new Public Procurement Law, the Law on the Access to Public Information, new Electoral Law and the Law on Political Parties, Law on Responsibility of Corporate Entities, as well as several other important amendments and anti-corruption provisions of the Penal Code were adopted. Poland has ratified the Council of Europe Criminal and Civil Law Conventions and the OECD Anti-Bribery Convention.

In September 2002, the Council of Ministers of Poland endorsed the first Programme for Combating Corruption; the majority of its aims were completed in 2 years. New Anti-corruption Strategy for 2005 - 2009 aims: to prevent corruption and develop effective counter-measures; co-ordinate actions aimed to ensure implementation of anti-corruption legislation; limit social tolerance for corruption by raising awareness and promoting suitable models of behaviour; and create transparent and citizen-friendly public administration system.

Notwithstanding the above-mentioned legal and policy developments, corruption is still perceived as a widespread problem in Poland. A public opinion survey carried out by the Stefan Batory Foundation indicates that the percentage of Poles who admit offering bribes was 14-17% from 2000-2004 and 15% in 2004. Bribes are most often solicited within public health service (56%), traffic police (12%), local governments (8%), while seeking a job (5%) and to school teachers (5%)[8]. Poland's ranking in the Transparency International Corruption Perception Index table has decreased from 45 in 2002 to 70 in 2005 – lowest among EU countries – with a score ranging from 3.5 to 4 out of 10 over the last four years.

In September 2005, the new conservative government, led by the Law and Justice party, came to power after winning elections on a platform including promises to limit corruption. The government designated the fight against corruption to be its key priority. In November 2005, plans were announced to establish the CBA – an "investigative task force" – to fight corruption. The government nominated Mariusz Kamiński, a member of parliament from the Law and Justice party, to be in charge of preparations of a new anti-corruption strategy and draft bill on CBA. The bill was adopted by the government in January and by the Parliament in May 2006.

Once the law enters into force, it is planed that the new anti-corruption body will be the focal point for combating corruption in Poland. The agency will have functions to prevent corruption, including monitoring of income declarations, and possessing investigatory powers, including the use of special investigative techniques, vested in the police, tax inspection, Internal Security Agency, as well as the Supreme Chamber of Control. Plans are under way to restructure Internal Security Agency transferring corruption offences to a different jurisdiction. The CBA would have approximately 500 staff members and an annual budget of 70 million PLN (*circa* 17.7 million EUR). The CBA will report directly to the Prime Minister. [9]

Notes

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2. Valts Kalniņš (2005).
3. De Speville (2000), Doig (2004), Meagher (2005), Pope (1999).
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Part II

Selected Models of Specialised Anti-corruption Institutions

Chapter 4
Multi-purpose Agencies with Law Enforcement Powers

Hong Kong Special Administrative Region: Independent Commission against Corruption

The Independent Commission against Corruption (ICAC) of the Hong Kong Special Administrative Region was established in 1974 as an independent multidisciplinary 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 2004, 76% of Commission's staff worked in the investigative branch.

Background Information

The decision to set up an independent multidisciplinary 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 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 raise public confidence and establish credibility and effectiveness of the institution. Accordingly, one of the first priorities of 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 eyes a symbol of the corrupt police force and ineffectiveness of 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 already surpassed that of anonymous reports.

Legal and Institutional Framework

The ICAC derives its status from the Independent Commission against Corruption Ordinance[1]. 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.[2] In addition, the ICAC is given specific legal powers and tasks, which can be perceived through two other laws: Prevention of Bribery Ordinance, 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 in handling an arrested person and in 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 ICAC with the power of taking non-intimate samples from an arrested person for forensic analysis;
- Empowers the ICAC to arrest persons that are referred as prescribed officers (they are 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, whether permanent or temporary, under the Government; and

(i) any principal official of the Government appointed in accordance with the Basic Law;

(ii) the Monetary Authority appointed under Section 5A of the Exchange Fund Ordinance and any person appointed under section 5A(3) of that Ordinance;

(iii) Chairman of the Public Service Commission;

(iv) any member of the staff of the Independent Commission Against Corruption;

(v) any judicial officer holding a judicial office specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance and 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 2. 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 ICAC and categorized with a view to pursue or not pursue further action;
3. For complaints with further action recommended, investigations will be carried out by ICAC's Operations Department;
4. For complaints with substantiated evidence, relevant details will be submitted for the institution of prosecution to the Secretary for Justice, 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 and Corruption Unit, Prosecutions Division, Department of Justice. It advises ICAC and handles its prosecutions.
6. Report will be subsequently made to ICAC's Operation Review Committee.

Source: ICAC, 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. Community Relations Department educates the public against the threats of corruption and enlists public support in combating corruption. Among different sections of the Operations Department there is a Witness Protection and Firearms Section, International Liaison Section, Financial Investigation Section and Computer Forensics and Research Development Section (see the 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. At present, the ICAC employs about 1 200 staff (see the 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 to seriously curb 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 Course* according to the line of work to which they will be assigned (*e.g.* investigations, prevention, education). On completion of the first part of the Induction Course, newly recruited investigators undergo a 12-month attachment to an Investigation Branch for on-the-job training. They then return to the Training School for Stage II of the Course with focus on practical investigation training. At the end of Stage II training, they go through a further 12-month cross-Branch posting before Stage III training which covers more advanced practical investigation skills.

Continuous training. Continuous professional training cover such subjects as financial investigation, interview technique, report writing and management skills. The investigators Operations Department's investigators are given continuous professional training addressing the changing commercial environment, technological advances and the latest developments in criminal investigation techniques.[3] Given the increasing number of cases requiring financial and computer data analysis, ICAC is increasing professional training for its investigators on financial investigation, computer analysis and forensics, as well as experience sharing with law enforcement agencies abroad.[4]

In addition to professional training, officers also receive training on team building, leadership, stress management, change management, quality management and personal effectiveness. To keep in pace with the rapid development in information technology, ICAC provides a range of computer training for their officers (training on software applications, solving hardware and software problems, system administration, and information technology security).

ICAC's officers also receive 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 85 million US dollars, which is about 12 US dollars per capita of the Hong Kong SAR.

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 Government:

- 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 web page. Also, statistics including corruption reports, election-related corruption reports, and prosecutions are also uploaded for the free access of the public.

Practice and Highlights

Box 3. Performance Standards employed by ICAC

All tasks are performed within "performance standards" in which the ICAC staff is 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 or information within 2 working days

Receiving corruption complaints. In recent years, the number of corruption complaints that are submitted to the ICAC – called corruption reports – range from 3,500 to 4,500 a year, excluding complaints related to elections. The total number of election-related reports range from around 200 to 700 per election year. Comparison of corruption complaints in 1975 and 2004 allows seeing that there is significant drop in complaints about public sector, in particular about police, but also other public institutions and an increase of complaints about private sector. To receive the reports from public, a Report Centre operates 24-hours. In 2004, the centre dealt with 5,717 reports and enquiries.

Pro-active Investigation of Corruption Cases. The Operations Department that is responsible for investigations is the largest department of ICAC. It has started, over recent years, to employ 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.[5] This approach has been proven effective in uncovering many serious cases of corruption.[6]

Advising on corruption prevention. The Corruption Prevention Department each year conducts about 300 studies 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. Furthermore, the ICAC's Community

Relations Department puts efforts to tailor-make education campaigns for different target groups including:

Public sector. In spearheading integrity programmes for staff of public institutions, they work with the Civil Service Bureau (CSB), in charge of government staff policy and matters. To further enhance the promotion of ethical management in government departments, the ICAC and the CSB launched the Civil Service Integrity Entrenchment Programme in January 2004. About half of the departments had requested a joint visit by the ICAC/CSB outreach team to discuss practical issues concerning civil service integrity and strategies in fostering an ethical culture in their respective departments. A large-scale Leadership Forum 2005 – Successes through Ethical Governance, co-organised by the ICAC and CSB in June 2005, drew about 1 000 senior public officials and business leaders to examine key ethical challenges;

Business community. In mid-1990s, a business ethics campaign was launched to reach over 2,000 listed and major companies, and trade and professional associations. As a result, 70% of these organisations contacted adopted corporate codes of conduct. In 1995, with the support of six major chambers of commerce, the Hong Kong Ethics Development Centre was set up to promote business ethics on a long-term basis. Meanwhile, 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, they inculcate the values of honesty and integrity amongst their younger generation. To build bridges to reach young people, they have partnered with various youth bodies, district organisations, schools and universities. In addition to school talks, they also use more interactive means such as drama performances and D.I.Y. ("Do It Yourself") projects for students to create their own video presentations.

Box 3. Anti-Corruption Efforts in Hong Kong Infrastructure Projects

One of the most extensive and noted ICAC projects, addressed the construction of the new airport in Hong Kong. The Airport Core Programme was designed involving substantial reclamation of land, construction of an airport, associated bridges and railway systems, a cross-harbour tunnel, expressways and a new town. ICAC adopted a proactive approach to prevent corruption in this mega-size public development project. ICAC involvement started early, at the legislation stage, to ensure that corruption prevention safeguards were incorporated in the systems. The staff of the Agency maintained close liaison with the senior management of the implementing agencies to provide advice during the procedures formulation stages as well as during the implementation of the project.

Source: ICAC

Educating the public and raising awareness on corruption. In pursuing their tasks, the ICAC co-operates with relevant public institutions and non-government organisations to provide corruption prevention education and convey anti-corruption messages through various means.

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, 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 Internet to keep the public posted of ICAC news and developments.

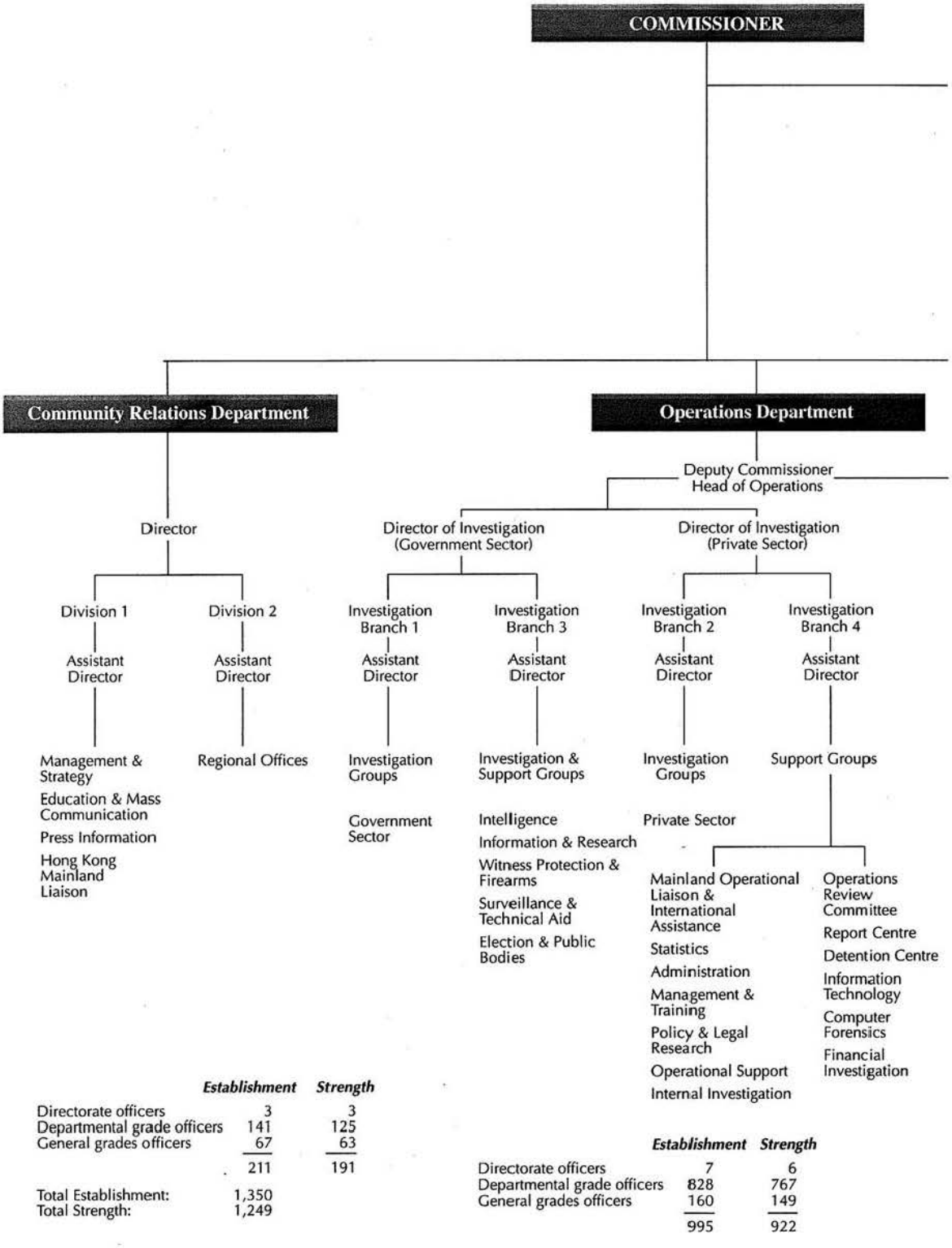
Apart from the corporate website (www.icac.org.hk), the Department has developed three other web pages – Hong Kong Ethics Development Centre (www.icac.org.hk/hkedc); Teensland (www.icac.org.hk/teensland); and the Moral Education website (www.icac.org.hk/me) – dedicated, respectively to the business sector, the youth, and teachers specialising in moral education. In June 2004, a web-based audio-visual platform, ICAC Channel, was launched to provide latest information through multimedia productions. Meanwhile, TV drama series, a signature product that the ICAC produced at an interval of two to three years, continued to attract a wide audience. Each of the five episodes of "ICAC Investigators 2004" broadcast in 2004 had an average of 1.5 million audience.

Contact information

The Independent Commission Against Corruption (ICAC)

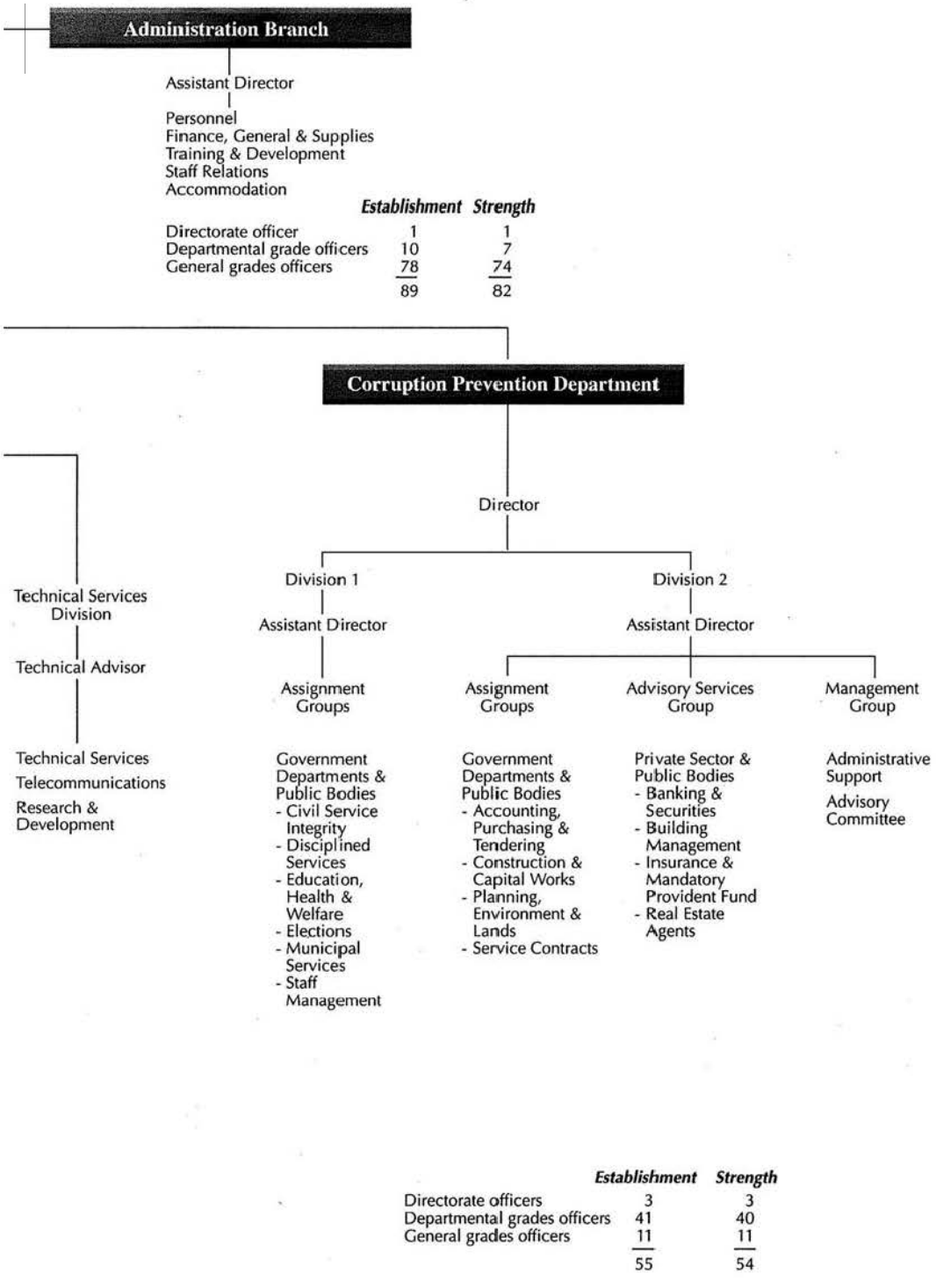
SAR Hong Kong
Email: general@icac.org.hk,
Website: http://www.icac.org.hk

Figure 1. Organisation of the Independent Commission



Source: 2003 Annual Report: Independent Commission Against Corruption, Hong Kong Special Administrative Region

Against Corruption (Position as at 31.12.2003)



	Establishment	Strength
Directorate officers	3	3
Departmental grades officers	41	40
General grades officers	11	11
	55	54

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 CPIB was established in 1952 as an independent body responsible for the investigation and prevention of corruption. CPIB evolved from another body – Singapore's Police Force known as the Anti-Corruption Branch. Prior to 1952, this small unit was in charge of investigating all corruption cases.

The main reason which led to the establishment of CPIB was the fact that corruption was perceived as a way of life in the forties and early fifties in Singapore. The CPIB was set up by the government as an as an independent body, separated from the Police, to investigate all corruption cases. In the early days, the CPIB faced a number of difficulties. The anti-corruption laws were inadequate and this had slowed down the gathering of evidence against corrupt individuals. Another problem was the lack of public support. Citizens did not co-operate with the CPIB as they were sceptical of its effectiveness and were afraid of reprisals.

According to the CPIB, this situation changed with the new of Government which took power in 1959. Firm action was taken against corrupt officials, many of whom were dismissed from the service. Public confidence in the CPIB grew as people realised that the Government was sincere in its anti-corruption drive.

In sixties, a more effective legislation against corruption was introduced in Singapore. The anti-corruption law, namely, the Prevention of Corruption Act, was overhauled. Additional powers of investigation were given to the CPIB: new legislation also increased the level of punishment for corruption offences. The Prevention of Corruption Act, Chapter 241, today provides the CPIB with all the necessary powers 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 legislation against money laundering has been introduced in addition to giving the same powers to the court for the freezing and confiscation of properties and assets by offenders.[7]

Legal and Institutional Framework

The CPIB derives its powers of investigation from the Prevention of Corruption Act, Chapter 241 forming its legal basis. CPIB is an independent governmental body. Its mandate is to investigate and prevent corruption in the public and private sectors in Singapore.

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 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. While 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.

While 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 serious criminal offences that was 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 corruption-prone departments and public bodies to identify administrative weaknesses in the existing systems, which could facilitate corruption and malpractices, and recommends remedial and prevention measures to the heads of departments concerned. Also in this regard, officers of the bureau regularly conduct lectures and seminars to educate public officers, especially those who come into contact with the public, on the pitfalls of and the avoidance of corruption.

It is also charged with the responsibility of checking on malpractices by public officers and reporting such cases to the appropriate public institutions for disciplinary action. The bureau is responsible for safeguarding the integrity of the public service and encouraging corruption-free transactions in the private sector.

Under the Law on Prevention of Corruption, CPIB has the following powers:[8]

Powers of arrest. 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. The Director or a special investigator arresting a person 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. In any case relating to the commission of:

(a) an offence under the Penal Code, such as public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant, taking gifts, assisting an offender to evade justice, offering gift or restoration of property in consideration of assisting an offender to evade justice, taking gift to help to recover stolen property or of any conspiracy to commit, or of any attempt to commit, or of any abetment of such an offence;

(b) an offence 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 powers in relation to police investigations into any offence given by the Criminal Procedure Code:

Special powers of investigation. If the Public Prosecutor considers that there are reasonable grounds for suspecting that an offence under the Prevention of Corruption Act has been committed, he can issue an order to authorise the Director or any police officer to make an investigation in the matter in such manner or mode as may be specified in that order. The CPIB is responsible solely for the investigation of corruption-related offences involving bribery in Singapore. While 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.

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. 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 2 000 USD or to imprisonment for a term not exceeding one year or to both.

Powers of investigation authorised by Public Prosecutor. 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. The Public Prosecutor may, if he considers that any evidence of the commission of an offence under the Prevention of Corruption Act or of the commission of above mentioned offences under 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. On the above mentioned grounds 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.

Every person to whom a notice is sent by the Public Prosecutor under the previous provisions shall, 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 or to imprisonment for a term not exceeding one year or to both.

Powers of search and seizure. 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 above mentioned offences 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.

Engagement in the civil service reform: As part of the on-going civil service-wide reforms initiated in May 1995 under the broad umbrella of the initiative called "Public Service in the 21st Century", CPIB aims to enhance process-control so as to better manage investigations, principally through the introduction of performance indicators involving "stretch targets" 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. Enhance personnel practices through the improvement of career opportunities and training, resulting in CPIB being conferred the People Excellence Award. Create an organisational culture characterized by an adherence to the core values of tenacity, result-oriented management, devotion, daring, innovativeness, impartiality and teamwork. A system of peer appraisals and staff opinion surveys encouraged public officials to align themselves to these values. Consequently, CPIB performed well operationally (see below statistics on investigations).[9]

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. There is no known external supervision nor are there advisory bodies charged with supervision of the CPIB.

Human, Training and Material Resources

The Director of the Corrupt Practices Investigation Bureau 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 appoints the Deputy Director of the Corrupt Practices Investigation Bureau. He also creates different grades and appoints assistant directors and special investigators. He may appoint such number of 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 the Deputy Director or an assistant director of the Bureau. The 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 Director, assistant directors and special investigators of the Corrupt Practices Investigation Bureau are public servants within the meaning of the Penal Code. A certificate of appointment signed by the Director is issued to every officer of the CPIB.

Practice and Highlights

Four-pillar Framework: Singapore's CPIB follows a four-pillar framework to combat corruption through effective enforcement; anti-corruption laws; adjudication and administration.

A strategy involving enforcement, legislation, judiciary and administrative measures to combat corruption was adopted in the first years after Singapore became independent in 1959. These reforms were reinvigorated through fresh initiatives periodically. Greater powers were given to the investigators. Amending the law to remove loopholes to make the detection and conviction of offenders easier appeared efficient, as it resulted in more effective adjudication and enforcement. Independence of action was assured by subordinating the CPIB directly to the Prime Minister with the aim to prevent undue interference and to ensure that CPIB does not favour any particular government department or public institution. Under the supervision of the Prime Minister's Office, CPIB was able to operate without fear or favour and "regardless of colour". It was this independence that enabled CPIB to take action against ministers and high-ranking civil servants.

The reform programmes were driven top-down by Government[10]. Personal example set by the Government provided moral authority for the anti-corruption movement. After some 40 years, it is believed that corruption in Singapore is very much under control. Transparency International ranks Singapore amongst the five least corrupt countries in the world[11] while the Political and Economic Risk Consultancy's Corruption in Asia Report ranked Singapore as the least corrupt country in Asia since the inception of the survey in 1995.

Box 4. Four Pillars of Corruption Control in Singapore

Effective Law-enforcement
Effective Anti-Corruption Legislation
Effective Adjudication
Effective Administration

Source : CPIB

Political will is the corner-stone of any anti-corruption efforts. According to CPIB, the combination of effective enforcement, anti-corruption laws, adjudication and administration are necessary to help ensure success in any anti-corruption movement, if there is political will to serve as strong foundation.

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Sources

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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 2000, with possesses 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 and education, co-ordination and implementation of the National Anti-corruption Programme. However, the STT is generally perceived as a law-enforcement institution. In 2006, the service employed some 215 staff in the central office and regional departments, most of they employed in investigation divisions. The STT is recognised as one of a few successful copies of the Hong Kong model.*

Background Information

In the period from regaining its independence in 1990 to 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 multifaceted approach of preventive and repressive, legal and institutional measures. This can be attributed to a number of factors, amongst others the political commitment of successive governments, strong outside incentives and reform requirement during the accession process to the EU, as well 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 Interior; it had intelligence and preventive functions regarding corruption in the public sector.[12] Recognising the need to address corruption through a multifaceted 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 a 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 become operational within a month of the adoption of the law.

The STT has been designed as the 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 bodies as well as with the civil society and the private sector, and to co-ordinate anti-corruption strategies on national and local level. The main objectives of the STT are to create a national system of corruption prevention, to improve the legal framework against corruption, to develop corruption data and analyses and to develop international relations to combat corruption.[13]

The STT, however, 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, bases the fight against corruption on three pillars: prevention, investigation and enforcement and public education. The Programme is a comprehensive document, listing approximately 200 specific measures to be undertaken by 2007. 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 2001. Corruption and transparency measures are further regulated by different laws and regulations that cover all common corruption prevention topics: prevention of the conflict of interest, declaration of assets, ethic and transparency of public service, prevention of money laundering and financial control over the public usage 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 Institutional Ethics Commission (CIEC). The CIEC was established in 1999 as an independent body accountable to the Seimas consisting of five members (the President of the Republic, the President of the Seimas, and the Prime Minister each appoint 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 the CIEC is the main control institution in the area of prevention of the conflict of interest of high-level public officials and the central authority in the field of analysing ethical problems confronting the civil servants, providing expertise and recommendation concerning anti-corruption programmes and reform of legislation in this field. It receives and within its scope of jurisdiction investigates complaints from the general public, and can initiate investigation 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 (SACC). The SACC is a parliamentary body set-up in 2001. Its functions are described in the Law on Seimas Anti-corruption Commission and 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 elaboration 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.

Interdepartmental Commission for Co-ordinating the Fight against Corruption (ICCFC). The ICCFC is a non-permanent body set-up in 2003 under the Government consisting of high 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 General Prosecutor'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 Interior or the Government, which competencies in parts overlap with the STT functions: the Financial Crime Investigation Service, Police Organised Crime Investigation Service, and the State Security Department.

However, while the development of this rather complex institutional and legal system has produced positive results and improved, over the course of the last decade, the situation in the country, corruption in Lithuania undisputedly persists as a notable problem facing society at large, the private businesses and ordinary citizens. This fact has been over the last years continuously attested by a number of studies or evaluation carried out by the international monitoring mechanisms, international and local NGOs, and by Lithuanian authorities.[14]

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 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 is performing 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 on national and local level, such as to:

- participate in the development of and, together with other State and Municipal agencies, implement the National Anti-Corruption Programme;
- put forward proposals to the President, the Seimas and the Government as to the introduction and improvement of new 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; and
- together with other State and Municipal agencies, implement corruption prevention measures.

One of the additional notable tasks of the STT is to carry out "vetting process" (or background checks) of officials before they are appointed to certain public functions, depending on the level of clearance required.

In spite of 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 abuse of authority, 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 (CPC) 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 – either on the information, complaint received or due to the services' own pro-active activity – that initiates preliminary investigation into most corruption offences. When another law enforcement or security service (e.g. Financial Crime Investigation Service, Police Organised Crime Investigation Service, State Security Service, Tax or Custom 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, financial and organised crime offences.[15]

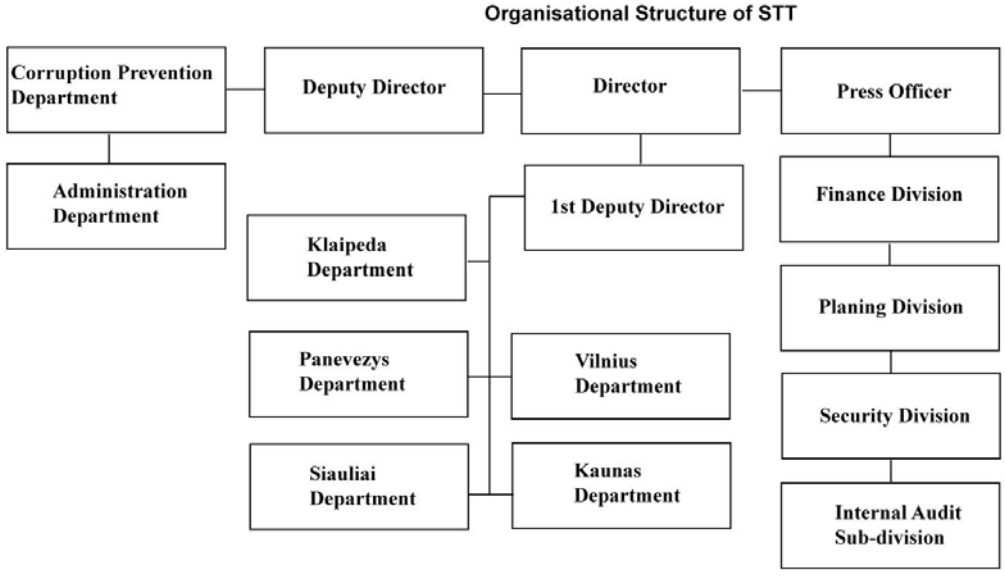
The Law on STT, the Law on Operational Activities and the CPC gives the STT a wide range of investigative powers. These include access to financial data and special investigative means such as covert interception of telecommunications, covert observation, deployment of undercover agents and simulated corruption offences (the Constitutional Court has in year 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 for 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 directs 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 join investigation teams, and can ask further expertise (e.g. in financial field) by 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 divisions on regional levels. The STT has a central office in Vilnius and 5 regional departments.

Figure 2. STT Organisational Structure



Source: STT

Human and Material Resources

In 1997, when the service was first set-up within the Ministry of the Interior, the STT employed 86 persons and the number has steadily risen over the years to some 215 staff members in 2005 – out of which close to 90% had university or higher academic degrees.[16] Most of the personnel have prior law enforcement and security background which attest the law enforcement nature of the service. The majority of the STT staff carries out investigation, and a smaller proportion is dedicated to prevention and education.

The independent status of the STT is secured also 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 by 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. In six years of operation, the STT had two directors; generally the fluctuation of the staff is not high.

The Law on 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 investigation against a 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 except; 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.

Staff members are subject to continuous in-service training; according to the STT's 2005 annual report, 163 of the personnel underwent different training events abroad and in the country.[17] The STT's annual budget represents to approximately 0.1% of the Lithuanian state budget, approximately US $ 5.57 million. During 2004-2005 the budget of the STT has increased by 11%.

According to the international monitoring reports, the STT is considered a rather well functioning and well-managed professional body; the same reports however indicated the need to strengthen and streamline its preventive and educations functions and increase the expertise in the area of financial investigations, proceeds from crime and liability of legal persons for the acts of corruption.[18]

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 though 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 the civil society, e.g. the national chapter of the Transparency International.

Practice and Highlights

Detection and Investigation of Corruption Related Crimes. During 2005, the STT initiated 79 pre-trial investigations, including 48 investigations (61%), which were started after the STT officers detected elements of crime, and 31 investigation (39%) after they received a complaint or statement about a crime committed.

In 2005, the STT disclosed 139 persons, suspected of crimes committed, including 62 civil servants and 5 legal entities. Out of all the civil servants and public officials suspected, 22 officials were from the system of the interior (7 Criminal Police officers, 7 Uniformed Police officers, 7 other officials from the system of the interior and 1 municipal police officer), 9 civil servants were from the health care sector, 4 civil servants were from the customs, 3 civil servants were from land management, 2 civil servants were from municipalities, 2 officials were from incarceration institutions, 1 civil servant was from the educational sector, 1 civil servant from defence and 8 civil servants represented other areas.

Figure 3. Number of Suspects in Criminal Acts Disclosed by STT, 2001-2005

In 2005, the STT detected 234 corruption related crimes, including 54 cases of bribe-taking, 48 cases of the abuse of office, 38 cases of bribe-giving, etc. On average, the STT detects about 200 criminal offences per year.

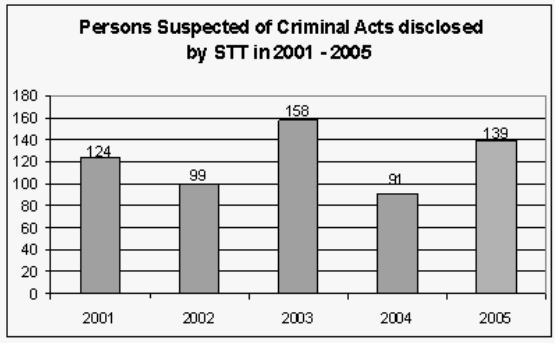
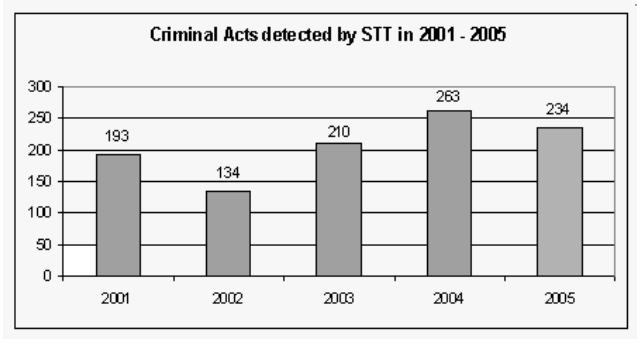


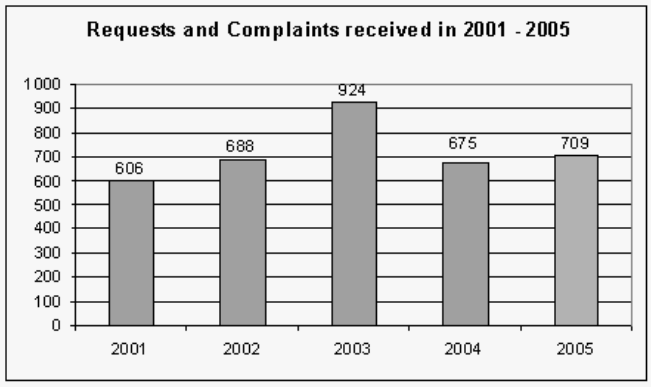
Figure 4. Number of Criminal Acts Detected by STT, 2001-2005



In 2005, in criminal cases where pre-trial investigation was conducted by the STT, 33 persons were convicted and 8 persons were acquitted. Last year, the STT divisions received 709 requests and complaints (including 110 submitted anonymously) from the public. These requests and complains were dealt with in compliance with the procedure established by the Law on Public Administration of the Republic of Lithuania

Figure 5. Number of Requests and Complaints Received by STT, 2001-2005

Out of 709 requests and complaints received in 2005, 517 were examined and resolved administratively, 130 were transferred to other institutions according to their competence, 42 investigations are still continued and other requests and complaints were returned to residents unexamined.



Prevention of Corruption. In 2005, the STT paid more attention to qualitative, rather than quantitative measures to prevent corruption. Anti-corruption activities were more focused on identification of corruption in the area of public administration, detection of non-transparent system and procedures and elimination of causes and conditions for corruption.

In 2005, 14 state and municipal bodies submitted their conclusions concerning the corruption occurrence probability (COP). During the same year, corruption risk analysis (CRA) was performed in Economy, Transport and Social Security and Labour ministries and seven municipalities.

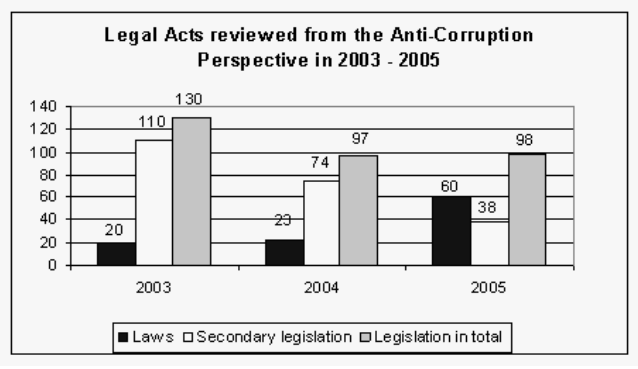
Table 1. Number of proactive corruption analysis measures implemented by STT, 2004-2005

	Submitted COP		Performed CRA	
	2004	2005	2004	2005
Ministries	2	4	2	3
Municipalities	5	10	2	7
	7	14	4	10
Total:	21		14	

Assessment of Legal Acts from the Anti-Corruption Point of View. On 28 May 2002, Seimas of the Republic of Lithuania adopted the Law on Corruption Prevention of the Republic of Lithuania, which obliges the STT to perform assessment of legal acts and draft legal acts from the anti-corruption perspective. In 2005, the STT reviewed 98 laws, secondary laws and their drafts, in 2004 and 2003, 97 and 130 respectively. The average number of laws reviewed from the anti-corruption point of view is 108 legal acts per year.

Figure 6. Number of Legal Acts Reviewed by STT, 2001-2005

Practice shows two clear trends: the number of secondary legislation reviewed anti-corruptively is decreasing and the number of primary legislation assessed from the anti-corruption point of view, as compared with the year 2003, has tripled. With the existing human resources available, the STT is able to review up to 100 pieces of legislation per year.



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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 body set up in 2002. Its mandate combines prevention, education and investigation of corruption. The KNAB activities range from investigating corruption offences, controlling activities of public officials, and financing of political parties to education and training on corruption risks. It also serves as a focal point for the national anti-corruption policy. The KNAB is an independent institution within public administration system, endowed with investigatory powers. Since its establishment, the KNAB has been gradually strengthened with more financial and human resources. In February 2006, there were 127 staff members, the majority of whom work on criminal investigations. In 2005, the budget of the KNAB amounted to approximately EUR 4.7 million. In 2005, the KNAB was named one of the most trusted public institutions in Latvia.*

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 was established, a coordinative government institution of representatives from 16 state institutions chaired by the Minister of Justice. 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 Security Police and State Revenue Service. Nevertheless, the fight against corruption was not a priority for any specific body, existing institutions lacked coordination and it showed little results.

A proposal of 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, institution attached to the Ministry of Justice with head appointed by the government; or attached to the General Prosecutor's Office with head appointed by the Prosecutor General.[19] Finally, an independent institution was created.

The law establishing the KNAB was drafted by a working group created in October 2000. It consisted of Financial Intelligence Unit, Prosecutor General's Office, State police, Security police, Ministry of Justice, Supreme Court, State Revenues Service, Transparency International-Latvia (TI Latvia).[20] The Law was adopted by the Parliament in April and entered into force in May 2002 (by June 2005 amended six times).

It took about one year to make the institution operational. The staff of the new agency was constituted mainly from former law enforcement officers, also officials from other state institutions and to a lesser extent representatives of private sector.[21] The KNAB carries out the totality of its functions since February 2003.

The KNAB was established in a context of increasing attention from international community to corruption problems in Latvia. Main impetus was the accession process to the European Union (EU). Since 1998 the fight against corruption was part of the national

accession programme; the European Commission regularly called upon the government to improve it. The World Bank experts suggested 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; GRECO evaluation in 2002 stated that the Corruption Prevention Council does not bring about the expected results and efforts of police institutions to fight corruption "are frankly segmented and disjointed and that there is an obvious lack of direction and co-ordination which no doubt leads to lost opportunities".[22]

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 coordination with other public institutions was another difficulty. Some institutions had diverging views on directions of 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 Office. Besides, the public had high expectations that the work carried out by the KNAB would have quick and tangible results. Another challenge was the nomination of the head of the KNAB. From 2002-2004 there were five persons occupying this position. Following various procedural issues and disputes among political parties, the situation became stable in May 2004, when the current head of the office was nominated.[23]

The Corruption Prevention Council, predecessor of the KNAB, later was merged with the Crime Prevention Council, which forms today the Corruption and Crime Prevention Council chaired by the Prime Minister. In April 2002, Parliament passed the Law "On the Prevention of Conflict of Interest in Activities of Public Officials" that replaced the Law "On Prevention of Corruption".

Legal and Institutional Framework

The Law "On Corruption Prevention and Combating Bureau" is KNAB's legal basis. Activities of the Bureau are also regulated by provisions in the Criminal Law, the Criminal Procedure Law, the Code of Administrative Violations, the Law "On Preventing the Conflict of Interest in the Activities of Public Officials" and the Law "On Financing of Political Organisations (Parties)".

Law on Corruption Prevention and Combating Bureau. The law provides that the KNAB is an institution of state administration that can also carry out investigatory operations. The Law sets out the following main functions and areas of activity of the KNAB.

Corruption prevention:

- Develop and coordinate the implementation of the national anti-corruption programme approved by the Cabinet of Ministers;
- Receive and process complaints of citizens, and carry out inquiries upon request of the President, the Cabinet of Ministers, the Parliament or the Prosecutor General;

- Analyse results of complaints, inquiries, declarations, corruption prevention practice and violations detected by public institutions and suggest improvements to ministries and the State Civil Service Administration;
- Elaborate 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, including check the declarations of public officials;
- Educate the public on their rights and 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 cooperation 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 combating:

- Detect and investigate criminal offences related to corruption in 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:

- Control the application of the Law "On Financing of Political Organisations (Parties)";
- Hold persons administratively liable and impose sanctions;
- Perform investigations and investigatory operations in order to detect criminal offences related to violations of rules relative to financing of political organisations (parties) and their unions set out in the Criminal Law except when state security services24 have jurisdiction of these violations;
- 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 on the declarations of financial activities submitted by political organisations (parties) and their unions and on violations in submitting declarations or of limitations imposed by the law;
- Analyse existing laws, suggest amendments and draft new laws;
- Develop public opinion surveys and analysis;
- Educate the public on political organisations (parties) financing and inform on violations and preventive measures taken.

Under the *Law on Financing of Political Organisations (Parties),* the KNAB officers have powers and rights to: investigate and 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 that political parties submit to the KNAB the following information: annual financial declaration; election campaign expenditure declaration before the elections (national, local and European Parliament); election income and expenditure declaration after the elections; annual financial and activity reports.

Criminal Law. The law sets forth the following criminal offences related to activities of public officials that in cases involving corruption are enforced by the KNAB (Articles 316 – 330):

- 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.

Criminal Procedure Law. The KNAB is a pre-trial investigation body (Article 386) assigned to investigate, under supervision of a public prosecutor, criminal offences that involve political party financing and public sector activities related to 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 of Latvia asking to commence criminal prosecution.

Code of Administrative Violations. The KNAB is responsible for inquires and imposing sanctions in cases involving the following administrative violations:

- Failure to submit the declaration of public official (fine up to 250 LVL25);

- Violation of limitations to other employment (fine from 50 to 250 LVL and/or prohibition to hold public office);
- Failure to report conflict of interest (fine up to 250 LVL and/or prohibition to hold public office);
- Violation of 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 50 to 250 LVL and/or prohibition to hold public office);
- Violation of limitations regarding taking of gifts, donations or other material benefits (fine from 50 to 250 LVL and/or confiscation of property acquired);
- Failure to submit the list of public officials (fine to heads of state or local administrations from 50 to 150 LVL);
- Failure to perform the duties of heads of state or local administrations with respect to prevention of conflict of interest (fine from 50 to 250 LVL);
- Violation of political organisations (parties) financing rules (fines from 250 to 10 000 LVL and/or confiscation).

In addition, the *rules on public procurement* provide that all disputed tenders in public procurement are submitted to the KNAB for investigation. Also in July 2004, the *Code of Ethics of the KNAB* was adopted. The supervision of its application is exercised by an Ethics Commission.

Human and Material Resources

As of 1 February 2006, there were 127 staff members working at the KNAB, including 2 deputy directors, 15 heads of divisions, 3 deputy heads of divisions, 93 employees and 13 investigators.

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 2003, such commission was set up bringing together the Prime Minister, representatives of Ministries of Justice, Finances and Interior, President's administration, State Audit Office, Prosecutor General's Office, the Parliament; TI Latvia participated as observers. There was an open job vacancy; 26 candidates applied, whose names and CV were made public and widely discussed.

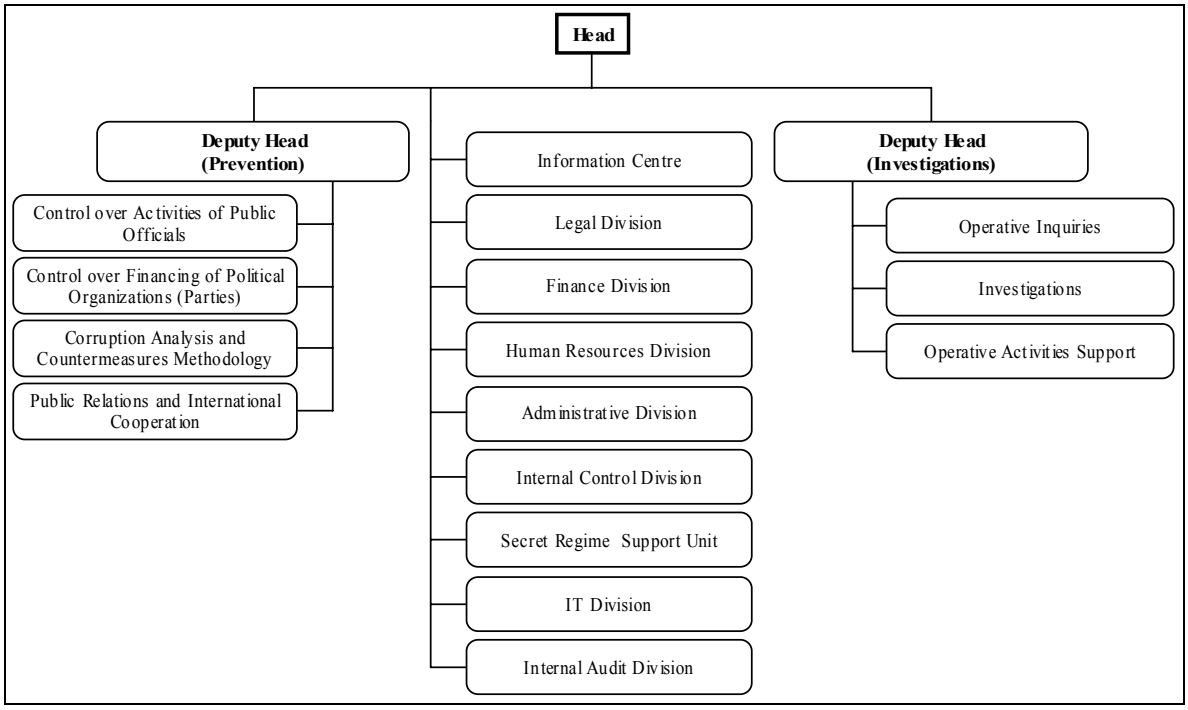
The rules for providing and financing training for the KNAB staff members were determined in 2004. In 2004 staff members attended 43 training courses; regular training in Latvia and abroad continued in 2005. Trainings range from techniques to question suspects and witnesses, procurement procedures, administrative violations and criminal procedure legislation to effective communication, accounting, insurance etc.

Accountability

In the first years the KNAB was under the supervision of the Cabinet of Ministers, but since 2005 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 Committee on Supervising the Prevention and Combating of Corruption, Contraband and Organised Crime is overseeing the work of the KNAB; it serves as forum to inform the deputies about activities and developments at the KNAB; the Commission has no right to oppose the decisions of KNAB.

Figure 7. KNAB Organisational Structure



Source: KNAB

Note: In June 2006, the International Cooperation Division was established under the Head of KNAB

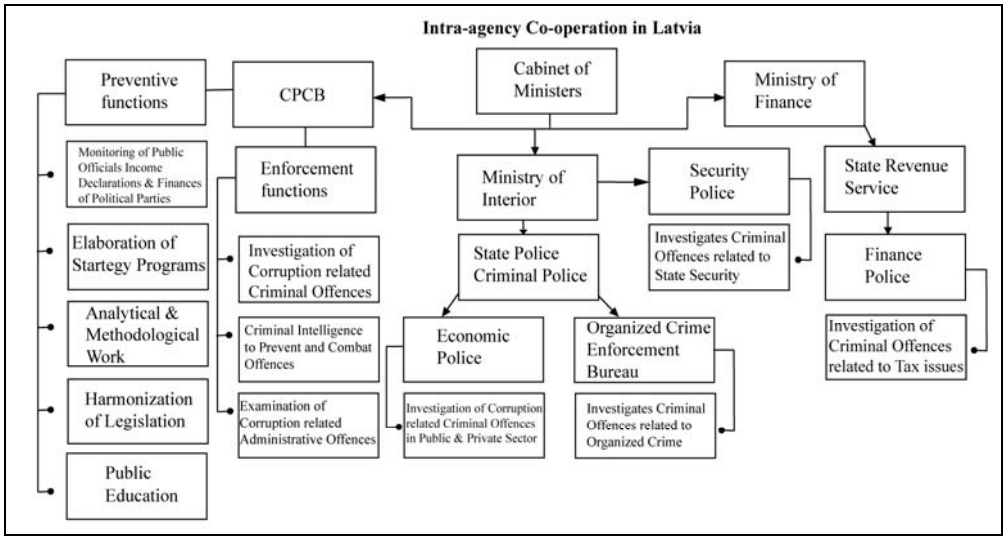
Table 2. KNAB Annual Budget, in million EUR26

Year	Allocation from the state budget	International contributions, including EU PHARE	Total
2003	2,37	-	2,37
2004	2,81	1,32	4,13
2005	3,05	0,54	3,59

Source: KNAB

The KNAB has 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 English and the annual public report. Reports are public information available on the website.

Figure 8. Inter-agency Cooperation in Latvia



Source: KNAB

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

With regard to political party financing, the KNAB reports on the results of control of declarations submitted by political parties in a year's time. 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 national anti-corruption programme.

The 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 Foreign Investors Council of Latvia, Ethics Council, Latvian Medical Association, Association of Building Professions, Confederation of Employers, Union of Lawyers, Association of Commercial Banks, Association of Local Authorities, Trade and Industry Camera, Journalists Union, Transparency International Latvia. 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, missions and international organisations. The Panel gets together twice a year. For instance, its discussion can focus on the implementation of the National Programme for Corruption Prevention and Combating for 2004-2008, results of investigations, control of political parties financing, control of public officials, amendments to legal acts, etc.[27]

Practice and Highlights

National anti-corruption programme: In 2004, Latvian Cabinet of Ministers adopted the national anti-corruption programme for 2004 – 2008, 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 also developed guidelines for implementing the programme and on internal anti-corruption programme and measures, as well as seminars (in 2004, 60 institutions were targeted).

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; and 4) legality checks and counter-checks.

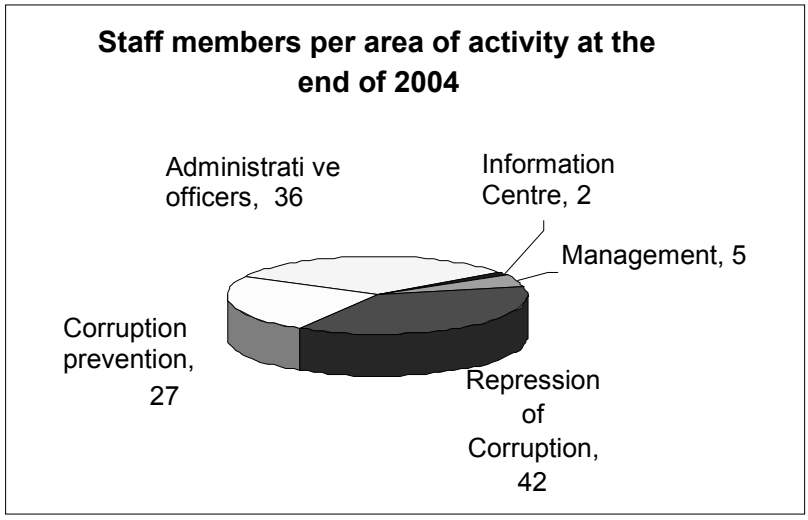
In 2005, the KNAB completed control of financial declarations for 2003 from 61 political organisation, as well as declarations from 16 parties related to elections to European Parliament. Overall, political parties were requested to return illegal donations in the amount of 310,623 LVL (€ 450,400) following KNAB's requests, the court suspended 11 and ceased the activities of 10 parties. In 2005, fines imposed on contributors reached 578,646 LVL (€ 823,000). Most common violations found by the KNAB are related to inaccurate figures on income or expenditure in declarations, anonymous donations, donations in cash, use of intermediary, failure to respect legal delay to report donations. Illegal donations and fines are paid to the state budget. As of 31 December 2005, following decisions of the KNAB, to the State Treasury were paid 100,272 LVL (€ 143,000) returning illegal donations and 4,050 LVL (€ 5,760) in fines.

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 October 2005, the KNAB had checked 2275 declarations and 165 officials were hold administratively liable. For instance, in 2004 there were 570 reports and complaints received, 331 terminated inquiries and 287 declarations checked.

After inquiries in state and local institutions based on reports and complaints in 74 cases violations of the Law were detected. Most common violations found by the KNAB are taking of decisions in conflict of interest situations (e.g. paying bonuses to oneself or relatives, proposing jobs or public contracts to relatives or business partners), the majority of which were committed by local officials, especially local deputies and heads of local administrations. The Bureau has also developed the Handbook on Prevention of Conflict of Interest in the Activities of Public Officials that was disseminated among officials.

Review and development of anti-corruption policy and legislation: Over years, the KNAB has developed a 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, Ministries of Finance, Interior and Justice, State Revenues Service and Financial Intelligence Unit. This has helped to achieve, for instance, its own access to bank information or 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 over the last years.

Figure 9. KNAB personnel per area of activity, end of 2004



Source: KNAB

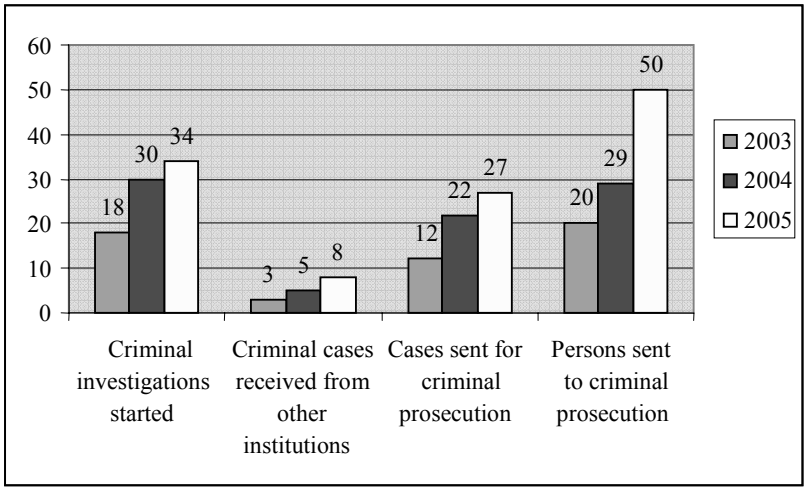
Investigation of corruption offences: The increasing diversity of detected corruption offences both in terms of size of bribe and level of officials is considered to be one of the successes of KNAB.[28] The first investigation was opened by KNAB in April 2003. By October 2005, there were altogether 82 criminal investigations started by the Bureau and 61 were sent to prosecution by December 2005. These cases mostly involved passive bribery (taking bribes) and use of official position in bad faith.

In 2003, the first two criminal investigations opened by the KNAB were into fraudulent activities of the former health minister and head of a public health centre, and - bribe taking by a specialised public prosecutor that was one of the first cases when a senior judicial officer was arrested. While both cases attracted considerable public attention, they also raised criticism as the court conviction against the former minister was only pronounced in March 2006.

Among investigations started in 2004 and 2005 several involve alleged corruption of senior state or local officials, cases were started, for example, against a public prosecutor, officials of the State Insurance Agency and National Military Forces, chairman and deputy of city council, school director, director of health centre, customs officials, policeman, insolvency administrators. There were also cases involving attempts to bribe the officials of the KNAB.

Investigative work of the KNAB is closely linked with efficient prosecution and adjudicating of corruption cases. In 2004, there were 4 court convictions in cases started by the KNAB (out of them in 2 cases there were suspended sentences, in one a fine equal to 80 minimal wages and in one an appeal to the Supreme Court); in 2005, 12 criminal cases for corruption-related offences investigated by KNAB have been adjudicated (only in one case defendant was not found guilty). Recent analysis of case law in Latvia shows that, while there has been a rise in the number of court convictions for bribe taking - from 5 in 2000 to 31 in 2004, - courts mostly imposed suspended sanctions (in more than 2/3 of cases) reflecting overall latent court policy in corruption cases in Latvia.[29]

Figure 10. Investigation of Corruption Offences by the KNAB, 2003-2005



Source: KNAB reports[30]

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Notes

1. Ordinance is a law or statute enacted by the Parliament.
2. Chief Executive is the head of the Hong Kong Special Administrative Region or the head of the Government.
3. Wong, Andrew (2003), "Anti-Corruption Strategy of the Hong Kong Special Administrative Region of the People's Republic of China", in *Controlling Corruption in Asia and the Pacific*, OECD and Asia Development Bank, p.51-55.
4. *ICAC to Enhance Professional Training for Investigators*, 1 May 2006, Xinhua, at http://www.chinaview.cn
5. Wong (2003)
6. ICAC (2004), *Annual Report 2004*, p. 32.
7. CPIB hyperlink is available at: http://www.cpib.gov.sg/aboutus.htm
8. See also: Prevention of Corruption Act at: http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_retrieve.pl?actno=REVED-241&doctitle=PREVENTION%20OF%20CORRUPTION%20ACT%0a&date=latest&method=part
9. Chua Cher Yak, Singapore's three-pronged program to combat corruption: enforcement, legislation and adjudication at www1.oecd.org/daf/asiacom/pdf/nl02-cpib.pdf
10. Chua Cher Yak, Singapore's three-pronged program to combat corruption: enforcement, legislation and adjudication, www1.oecd.org/daf/asiacom/pdf/nl02-cpib.pdf.
11. www.transparency.org/policy_research/surveys_indices/cpi.
12. GRECO (2002), *First Evaluation Round, Evaluation Report on Lithuania*, Strasbourg, 8 March 2002.
13. Id.
14. European Commission (2003), *Comprehensive monitoring report on Lithuania's preparations for membership*; GRECO (2002 and 2005), *Evaluation Reports on Lithuania, First and Second Evaluation reports*; Open Society Institute (2002), *Monitoring the EU Accession Process: Corruption and Anti-corruption Policy*; Transparency International, Lithuanian Chapter, (2004 and 2005), *Map of Corruption in Lithuania: Survey on the Residents' and Entrepreneurs' Attitude Towards Corruption and their Experience in Confronting Cases of Corruption*.
15. GRECO (2002), *First Evaluation Round, Evaluation Report on Lithuania*, Strasbourg, 8 March 2002.
16. STT (2005), *Special Investigation Service, Lithuania: Annual Performance Report on 2005,* http://www.stt.lt.

17. See STT (2005).

18. GRECO (2005), *Second Evaluation Round, Evaluation Report on Lithuania*, Strasbourg, 20 May 2005.

19. *Korupcijas Novēršanas Koncepcija* (Concept on Corruption Prevention), adopted by the Cabinet of Ministers on 8 august 2000.

20. KNAB (2003), *Korupcijas Novēršanas un Apkarošanas Biroja Publiskais Pārskats,* 2003 Public Report, KNAB, Riga.

21. KNAB (2003), *Ziņojums par Korupcijas novēršana un apkarošanas biroja darbību. 2002.gada 10.oktobris – 2003.gada 1.aprīlis* (Activity Report 10 October 2002 – 1 April 2003), KNAB, Riga.

22. GRECO (2002), *First Evaluation Round Report on Latvia*, Council of Europe, Strasbourg, 17 May 2002.

23. Voika, Inese (2006), "Does KNAB Meet Expectations – First Three Years", *Corruption C˚ Report on Corruption and Anti-Corruption Policy in Latvia. 2005. First semmianum*, Providus, Riga, pp. 19-32, Kalniņš, Valts and Lolita Čigāne (2003), *On the Road toward a More Honest Society: Latest Trends in Anti-Corruption Policy in Latvia*, Latvian Institute of International Affairs, Riga, 2003.

24. State security services are the Constitution Protection Bureau; Military Counterintelligence Service of the Ministry of Defence; Security Police under Ministry of Interior; and the Information office of the Home Guard (the Law On State Security Authorities of 5 May 1994).

25. 1 LVL (Latvian Lat) = 0, 7028 EUR.

26. Ibid.

27. www.knab.gov.lv/eng

28. Voika (2006).

29. Judins, Andrejs (2006), "Court Practice in Cases Involving Bribery", *Corruption C˚ Report on Corruption and Anti-Corruption Policy in Latvia: 2005. Second semmianum)*, Providus, Riga, pp. 35-48.

30. In 2003 data for investigations starts from February and for prosecutions from April.

Chapter 5
Law Enforcement Type Institutions

Specialised Prosecution Services

Spain: Special Prosecutors Office for the Repression of Corruption-Related Economic Offences

*Special Prosecutors Office for the Repression of Economic Offences Related to Corruption (*Fiscalía Anticorrupción - *ACPO) was established in 1995. It is a specialised prosecution office within the State Prosecution Service with a mandate to investigate and prosecute a specific list of 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 recent history of the country and transition to democracy explains to a considerable extent the changing perception that the Spanish society has of this phenomenon.

In Spain corruption is perceived to be closely related to the political parties' funding.[1] In the transitional period, political parties did not always obey the strict rules on funding and a certain degree of political corruption was tolerated in the 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 political debate and political credibility became an overriding value.

Corruption scandals in the early 1990s 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 General's Office for the Repression of Economic Offences related with 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 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 has created the ACPO Office in the view of overcoming the difficulties of evidence in certain cases and in order to guarantee a more efficient response when public interests are affected.

Legal and Institutional Framework

ACPO is established and regulated by Article 18-ter of the Organic Statute of the Prosecutor General's Office approved in 1981, and amended in 2003. ACPO is part of the SPS and is one of its integral bodies. Although ACPO independence is not formally provided by the law, the office has the informal independence with the 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. More specifically, the following offences are included in its competence:[2]

- Offences of bribery;
- Offences against the Public Treasury, smuggling, and related to money exchange;
- Prevarication offences (act of distortion and deception, and concealing of a crime);
- Offence of abuse or illicit use of privileged information;
- Misappropriation of public funds;
- Fraud and price fixing;
- Offences of exercise of undue influence;
- Negotiations forbidden to civil servants;
- Certain offences against property and socio-economic order, including those with serious consequences for the efficiency of tax management, and serious fraud related to financial interests of European Union (Sections IV and V of Title XIII of Book II of the Penal Code);
- Offences related to the above.3

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 list, the offences concerned must be of special significance. ACPO only takes over the criminal proceeding when it estimates that a particular case is of such significance (complexity, importance, damage, etc.) that falls under their jurisdiction. Other cases are deal with by other prosecution departments or territorial units. Criteria for attribution of cases of special significance to ACPO are the following[4]:

- 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. 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 related to embezzlement of public funds, which involve public funds or goods of special importance, entail danger to national economy; and effect multiple victims;
- Offences related to contraband when they involve intermediary or beneficiary suspected of committing the same offence;

- Financial offences in cases, when the amount of the offence is in excess of the amount fixed in the legislation of civil procedure relative to limiting cases falling under the ordinary judgement.

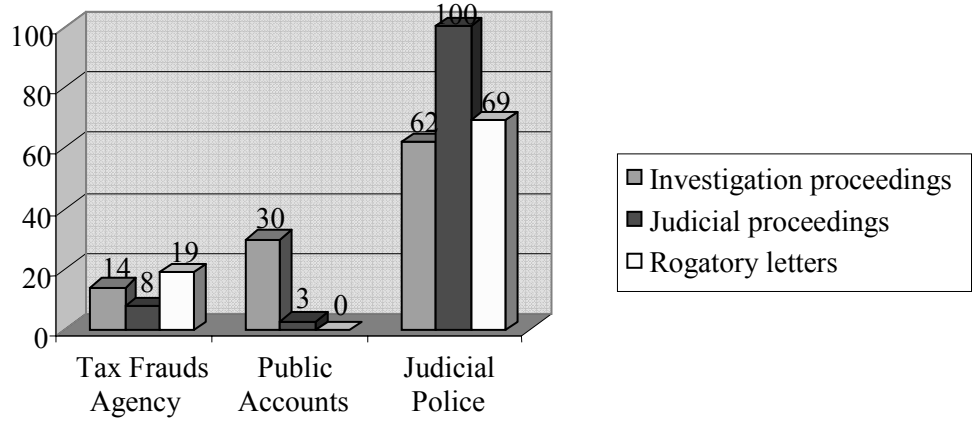
ACPO performs the following two functions – direct investigation and prosecution. The work of ACPO is grounded in the fundamental principle that the State Prosecution Service is the holder of penal proceedings in all cases of delinquency, according to the Article 124 of the Constitution and the Criminal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

Prosecutorial investigations. Investigations can be commenced either *de oficio*, or as a result of a complaint of a private person or from public administration. Article 262 of the Criminal Procedure Law and other provisions oblige public administrations to cooperate with the administration of justice and require from them to denounce alleged criminal offences. If an offence falls under the competence of ACPO there is no need for a decision of State Prosecutor General to start investigation; in cases where there is a need to determine the special significance of the offence, the Chief Prosecutor of ACPO ask 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 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 retributions of competence.

Direct participation in criminal proceedings. It is also an essential function of ACPO. It intervenes in both first instance and appeal, as well as in the execution of sanction. Special prosecutors can take part in proceedings selected by the Prosecutor General. ACPO has to inform the Prosecutor General's Office, which would have been territorially competent also to avoid overlapping proceedings.[5]

Figure 11. Reports carried out by ACPO support units in 2005



Source: ACPO

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 the proposal from the Government, after consultation with the General Council of the Judiciary. 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 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 22 staff members, 13 of them 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. The candidates to the prosecutors are required to have training on economic crime and tax fraud; most of them had previous professional experiences in dealing with economic offences. Prosecutors can be removed, based on a motivated decision, using the same procedure as for their nomination.

The Prosecutor General may appoint public prosecutors from other public prosecution offices to join the ACPO. These prosecutors report to the head of the body where they practice permanently.

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

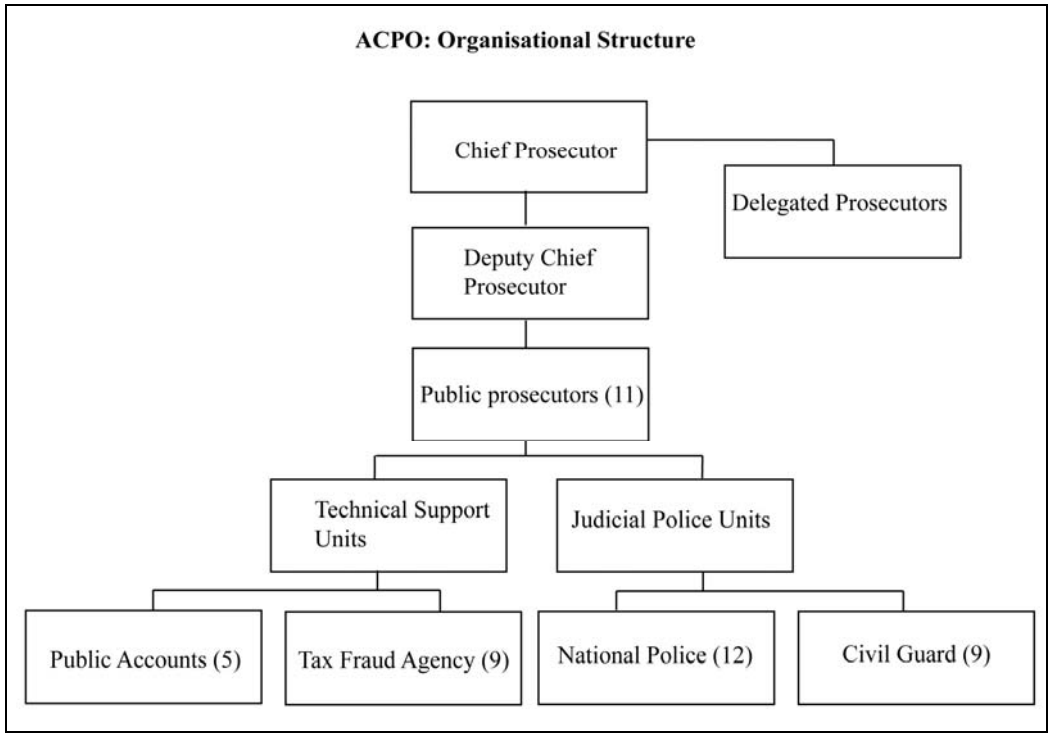
In accordance with tax legislation, the SPS and the judicial bodies are allowed to collect all information necessary for carrying out criminal investigations. Through the Tax Fraud Agency's support unit, ACPO has a direct link with the Tax Inspectorate's national database containing details of the tax returns of all individuals and legal entities in Spain over the last six years. On the basis of the general rules the ACPO may also have access to other relevant national data bases 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 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 de Sala) and to the Prosecutor General Council (Consejo Fiscal) on the proceedings in which ACPO participated.

Figure 12. Organisational Structure of ACPO



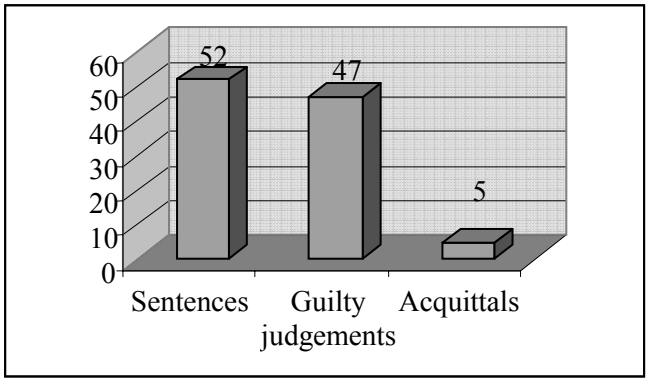
Source: ACPO

Practice and Highlights

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

- February 1998: A former director general de la Guardia Civil[6] 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 the 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 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 the charges of breaching the duty and accepting bribes, both crimes committed when he served as a judge. The Court has passed a sentence of 9 years of imprisonment.

Figure 13. ACPO judicial proceedings, 1997 - 2005



Source: ACPO

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Romania: National Anti-corruption Directorate

*In 2002, Romania created the National Anticorruption Prosecutor's Office (NAPO), which was later reorganised, and since 2006 it has been called the National Anticorruption Directorate (*Directia Nationala Anticoruptie - *NAD). NAD is a part of the Prosecutor's Office attached to the High Court of Cassation and Justice. NAD is a specialised prosecution service with a mandate to investigate and prosecute serious corruption offences. The prosecutors working within NAD conduct pre-trial investigations, including ordering, directing and supervising pre-trial investigation activities conducted by the judicial police officers attached to NAD. When technical assistance is needed in a particular case, NAD prosecutors order, direct and supervise technical activities conducted by NAD specialists and experts in economic, financial, information technology and other fields. NAD prosecutors also conduct criminal prosecutions in courts.*

Background Information

The decision to establish a strong specialised investigative and prosecution anti-corruption service has surfaced in year 2000 after different national bodies responsible for coordinating the fight against corruption – some created within the Government, some under the President's authority – brought limited success in curbing corruption, which admittedly presented a serious problem in Romania.

With the support of the European Commission and bilateral twinning, especially with the Special Anticorruption Prosecutor's Office in Spain, the specialised National Anticorruption Prosecutor's Office (NAPO) was established in 2002 as an autonomous prosecutor's office within the Public Ministry.

Due to advance preparation, training and material assistance it became operational within a year of its formal establishment. During its first years, the NAPO fought with a number of practical difficulties. It dealt in the same time with operational tasks, internal organisation problems, staffing, attending specialised training sessions and insufficient financial and technical means. Despite these challenges, the NAPO has achieved some progress in a relatively short period of time.

During 2004 and 2005, the NAPO was subject to several independent reviews, including peer reviews by the European Commission and the non-governmental organisation Freedom House. Although these reviews acknowledged that the establishment of the NAPO was an important step forward compared to the situation before 2002, criticism was expressed regarding a certain reluctance of the NAPO to take action against high level political corruption cases. On the other hand, a Constitutional Court decision stated that the Members of Parliament can be investigated and prosecuted only by the Prosecutor's Office attached to the High Court of Cassation and Justice; thus the NAPO, an autonomous prosecution office, was not competent to investigate or prosecute Members of Parliament for corruption deeds.

According to the recommendations of the peer reviews and in order to restore the competence of the specialised anticorruption prosecutors on Members of Parliament, the NAPO was reorganised, first as a autonomous department (in October 2005) and then (in March 2006) as a specialised directorate - the NAD - in the framework of the Prosecutor's Office attached to the High Court of Cassation and Justice. The NAD is at present a body with certain autonomous features, within the Prosecutor's Office, attached

to the High Court of Cassation and Justice. It is specialised in investigating and prosecuting serious corruption offences throughout the territory of Romania.

Legal and Institutional Framework

The NAD's legal framework is provided by the Government Ordinance no. 43/2002 that was later approved by the Law no. 503/2002 and subsequently amended[7]. The NAD has jurisdiction to investigate and prosecute corruption as defined in the Law no. 78/2000 on prevention, detection and prosecution of corruption offences as amended in 2003 and 2004. The law no. 78/2000 adopts a broad approach to the definition of corruption. Accordingly, the NAD's substantive jurisdiction includes traditional corruption offences, such as bribery offences, a number of corruption-related offences and offences against the financial interest of the European Union.

The amendments, which were introduced successively, aimed to ensure that the specialised anticorruption prosecution office was focused at its mission to fight the high level corruption. Petty corruption falls under the jurisdiction of regular prosecutorial bodies.

In order to fall under the jurisdiction of the NAD, the offence must meet one of the following criteria stipulated by the law (Government Ordinance no. 43/2002, as amended in October 2005):

- the damage caused by the offence exceeds 200 000 EURO;
- the value of the bribe exceeds 10 000 EURO; or
- the offence is committed by a public official within the category expressly listed by the law (e.g. members of the 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 with positions of directors and above within the national companies and enterprises, commercial undertakings where the state is a stakeholder, central financial-banking units.

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

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

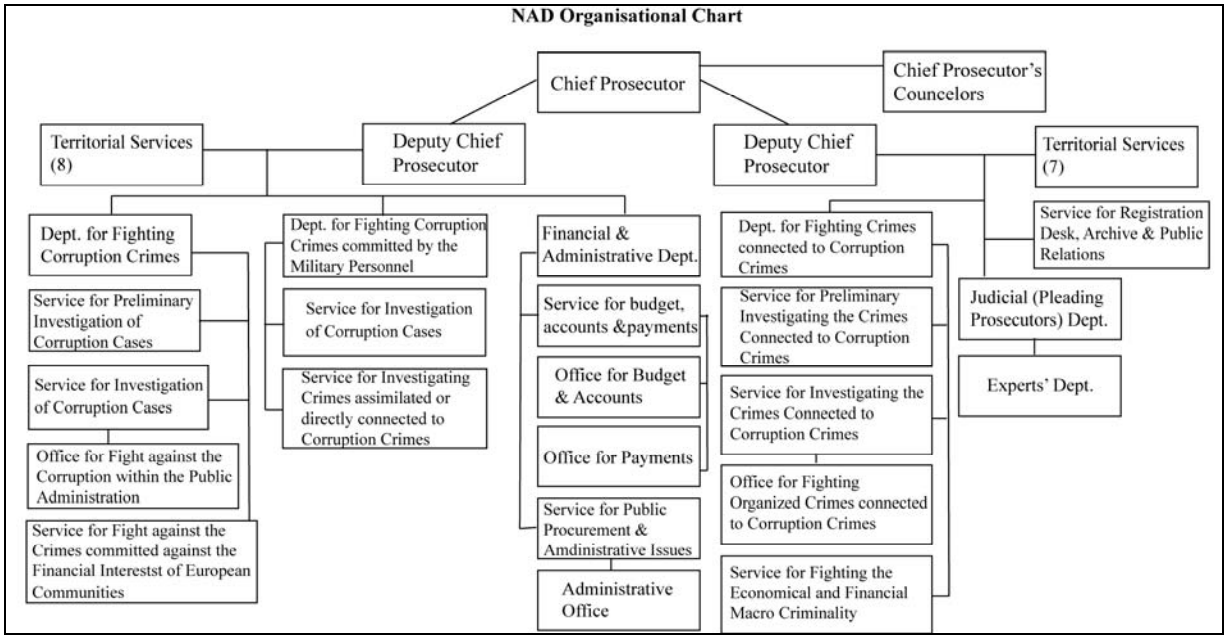
In addition, the prosecutors can order specific protective measures for witnesses, experts and the victims.

The NAD 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 NAD. Central office comprises a number of sections and services (see chart 2.4.).

The head of the NAD is a Chief Prosecutor which by rank is a Deputy Prosecutor General of the High Court of Cassation and Justice. The Chief Prosecutor of the NAD, his

deputies and the chief prosecutors of the NAD 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 14. Organisational Structure of NAD



Some concerns have been reported by the above mentioned peer reviews and evaluation reports regarding a rather non-transparent selection procedure for the appointment of the head of the former NAPO. The present Chief Prosecutor of the NAD was appointed by the President of Romania based on the proposal of the Minister of Justice following an interview in front of the Superior Council of Magistracy and broadcasted life by a national television.

Human and Material Resources

The service employs a high number of specialised prosecutors, judicial police officers and specialists and experts in different fields, giving the service 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 NAD, with the prior opinion of the Superior Council of the Magistracy, among the prosecutors who fulfil the following conditions:

- Good professional background;
- Blameless moral behaviour;
- 6 years experience as prosecutor or judge.

Similarly to earlier concerns about the appointment of the Prosecutor General of the NAPO, experts raised an issue of the lack of transparency and a discretionary selection process for appointment of prosecutors within the current the NAD. In order to address

these concerns, a new selection procedure was introduced in June 2005 by amending the appropriate legislation. As a result, candidates are selected on the basis of an interview held by a commission formed on the orders of the Chief Prosecutor of the NAD. The commission includes 3 NAD prosecutors and experts in psychology, human resources and other relevant fields.

The interview is designed to test professional, decision-making, and stress-management skills of the candidates as well as reveal their readiness to assume responsibility and other relevant character traits. In evaluating potential candidates, the NAD selection committee also takes into account previous professional experience of the applicants, their fluency in foreign languages, and IT skills.

Box 5. Engagement of Criminal Police Officers and Specialists

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

Source: NAD

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

Judicial Police officers which represent the judicial police of the NAD are delegated by order of the Minister of Administration and Interior at the nominal proposal of the Chief Prosecutor of the NAD. On the basis of the delegation, they are appointed within the NAD by order of the Chief Prosecutor for a mandate of 6 years, renewable. During their mandate, the police officers of the NAD can only carry out the investigative activity entrusted to them by the NAD's prosecutors.

Experts from a variety of fields (economic, finance, banking, customs, IT) are appointed by order of the Chief Prosecutor of the NAD, on the basis of the opinion of the competent minister for an unlimited mandate, in order to support the clarification of technical aspects of the criminal investigations. They have the rights and obligations of the civil servants.

Since its establishment as the NAPO, the NAD has received considerable financial resources and technical assistance through both domestic and foreign funding. Foreign assistance programmes provided support through PHARE, EU twinning, bilateral programmes, and was key for its success in the first years of operations. The budget of the NAD has increased during the years. In 2004, the former NAPO had received funds from the state budget, at the total amount of 54.2 million RON (€ 13 million). In 2005, the former NAPO received from the state budget 64.8 million RON (€ 17 million) and in 2006, the NAD budget amounts to 72 million RON (€ 20 million).

Table 3. NAD Personnel, February 2006

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
			Total	out of which		Total	out of which		
				Appointed	Delegated		Appointed	Delegated	
Prosecutors	130	118	61	57	4	57	52	5	12
Judicial Police Officers	170	151	77	77	-	74	74	-	19
Experts	45	44	34	34	-	10	10	-	1
Total	345	313	172	168	4	141	136	5	32

Source: NAD

So far the NAD's staff was trained through PHARE programmes of international or bilateral cooperation, through programmes supported by other European and US donors, and through a number of its own professional training schemes. The prosecutors, police officers and the NAD's specialists benefited from more than 100 training events.

The NAD's logistical capacity is above the average of the Romanian judiciary. The NAD is the only prosecution service in Romania which has its dedicated Technical Service Unit, endowed and empowered to implement 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 NAD's police officers and prosecutors. An ongoing project is meant at present to establish a secure data communication system between the central headquarter and the 15 territorial services.

Accountability

As a prosecution body, the NAD is subject to the regular accountability mechanisms of prosecution services in Romania. In addition, the law requires the NAD 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 will submit his/her conclusions on the report to the Parliament.

Practice and Highlights

Internal reforms: the NAPO has come under increasing criticism of its reluctance to launch investigations in cases of high-level corruption. The fact that individual prosecutors did not feel independent enough to start investigating politically powerful persons was a source of concern led to serious internal reforms in the course of 2005. After the NAPO was reorganised into the NAD; its Chief Prosecutor as well as its individual prosecutors are now subject to a more transparent procedure of selection and appointment.

Legal measures were taken in order to strengthen the operational independence of individual prosecutors (the possibility of the prosecutor to challenge in front of the Superior Council of Magistracy the unlawful intervention of the hierarchical prosecutor in an investigation or solution adopted by the individual prosecutor; limited possibilities to

reallocate a case already allocated to a prosecutor). The competence of the NAD was restricted in order to increase the financial threshold above which the NAD is competent from 10 to 200 000 EUR (value of the damage) and from 3 to 10,000 EUR (value of the bribe).

The results obtained by the NAD in fighting high level corruption in the last eight months since its reorganisation and the setting up of its new management team, as well as the independence and objectiveness of the NAD's investigations appear to be appreciated by the public and the international fora. In these few months, 14 criminal investigations were opened against Members of the Parliament and Members of the Government (both present and former) for corruption and corruption-related offences. Two of the Members of Parliament were already indicted.

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Sources

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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 kriminala-*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 criminal offences under the USKOK's jurisdiction are strictly enumerated by the Law. The USKOK has intelligence, investigative, prosecutorial and preventive functions and is responsible for international cooperation 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.

In addition to establishing of the USKOK, other measures included the adoption of the National Programme and an Action Plan for Fighting Corruption in March 2002; and creation of the new Parliamentary Commission for the Prevention of Conflict of Interest, which was formally established in 2003 and became functional in 2004.

The Law on the USKOK entered into force in October 2001 Its adoption was seen as a landmark in the efforts to fight corruption and organised crime in Croatia. The USKOK became nominally operational in December 2001, when an acting head was nominated with the assignment to make the USKOK fully operational. Due to obstacles of financial nature and the lack of specialised and trained prosecutors it, however, took some time for the service to become fully operational.

The formal structure and competencies of the USKOK were designed in a way to make this institution the leading state authority in the prevention and repression of corruption in Croatia. However, main focus of USKOK's activities has been at investigation and prosecution; its responsibilities in the area of prevention of corruption have never fully materialised. In the process of recent revisions of the law, it was suggested to abolish the preventive and public awareness tasks of the USKOK and focus only at investigation and prosecution. However, this suggestion was not adopted and the obligation to have preventive functions was maintained in the law.

On the other hand the USKOK's investigative powers have been strengthened since its establishment. Recent amendments to the Criminal Code widened the scope of the USKOK's jurisdiction; amendments to the Law establishing the USKOK were made with the aim to improve the co-operation and the co-ordination between the USKOK, the courts and the police, as well as strengthen the authority of the USKOK over the police during the preliminary police investigation. In this view, it should also be noted that the USKOK is a prosecution body that does not employ its own investigators or police officers, but directs and supervises criminal investigations conducted by regular criminal police officers. Most officers are working at the Department of Economic Crime and Corruption of the Police which was established in 2001.

Legal and Institutional Framework

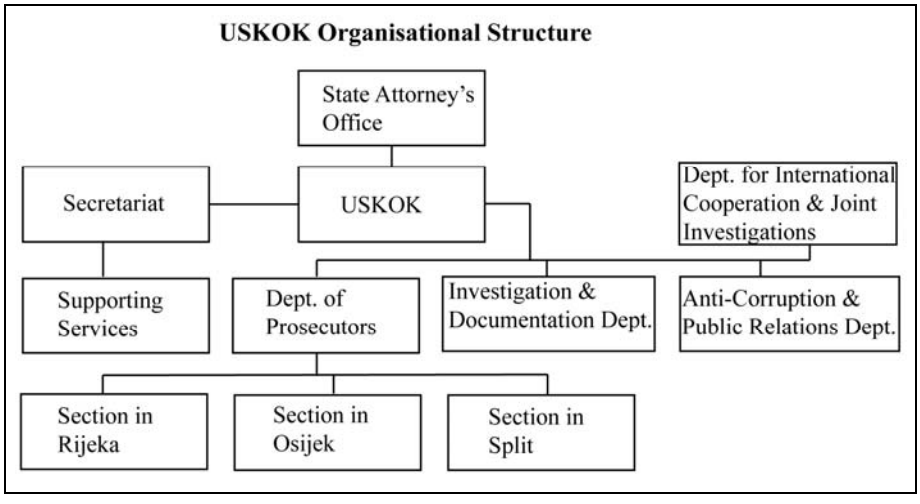
The main legal basis for the functioning of the USKOK is the Law on the Office for Prevention of Corruption and Organised Crime adopted in October 2001. According to the Law, USKOK is a specialised Public Prosecutor's Office, established for the whole territory of Croatia. The mentioned law covers the areas of: organisation, jurisdiction and competences of the USKOK; jurisdiction and competence of courts when investigating (investigative judges) and adjudicating cases under USKOK's jurisdiction; appointment of the Head of the Office and Deputy Head, assignment of public prosecutors to USKOK; staff matters; seizure and confiscation of proceeds from crime; cooperation with other public bodies; and international cooperation in criminal matters.

The head of USKOK holds the position of Deputy Public Prosecutor General and is appointed by the Public Prosecutor General for a period of 4 years (with a possibility of re-appointment). Prior to the appointment, the Public Prosecutor General must seek an opinion of the Ministry of Justice and the State Council of Public Prosecutions. According to the law security checks and inspections of the property status of the Head, may be performed without his/her knowledge anytime during his/her time in office, and one year after he/she ceased to perform the duties of Head.

Special prosecutors are appointed by the Public Prosecutor General on the proposal of the Head of USKOK for a period of 4 years (with a possibility of re-appointment). These prosecutors are subject to the same security checks as the Head (see previous point). In order to ensure a high level of expertise, capacity and independence in their work, the law prescribes that USKOK may employ only prosecutors who have passed the national judicial examination and have at least 8 years of working experience as judges, prosecutors, lawyers or criminal investigation police officers.

Organisationally, the USKOK is an autonomous prosecution service attached to the Prosecutor's General Office with its central office in Zagreb. Since 2005, the USKOK has established four departments in order to perform its main functions as established by the law: (1) Prosecution, (2) Investigation and Documentation, (3) International Co-operation and Joint Investigations; and (4) the anti-corruption and public relations department (see chart 2.5.). The Prosecution Department also has detached regional offices in four major County Courts throughout Croatia, namely Zagreb, Rijeka, Osijek and Split.

Figure 15. Organisation Structure of USKOK



The Investigation and Documentation Department is tasked to:

- Systematically collect data on corruption and organised crime;
- Organise and run a data-base which serves as a source of information in the criminal proceedings;
- Encourage and direct the cooperation between the government bodies with a view to discovering corruption and organised crime.

The Prosecution Department carries out all duties and responsibilities of public prosecutors pursuant to the Criminal Procedure Code and other regulations, and notably:

- Direct the work of the police authorities and other bodies in discovering criminal offences under the USKOK's jurisdiction and request the gathering of information on these offences.
- Propose the implementation of security measures of compulsory seizure of funds, revenues and property acquired through criminal offence as specified herein and in other regulations,
- Perform other duties according to the schedule of duties.

The Department for International Cooperation and Joint Investigations is responsible for the following tasks:

- Cooperation with competent bodies of other states and international organisations pursuant to international treaties,
- Participation in joint investigation bodies established on the basis of an international treaty or a clause for a particular case - for the investigation, criminal prosecution or representation of prosecution before the court, of selected criminal offences or in other states.8

Anticorruption and Public Relations Department is tasked to:

- Inform the public of the danger of and damage by corruption, and the methods and means to prevent it,
- Based on the competence and the directives from the Head of the Office informs the public of the Office's activities
- Prepare reports and analysis on the form and causes of corruption in public and private sectors, and may give incentives to the Head of the Office for the adoption of new regulations or amendments of regulations in force,
- Perform other duties according to the annual schedule of duties of the Office.

The substantive jurisdiction of the USKOK is limited to the offences enumerated in the Law. In the area of corruption and corruption related offences, the USKOK has jurisdiction over the following crimes:

- Active and passive bribery in public sector;
- Active and passive bribery in private sector;
- Trading in influence;
- Abuse of public duties;

- Abuse in bankruptcy proceedings;
- Unfair competition in foreign trade operations.

The USKOK is also responsible for some types of criminal activity which under specific conditions include corruption offences:

- Crimes committed by a group of persons or by a criminal organisation; or
- Offences for which a prison sentence in excess of three years is prescribed and the offence has been committed in two or more countries or a significant part of its preparation or coordination has taken place in a foreign country or if the offence has been committed in connection with the activity of a criminal organisation active in two or more countries.

Additionally, the USKOK has jurisdiction for the criminal offences of:

- Money laundering;
- Obstruction of evidence;
- Duress against officials engaged in the administration of justice;
- Obstructing an official in the performance of duty; and
- Attacking an official if such offences have been committed in connection with the perpetration of a corruption or an organised crime offence.

For the purpose of implementing the above tasks, the Law grants prosecutors from USKOK a series of special powers, which in some cases exceed the powers of regular prosecutors in regular criminal proceedings including provisions relating to the collaborators of justice and special investigative means. Furthermore, USKOK can request the Ministry of Finance to conduct an inspection into the business operation of any legal or natural person and to temporarily seize money, securities, items and documents that can serve as evidence; it can also request cooperation from all other state bodies, as well as banks and financial institutions. The law stipulates that a failure to comply with a legal request from USKOK constitutes an aggravated violation of the official or working duty for the individual civil servant and in serious cases the person in question can be prosecuted for a criminal offence of obstructing the gathering of evidence.

As noted above, the USKOK does not have investigators and police officers permanently working within the Office; instead, USKOK prosecutors direct and conduct investigations though regular police forces. In this respect the law stipulates that The General Director of the Police is on the request by the USKOK obliged to organise an expert investigation team to work with the prosecutors on a specific case and allocate sufficient technical means for such a team. The second important institution with which USKOK closely cooperates is the Office for the Prevention of Money Laundering, which is by law obliged to inform USKOK about any suspicious transaction or assets that could fall under the USKOK's jurisdiction.

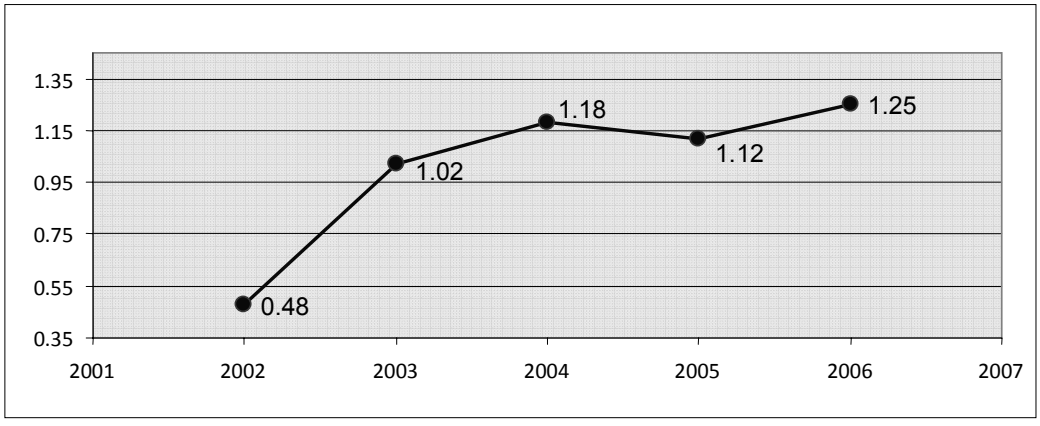
Finally, it should be mentioned that the law on the USKOK not only created the specialised prosecution service, but has also adapted the court jurisdictions. All criminal offences that come under the jurisdiction of USKOK are adjudicated by four major County Courts (Zagreb, Rijeka, Osijek, Split). Further, the law on USKOK requests a designation of specific investigative judges to deal with cases under the USKOK

jurisdiction and establishment of special trial panels, consisting only of professional judges (regular criminal case are in Croatia usually adjudicated by mixed panels of judges and lay-justices). These judges are appointed by the presidents of individual County Courts for a term of 4 years.

Human and Material Resources

According to regulation issued in 2005 the total number of the USKOK's staff is 53 (the Head, 16 special prosecutors, 1 secretary of the Office, 9 counsellors, 6 professional associates, 2 criminal analytic experts, 3 PR experts, an interpreter, 3 IT experts, 12 office administrators, 3 typists, and 3 employees. In the beginning of 2006, the USKOK's staff consists of 14 prosecutors, one IT expert, 2 counsellors, 3 typists, 3 office administrators and one employee. It is envisaged to have 35 staff members by end 2006. As noted above, the USKOK does not have investigators and police officers permanently working within the Office; USKOK prosecutors rather direct and conduct investigations though regular police forces.

Figure 16. USKOK's annual budget, in million EUR, 2002- 2006



Source: USKOK

Currently, the USKOK is developing a case tracking and management system, and finalising installation of IT equipment and videoconference system through financing provided by European Union (350,000 EUR).

Lack of trained specialised prosecutors, and in particular lack of material resources have been the major obstacles for the optimal development of USKOK in the first years of its operation. Reportedly, one of the main problems is that, while a very large responsibility for corruption-related issues falls under USKOK's Prosecution Department, this has not been fully matched with the sufficient material resources and adequate numbers of sufficiently skilled and trained staff. Skill gaps remain, particularly in the field of investigative techniques and prosecution skills and specialised anti-corruption training.

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Specialised Police Services

Belgium: Central Office for the Repression of Corruption

*The establishment of the Central Office for the Repression of Corruption (*Office Central pour la Répression de la Corruption – *OCRC) was a part of the major reform of the Belgian law enforcement system, which was carried out in 2001. The OCRC has been established as an integral part of the Federal Police and has national jurisdictions for investigating all serious cases of corruption offences. The OCRC investigates complex and serious crimes and other offences related to public and private corruption, supports the judicial police in investigating such crimes and offences, investigates and supports investigations of offences related to public procurement, public subsidies, permits and approvals. The OCRC is also responsible for the management and analysis of specialised documentation. The service recruits a number of specialists and experts in different fields in order to carry out its functions effectively.*

Background Information

A number of factors have played an important role in the establishing of the Central Office for the Repression of Corruption - the OCRC. First, there were a number of gaps in the Belgian anti-corruption legislation, especially as regards to the elements of corruption offences, which limited the ability of law-enforcement bodies to prosecute corruption. In addition, the law required that the existence of a corruption pact had to be proven, which rendered prosecution even more difficult. At the same time, large town-planning projects, including real estate projects, created conditions favourable for corruption. Finally, Belgium houses on its territory several international institutions, which administer considerable financial amounts, especially technical assistance to Member States of the European Union and non-member countries, which also increases the risks of corruption.[9]

The Federal Security Plan of 30 May 2000 outlined the Belgium's anti-corruption policy. This Plan identified the main threats of corruption, such as threat to democracy, market economy and loss of confidence in the state on the part of citizens, and the main directions of the anti-corruption policy, which involves two main approaches. On the one had, the Plan proposes a global, multidisciplinary approach to corruption, which includes prevention and law-enforcement, as a part of broader reform aiming to modernise the civil service and to reorganise the financial control system. On the other hand, the plan provides for the creation of a federal Anti-Corruption Office with the aim to coordinate the efforts of the different administrations. The Plan further identifies the fight against fraud in public procurement as the policy priority.[10]

Legal and Institutional Framework

The OCRC was established by a Royal Decree of 17 February 1998 as the key institution responsible for repression of corruption. The OCRC is not, strictly speaking, a new body, but rather a transformation of a former structure, the Superior Control Committee (CSC), whose origins go back to 1910.

The OCRC is positioned within the federal police force under the authority of the General Commissariat of the Judicial Police. The reorganisation of the Belgian law-enforcement system in 2001 and the establishment of the OCRC marked the creation of

anti-corruption law-enforcement system. The new OCRC has repressive functions, but it has abandoned the purely reactive approach against corrupt acts which have already taken place. In accordance with Articles 95 and 102 of the Law of 7 December 1998, the OCRC has been organised as an integrated police service at two levels: a programmatic function and a proactive research function.

The Act on the suppression of corruption, which was adopted on 10 February 1999, amended the provisions of the Criminal Code and the Code of Criminal Investigation, which provide a legal basis for the OCRC operations. A ministerial directive of 16 March 1999 further specified that inquiries relating to corruption and complex and serious crimes and other offences related to the interests of the public service are to be entrusted to the federal police, unless the magistrate (prosecutor or investigating judge) decides otherwise. This means that all serious cases of corruption are dealt with, in principle, by the OCRC, even though other police services also have legal competence in this sphere. The positioning of the OCRC within the Judicial Police gives the OCRC the national competence. The OCRC is responsible for:

- Investigating complex and serious crimes and other offences detracting from the moral or physical interests of the public service (including corruption in the private sector);
- Supporting the judicial police in investigating such crimes and offences;
- Investigating and supporting investigations of offences committed in connection with public procurement contracts and public subsidies and the issue of authorisations, permits, approvals and acceptances; and
- Managing and analysing specialised documentation.

The OCRC undertakes these tasks only when asked to do so by the public prosecutor's office and does not act on its own initiative. Functionally, the OCRC answers to the Director General of the Judicial Police. The judicial police is placed under the authority of the Minister of Justice and the judicial authorities (Art. 97 of the Act of 7 December 1998 organising an integrated police service).

Human, Training and Material Resources

The OCRC currently employs approximately 60 investigators. The OCRC's internal organisation consists of 3 sections, namely, public procurement contracts, subsidies, and finances.

The Belgian authorities have pointed out that since the 1998 reform which brought the various police forces together in a single entity (federal police) all federal police officers have had the same status and consequently been subject to the same conditions of recruitment and mobility.

Legislative provisions establish that specialised personnel may be recruited by the police for specific requirements of specialised services. Accordingly, the OCRC has a practice of recruiting accountants, engineers and other professionals. More particularly, the specialised investigators include, inter alia, 11 criminologists, 4 engineers, 1 graduate in topography and one civil engineering graduate. Unfortunately, since the OCRC has been attached to the judicial police, recruitment of its staff is aligned on the general recruitment policy of the judicial police and this does not afford the flexibility it enjoyed before.

With respect to bringing the OCRC up to strength, the operational capacity of the Office is already at more than 90% strength: 1 head of service, 25 superintendents and 33 chief inspectors, as well as administrative employees, were at present working in the OCRC. This was the highest percentage of superintendents posted to a service anywhere in the federal police. Although the actual capacity of the OCRC is quite considerable, reports indicate that the service should be strengthened with additional personnel. Analysis of the service's statistics shows that this is due, above all, to the complexity of the cases handled.

Practice and Highlights

Investigating corruption cases: To strengthen exchange of information between the OCRC and other police services, a ministerial memorandum was signed in February 2002 stipulating that the federal police should be responsible for investigating corruption cases. In practice such cases would be examined by the specialised federal police service, namely the OCRC. Furthermore, both levels of police (federal and local) use a single computerised system in which was stored the respective information. It contains all OCRC cases and the corruption cases district judicial services transmitted to the Office are gradually entered.

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Sources:

1. GRECO (2000), First Evaluation Round, Evaluation of Belgium, Strasbourg, 15 December 2000
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Norway: The Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim)

*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 the society and business life in the world. It is believed that in every day life expectations or demands for bribes from public officials are not encountered and businessmen do not offer bribes. In almost all cases offers or expectations of graft are likely not only to cause offence but also attract openly negative reactions. Transparency International's Corruption Perception Index places Norway among 10-12 least corrupt countries in the world with a score ranging from 8.6 to 8.9 out of 10 over the last 5 years.[11]

The most frequent explanations given to the low level of corruption were: 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 had an important role in maintaining the high level of transparency by searching, scrutinising and disseminating information about suspicious economic activities.[12] Norwegian government had also prepared national action plans against economic crime, including corruption. The action plan issued in 2000 contained several specific measures to combat corruption, such as specialisation, expertise, international cooperation, and involvement of the business sector. Last action plan was issued in June 2004.

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 organisation with a high level of competence and an emphasis on multidisciplinary 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.[13] In 1994 the Norwegian authorities have decided that Økokrim should have national responsibility in the fight against corruption. The same year the Anti-Corruption Team was established within the 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 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 the stock market and securities trading;
- violation of the Competition Act;
- corruption, breach of trust, and embezzlement;
- money laundering (handling of stolen property).

Environmental crime includes:

- illegal pollution (including handling of dangerous waste);
- natural environmental crime (e.g. illegal hunting and trapping, illegally disturbing protected areas);
- cultural heritage crime (e.g. removing or damaging protected monuments/sites and violation of the Planning and Building Act);
- crime related to the working environment (e.g. insufficient training, inadequate safety procedures or defective equipment that may cause death or personal injury).

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 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, the ordinary 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.

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.[14]

Box 6. Composition of 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.

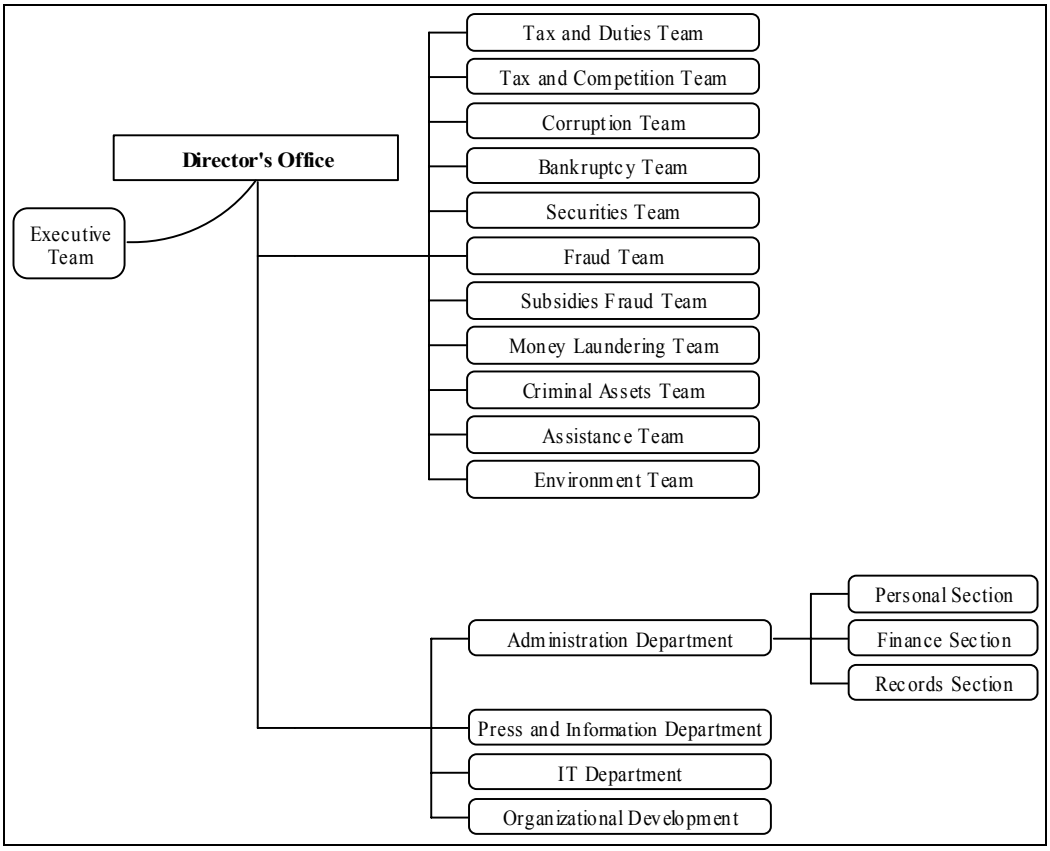
With the introduction of the amendments to the Penal Code pertaining to corruption, the range of investigative tools available to law enforcement authorities when investigating alleged corruption cases have been broadened. Thus, whereas investigations of cases of basic corruption, which are punishable 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 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 for in corruption cases. [15]

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 chart 2.6.). 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.

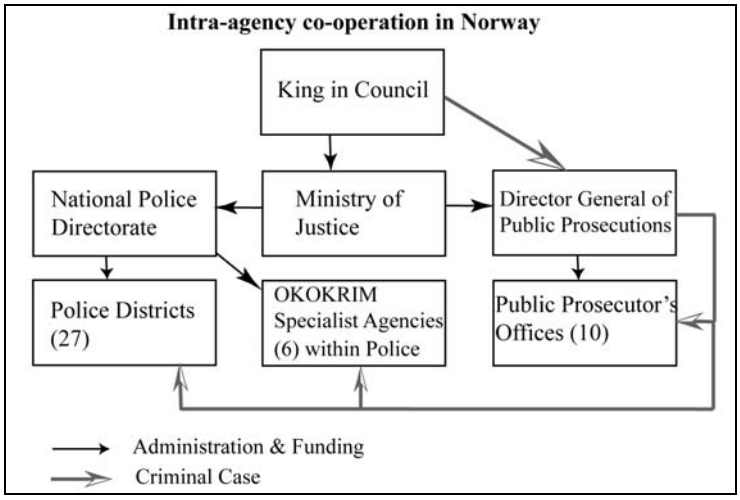
Figure 17. Organisational structure of Økokrim



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.[16]

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 18. 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*).[17]

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 though 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 betweens 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 multidisciplinary 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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The Police in Norway, www.politi.no/pls/idesk/docs/f64007056/pod_norgeapril2005.pdf

Transparency International Corruption Perception Index, www.transparency.org/policy_research/surveys_indices/cpi

United Kingdom: Serious Fraud Office

The Serious Fraud Office (SFO) was established in 1987 as an independent public institution within the criminal justice system of the United Kingdom under the oversight of the Attorney General. Its mandate is to investigate and prosecute serious and complex fraud in order to maintain confidence in the integrity of business and financial services in the United Kingdom. The SFO only focuses on serious and complex cases. The distinctive feature of the SFO's approach to investigation is the use of multidisciplinary teams. Each case is allocated to a team of lawyers, financial investigators, police officers, IT and other support staff.

Background Information

In the 1970s and 1980s in the United Kingdom witnessed considerable public dissatisfaction 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 the criminal proceedings.[18]

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 of the SFO. In particular, one of its main recommendations was the setting up of 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 adopted in 1987, as an independent Government Department headed by a Director who exercises powers under the oversight of the Attorney General. It is an integral part of the criminal justice system. Today the SFO is the main body directing investigations and prosecuting corruption offences in the United Kingdom.

In addition to the SFO, there are many other institutions in the United Kingdom dealing directly or indirectly with various aspects of corruption. One notable example is the Anti-Corruption Command, a specialised unit within the Metropolitan Police, with functions to collect, analyse and develop intelligence relating to corruption within the police; it also has operational and surveillance wings and integrity-testing units.[19]

Legal and Institutional Framework

The SFO operate only in England, Wales and Northern Ireland. It does not have jurisdiction over Scotland, the Isle of Man or the Channel Islands. The SFO's mandate is to direct investigations and prosecute serious or complex fraud. It investigates and prosecutes corruption offences when they arise in the context of serious or complex fraud. The primary aim of SFO is to "use of powers and resources to bring a case in front of the criminal courts which has a reasonable chance of succeeding in the sense that there is a reasonable chance that a conviction will result."[20]

Corruption in the UK is currently dealt with by both common (unwritten, based on custom and precedent) and statute (parliamentary) law in the United Kingdom. More specifically, the common law of England and Wales as well as that of Scotland contains public-official bribery offences, which are not necessarily of the same scope (although the bribery of judges would be punishable under common law in both jurisdictions).

Provisions on corruption are also contained in four different criminal statutes, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 (collectively called the Prevention of Corruption Acts 1889 to 1916), which apply to the entire United Kingdom and a Anti-Terrorism Crime and Security Act 2000.

Various cases of suspected fraud are referred to the SFO. The SFO is not investigating them all, but choosing only cases of major and complicated fraud. The SFO uses a set of criteria when deciding whether to accept a case. The overriding *criterion* is whether the suspected fraud is enough serious or complex that its investigation need to be carried out by those responsible for its prosecution.

Box 7. Main Factors Considered by SFO when Deciding on Whether to Accept a Case

- Does the value of the alleged fraud exceed 1 million GBP (1, 45 million EUR)?
- Is there a significant international dimension?
- Is the case likely to be of widespread public concern?
- Does the case require a combination of legal, accountancy and investigative skills?
- Does the case require specialised knowledge, *e.g*. of financial markets?
- Is there a need to use the SFO's special powers, such as specified under the Section 2 of the Criminal Justice Act?

Sources: SFO website, at www.sfo.gov.uk/cases, Wardle (2003); see also, the OECD Working Group on Bribery (2005), United Kingdom: Phase II report, Paris, 17 March, p. 35.

Overall, the assessment ("vetting") whether a suspected fraud should be accepted for investigation involves a detailed examination of all known facts of the referred case. Regular liaison meetings are held to establish which organisation is most appropriate to deal with a specific suspected fraud. Whether a case should be accepted is normally decided within one month of it being referred to the SFO, although additional information may be requested before a decision can be made. Cases recommended by the vetting team for a formal investigation are submitted to the Director of SFO for final acceptance. Cases not accepted by the SFO are referred back to the originating body. Each year thousands of fraud cases, not falling within the SFO's scope are investigated by police regional fraud or commercial squads, and prosecuted in the courts, by the Crown Prosecution Service. Other government departments also undertake investigations and prosecutions.

Once it is decided to start an investigation, each case is allocated to a multidisciplinary team. It consists of lawyers, financial investigators, police officers, IT and support staff. Each team is led by a Case Controller, a senior grade lawyer, who is responsible for all aspects of the investigation and any ensuing prosecution. Counsel and other experts may be instructed at an early stage and work closely with the team throughout.

In the course of investigation of fraud cases, vast quantities of documents often left in a deliberately obscure and fragmented form need to be examined. This is done by experts having different types of expertise, *e.g*. police, accountants, lawyers, bankers, stockbrokers and computer specialists, to determine whether offences have been committed and if they have, to arrange the evidence in a compact and coherent form for presentation to the court.

Case meetings are held at regular intervals throughout the investigation involving all members of the case team. The meetings provide opportunity to agree on joint lines of

action among all the different specialists in the team, including independent prosecuting counsel, who are usually engaged at an early stage.

Once the case has been investigated - before instituting any criminal proceedings – it is considered whether on the evidence against each potential defendant there is a realistic prospect of securing a conviction and whether the public interest requires a prosecution. The SFO follows the principles outlined in the Code for Crown Prosecutors, which also applies to Crown Prosecution Service decisions whether to prosecute.

The SFO powers are described in the Criminal Justice Act 1987. Other statutory powers are available to the SFO, police or other law enforcement agencies under *inter alia*: Police and Criminal Evidence Act 1984; Companies Act 1986; Criminal Justice Act 1988; Regulation of Investigation Powers Act 2000; Financial Services & Markets Act 2000; Proceeds of Crime Act 2003.

Section 2 of the Criminal Justice Act gives extensive powers of investigation to the SFO Director. These powers, commonly referred as s2 powers, and which are not specific to SFO, include the following:

- Require a person to answer questions or otherwise furnish information;
- Require production of documents;
- Apply to Justices for a search warrant.

S2 powers are designed to obtain information to assist an investigation. They may only be used for the purposes of an investigation of a suspected offence which appears on reasonable grounds to the Director to involve serious or complex fraud and where there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs of any person. They are not designed to obtain evidence for direct use in court. Even so, material obtained using s2 powers may subsequently be produced as evidence in the proper form. S2 powers are known as "compulsory" powers because:

- Failure to comply with an s2 Notice, without a reasonable excuse, is an offence (Section 2(13));
- Giving false or misleading information in response to a Notice is an offence (Section 2(14));
- The "right to silence" does not apply to information obtained under Section 2 - it cannot be used in evidence unless a formal witness statement is obtained.

S2 powers are exercised by the written notice, know as Section 2 notices. Many Section 2 mandatory 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 those institutions and persons owe duties of confidence to their clients. Many are willing to assist but cannot do so while such duties of confidence remain. A Section 2 notice obliges them lawfully to provide information and documents.

S2 powers are intrusive. Consequently it is important that care is taken in:

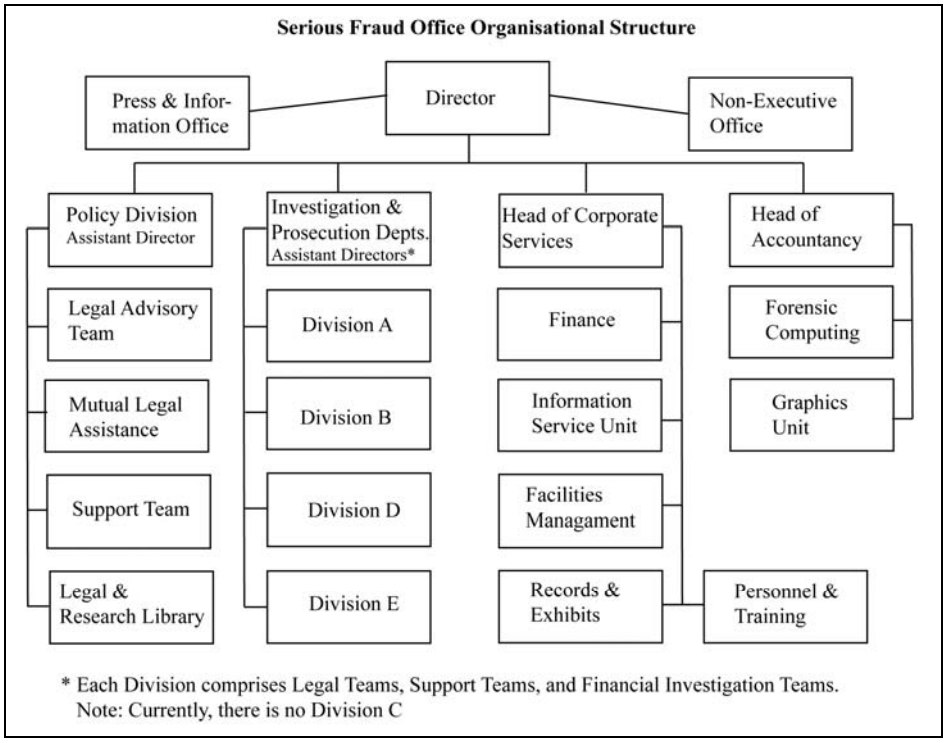
- Making the decision whether to use the powers;
- Complying with the statutory preconditions;
- The manner that the powers are exercised;
- Ensuring that the use of the powers is necessary, reasonable and proportionate in accordance with Human Rights Act 1998.

A decision to use s2 powers may be made by the Case Controller either alone or as a result of discussion in a case conference. Considerations, grounds and reasons should be recorded in written minutes and kept in a special registry. Contract staff or seconded staff may be authorised to exercise s2 powers, but the Director remains responsible for the proper exercise of all delegated statutory powers.

S2 notices may be issued and signed by any SFO member or other investigator who has been authorised by the Director. Notices requiring production of banking information additionally require the authority of the Director. The SFO lawyers and investigators may be given a general authority annually; others may be authorised on a case basis. Police officers working with the SFO retain all their own constitutional, common law and statutory powers may not be authorised to use s2 powers.

Concerning the organisational structure of the SFO, there are four investigation and prosecution divisions, each headed by an Assistant Director. Each division contains a number of multidisciplinary case teams. Each operational division covers cases of fraud committed in its own geographic area of the country within the SFO's jurisdiction. However, as a large proportion of cases originate in London these are shared between the divisions. The head of accountancy is an Assistant Director, who is a senior chartered accountant. Accountancy support is allocated from a central resource when needed. This can include employing external accountancy expertise. A forensic computing unit is responsible for the seizure, processing and analysis of all electronic-based evidence. A graphic designer assists case teams and counsel in the preparation of presentations for court hearings.

Figure 19. Organisational structure of the Serious Fraud Office



The Criminal Justice Act 1987 provides for the conduct of investigations by the SFO in conjunction with the police. The constitutional independence of the police, their accountability and their command structure remain unchanged by the establishment of the SFO or by the attachment of police officers to SFO cases. The police fraud squads have their own specialist expertise to deal with corruption related criminal offences. Within the scope of its operation, the SFO cooperates extensively with the police. The police are involved in the case team. Police involvement in SFO investigations produces real benefits, combining their skills experience and local knowledge with the SFO's legal and financial investigation capability. As mentioned earlier, s2 powers under may not be used by police officers.

Accountability

As mentioned earlier, the Director of the SFO is appointed by and accountable to the Attorney General. The Prosecutor General, on his turn, is appointed by the Prime Minister and is responsible to Parliament the SFO. The Director of the SFO makes an annual report to the Prosecutor General on the work of the Office. The report is provided to the Parliament and published.

The SFO annual reports are available at http://www.sfo.gov.uk/publications/annual_report.asp.

Human and Material Resources

The SFO has 150 members of staff, 35 of whom are lawyers.

Duties of the SFO lawyers, be it case controllers or investigators, involve interviewing witnesses and suspects, taking statements and analysing evidence. They may need to liaise with other agencies, advise on difficult legal or practical issues, or obtain foreign or expert evidence.

Several lawyers also work in the Policy Division, providing guidance on new legislation and the SFO procedure and advising the SFO's Mutual Legal Assistance Unit, which obtains evidence to assist overseas courts, and prosecuting authorities.

Practice and Highlights

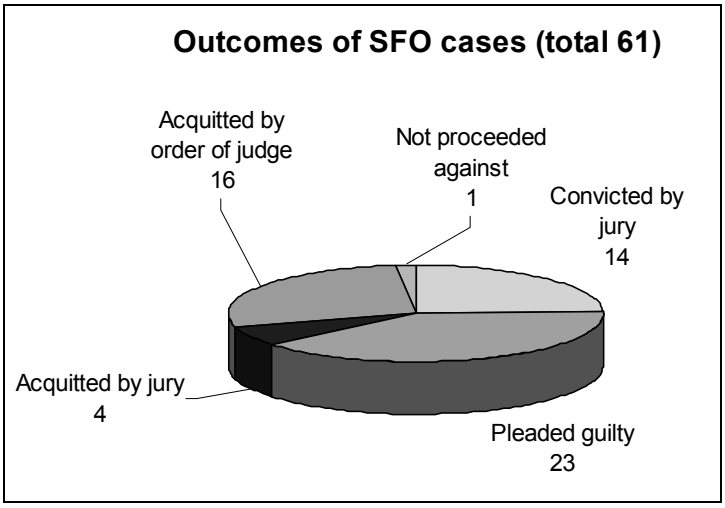
Investigating and prosecuting fraud cases: The SFO is responsible for the investigation and prosecution of some of the biggest frauds in British history. Approximately 20-30 new cases are accepted by the SFO each year. For example, in 2006 there are about 80 cases under investigation or going through the courts. The caseload is expected to increase over the next few years.[21] The cases may involve investment, banking or corporate frauds, frauds on the U.K. government or the European Union, and those involving manipulation or financial markets. Most cases have an international dimension and many involve close working with other agencies such as the Police, Crown Prosecution Service, Department of Trade and Industry, Her Majesty's Customs and Excise and the Financial Services Authority, or their overseas equivalents.

For example, in the period from April 2004 - April 2005, 22 cases involving 61 defendants were concluded, *i.e.* defendants were sentenced, acquitted or not proceeded against. Out of 58 defendants who tried 37 were convicted (see the figure below). [22] From the 37 convicted defendants, 32 received custodial sentences [23] (out of them 3 were

suspended), 3 defendants were given community service orders and two were fined. The longest term of imprisonment handed down was 7 years. Fifteen of the 37 were also disqualified from acting as company directors.

The largest confiscation sum ordered against a single defendant was 14.3 million GBP.

Figure 20. Outcomes of SFO cases



Source : SFO Annual Report 2004-2005

In 2003-04, at the start of the report year the SFO had 71 cases active[24]. These represented an aggregate value of alleged frauds (sums at risk) of approximately 1.9 billion GBP. They considered 35 referrals made to them during the year, of which 7 were accepted for investigation. Two more cases arose out of the investigation of existing cases. SFO also accepted two cases that had been referred in the previous year. Thus, 11 investigations commenced during the year. Throughout the year they worked on a total of 84 cases (excluding appeals) and by end had 71 on-going cases with an aggregate value of 1.84 billion GBP.

Referred cases and alerts to cases of suspected fraud: The referrals come to SFO from various sources, with 60% coming from the Police. The Department of Trade and Industry and the Crown Prosecution Service also play a key part in alerting the SFO to cases of suspected major fraud. All of the referring organisations make an initial assessment of the circumstances before passing their conclusions to them. SFO then determines whether or not the matter is within their investigation criteria. For instance, in 2001 out of 39 referrals 21 were accepted for investigation by SFO.

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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 14/2003 of 26 May Amending Act 50/1981 OF 30 December Regulating the Organic Statute of the Public Prosecution Service, Boletín Oficial del Estado 126, 26 May.
4. Organic Act 10/1983 of 16 August 1983.
5. Exercise of the respective powers of the State Attorney General requires from the heads of all special prosecution offices, in accordance with Article 25 of Organic Statute, to inform immediately on acts that can prima facie fall into their competence.
6. Spanish police force with military 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. Law on the Office for the Suppression of Corruption and Organised Crime, March 2005, at www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Office-for-the-Suppression-CC.doc
9. GRECO (2000), *First Evaluation Round, Evaluation of Belgium, Strasbourg*, 15 December 2000
10. Id.
11. See Transparency International Corruption Perception Index, www.transparency.org/policy_research/surveys_indices/cpi
12. GRECO (2002), *First Evaluation Round Report on Norway, Council of Europe*, Strasbourg, 11 July 2002, p.6.
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19. Council of Europe (2004), p. 69.

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22. See for more information SFO Annual Reports available at http://www.sfo.gov.uk/publications/annual_report.asp

23. Custodial sentence means imprisonment or detention in some other closed institution.

24. Active cases are the cases either under investigation or where legal proceedings had commenced, awaiting trial or trial in progress.

Chapter 6
Preventive and Policy Co-ordination Institutions

France: Central Service for Prevention of Corruption

The French Central Service for Prevention of Corruption (Service Central de Prévention de la Corruption – SCPC) was established in 1993. It is attached to the Ministry of Justice. The SCPC is a relatively small body but it has diverse expertise as it brings together seconded experts from various judicial and administrative bodies. The SCPC collects information and provides independent expert advice on corruption risks and corruption cases under investigation. Most of requests are from local authorities. The SCPC increasingly provides training and assistance on codes of conduct for public and private enterprises.

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; as a result some leading politicians faced criminal charges.[1] These developments had a negative impact on popularity of governments led by Michel Rocard and Édith Cresson. In 1992, a new government was appointed led by Pierre Bérégovoy. In his inaugural speech, the new Prime Minister announced that the fight against corruption will be one of his priorities.[2]

In April 1992, the Prime Minister set up a special Commission for Corruption Prevention. It comprised high level officials and was led by prosecutor and state counsellor Robert Bouchery. The Commission's mandate was to propose measures to solve problems of fraud and corruption encountered at that time in France.[3] In June 1992, the Bouchery report was presented to the Prime Minister including a recommendation to set up a central service for fight against corruption, an independent body composed of judicial officers. In a few months time the government developed a draft law taking into account the recommendations from the report.

The law No 93-122 "On Preventing Corruption, Transparency in Business and Public Procedures" was voted by the Parliament on 29 January 2003. The Law provides a series of measures, including creating the Central Service for Prevention of Corruption – the SCPC, tighter, more transparent rules for financing electoral campaigns and political parties and awarding public contracts and more rigorous control over local authorities.

The Constitutional Council was requested to review the law, including the mandate of the SCPC, and in a decision of 20 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 provided 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".[4]

As a result, some of the articles of the law relative to the SCPC had to be cancelled. The service was not granted investigatory powers or powers to request information. The SCPC was created as an "administrative service of prevention".

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 latter, stating that "no relevant case has been disclosed or investigated by this new institution".[5] In its Annual Report the SCPC suggests that rights to request administrative documents be attributed to it in the future, like to many other public administration bodies.[6]

Following the entering into force of the law, the SCPC was set up quite rapidly. The service was made operational in a less than a year after its creation.

Legal and institutional framework

The SCPC's legal and regulatory basis is the law n°93/122 of 29 January 1993 "On Prevention of Corruption and Transparency of Economic Life and Public Procedures" and the Decree n° 93/232 of 23 February 1993. The law establishes the SCPC as a service under the responsibility of a senior judicial officer (either prosecutor or judge).

The law sets forth the mandate and main functions of the SCPC that are threefold:

- Centralise information necessary for the detection and prevention of passive and active corruption offences, trafficking in influence, concussion, illegal use of public function, failure to respect open and equal access to public procurement;
- Provide assistance to judicial institutions investigating, prosecuting and adjudicating corruption cases, upon their request;
- Provide opinions to administrative bodies to prevent corruption, upon their request.

For instance, the SCPC can provide opinions on draft laws upon request of the government.

The SCPC has no powers to investigate administrative or criminal cases. Meanwhile, when the information collected by the office 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 automatically ceases its involvement.

The SCPC is not providing legal advice to physical persons or determine liability or impose administrative or disciplinary sanctions to public officials, but it can refer information to other public authorities that can lead to opening an enquiry.[7]

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

Further to the law, Decree N° 93/232 of 23 February 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, TRACFIN, Interministerial Task Force of Inquiry into Public Procurement; Competition Commission, Stock Exchange Commission);

- regional and local authorities (city mayors, presidents of regional and local councils); audit and control bodies (Courts of accounts, other control and inspection bodies); and
- private enterprises rendering public services.

The Decree establishes the obligation to the SCPC to provide an annual activity report to the Prime Minister and to the Minister of Justice. The report is afterwards made public. The report should include suggestions of measures to be taken to prevent irregularities reported to the SCPC.

The SCPC works in cooperation with other judicial and administrative bodies, such as the anti-money laundering authority TRACFIN, Ministry of Justice and the new police service of fight against corruption Anti-corruption brigade (BCLC). The BCLC was created in 2004 within the Division of Economic and Financial Delinquency of the Judicial Police. The BCLC is in process of being established. As of beginning of 2006, it had about 25 police officers and gendarmes.

Human and material resources

The SCPC's staff comprises about 15 persons: the head of the service, the secretary general, 8 to 12 counsellors. The staff members are judicial officers or public servants. The counsellors working for the SCPC are seconded from various state institutions, be it judicial or state administration. There are also assistants and a driver. The head of the service and the Secretary General are both nominated by the President for four years; the head cannot be dismissed in the interim. In 2006, a new head of the service was appointed; before his appointment he was Prosecutor General.

The counsellors are experienced public servants coming from various ministries, judicial and other public bodies, such as Police, Gendarmerie, Tax, Customs, Justice, Chamber of Accounts, Competition, Repression of Fraud, Interior, Equipment, Housing, Transports. To work at the SCPC, different administrations propose and the head of the SCPC selects the staff members. At any moment, the head of service can decide to return the staff member to his administration. The staff member remains employee of his or her administration that continues to be the employer, including paying the salary.

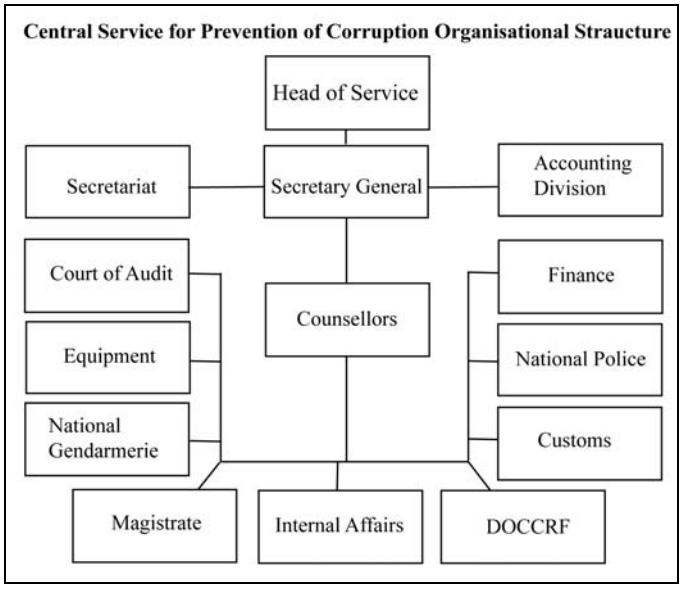
The SCPC has its own budget within the budget of the Ministry of Justice. The budget is managed by the head of the service. The budget in 2005 was 375,000 EUR. Roughly 80 per cent covers administrative costs (rent, telephone, electricity and alike). The rest is used for specific activities of the service. The salaries of staff members are paid by their respective ministries; also, expenses linked to attending training or international events by members of the SCPC are covered by organising authorities. The budget is entirely covered from the state budget. There are no other resources.

Accountablity

The SCPC is attached to the Ministry of Justice and reports to the head of the Cabinet of the Minister of Justice. Neither the government nor the Minister of Justice can give instructions to the SCPC and its members. According to its regulation, the SCPC provides an annual report to the Prime Minister and the Minister of Justice. Each year the report contains an analysis of selected sectors of economy with regards to corruption risks, as well as practical notes on criminal offences. The report often is related to issues covered by the opinions provided by the SCPC. The report is available either at the Direction of

official journals (*la Direction des journaux officiels*) or on the website of the SCPC at www.justice.gouv.fr/minister/minscpc.htm.

Figure 21. Organisation structure of SCPC



There is a permanent liaison committee of the SCPC composed of members of various government departments and civil society. This committee aims to provide assistance in the areas of centralisation of information and research.[8]

Box 8. Themes of SCPC Annual Reports, 1993 - 2005

1993-1994: Lobbying and Trading in Influence, Sport, International Commerce, Decentralisation, Control of Legality

1995: Public Procurement (main risks, practice, measures to prevent corruption and fraud), Health Sector; International business, Ethics

1996: Publicity, Advertising Companies, Derivatives and Merchandising - Public Procurement (techniques to get round procurement rules), International Business, International Fraud

1997: Sects, Information Technology, Domestic Trade and Industry, Use of Proceeds Obtained from Corruption

1998 – 1999: Consultancy and Intermediary, Retail Trade, Professional Training

2000: Advertising and Internal Control, Pantouflage (Revolving doors), Child Adoption, Other Cases of "Persons in Distress"

2001: Forms of exclusion (individual, economic, political), Charities, OECD Convention, Cleaning Companies, Private Security Companies

2002: Ethics, NGOs, Accounting, Anti-corruption Services in Germany, Croatia, Denmark, Hong Kong SAR, Great Britain

2003: Money Laundering (corruption, sport, raw material market), NGOs, Whistle-blowing, Fraud, Fight against Corruption in Botswana, Brazil, South Korea, Finland, Rumania

2004: Conflict of Interest – Economic Intelligence – Shelf Companies – Money-laundering (accounts of enterprises, insurance companies, reporting of suspicions of lawyers and notaries)

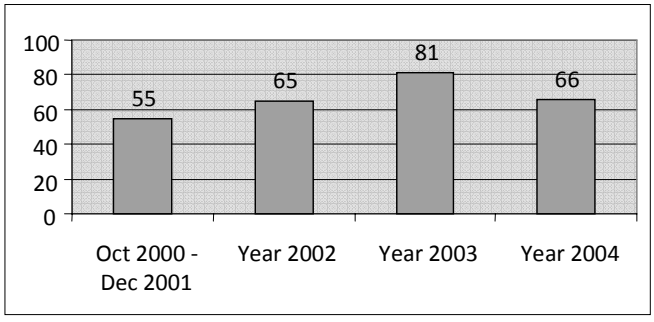
Source: SCPC reports, available at http://www.justice.gouv.fr/publicat/scpc.htm

Practice and highlights

Centralisation of information: Overall, this is the main activity of the SCPC - centralise information, analyse corruption risks and develop preventive measures in different sectors of economic activities. This work covers both private and public sector corruption. It includes any publicly available information. The SCPC is not focusing on specific cases or particular persons; it rather aims to develop understanding about situations and mechanisms leading to fraud and corruption. The information collected by the SCPC is public. The SCPC has a library on corruption issues open to the public. The work on collecting information, however, is limited, as the SCPC has not been granted rights to request information;

Inquiries: On average, SCPC receives 55 requests in a year from judicial or administrative authorities to either provide an independent, expert opinion or assistance in a specific case under investigation. This number has slightly increased over the last three years (see table 1). Nevertheless, SCPC considers that it is still much below its actual operational capacity and modest if compared to the number of court convictions[9].

Figure 22. Enquiries received by SCPC

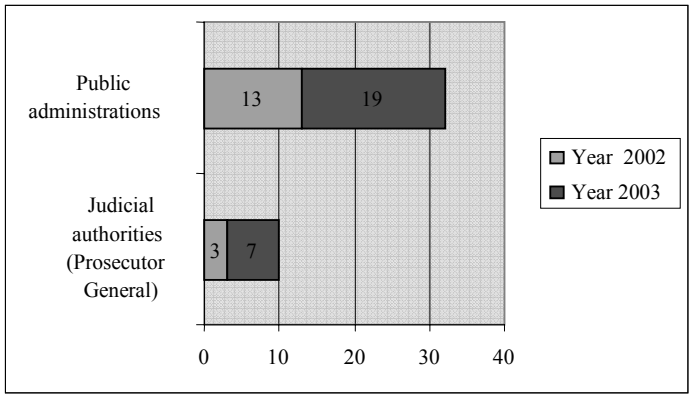


Source: SCPC annual reports

Opinions to public administrations: Following up the requests, SCPC provides in average 30 opinions to public administrations every year. In the majority of cases, the opinions are requested by local officials, mainly mayors of towns. In 2004, out of 30 opinions 14 were made on the request of 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 are given in relation to "illegal taking of interest" (decision-taking in cases involving personal interests). Essentially, the SCPC responds to enquiries on whether a public contract can be passed or a public service outsourced to relatives or close friends of a local official.

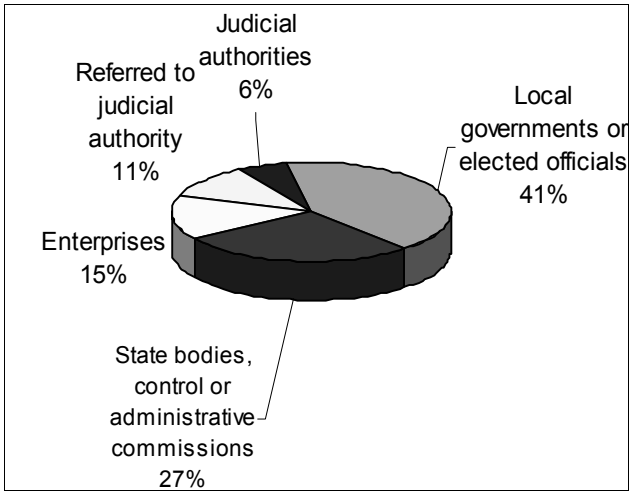
Assistance to judicial authorities: The SCPC provides advice to help to proceed with investigation of specific cases. There are an increasing number of such requests from prosecutors, judges and judicial experts. Still, this remains one of the least developed areas of activity, despite the fact that the service is attached to the Ministry 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.

Figure 23. Reports Referred by SCPC to other institutions, 2002 – 2003



Source: SCPC annual reports

Figure 24. Opinions provided by SCPC, 2002 – 2004



Indicators: The SCPC also assists supervisory and control bodies to develop indicators helping to identify main forms of financial manipulations and prevent them[10];

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 to help to prevent corruption and better detect cases of corruption and fraud. Courses are drawn on legal and technical expertise of SCPC members and collected information. 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, 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 Control11);
- University students (e.g. national schools of administration, magistrates, police, customs, HEC School of Management) and general public.

Members of the SCPC dedicate in average 15% of their time to the training and awareness-raising activities. The SCPC cooperates with training centres, schools and universities. In 2003, SCPC provided estimated 250 – 300 hours of training for 2000 persons.[12]

Box 9. Example of SCPC Training Module for Police on Public Procurement

Day 1: Presentation of SCPC and Anti-Corruption Brigade of Judicial Police
Offences of Corruption and trafficking in influence
Day 2: Notion of public contract and phases to award a public contract
Glossary of terms
Common practice
Favoritism, 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: SCPC

Partnerships with enterprises: In 2001 GRECO recommended to France to more actively support private initiatives to prevent corruption and strengthen links between government and preventive activities and such initiatives. The SCPC is the focal point for implementing this recommendation. It has developed a number of partnerships with public and private enterprises. These partnerships are based on agreements negotiated with each individual enterprise and usually provide for cooperation in the following three areas:

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

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 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 Association of Private Enterprises, the Employer's Federation MEDEF, Association of Chambers of Commerce and Industry.[13] Cooperation has also been developed with business management schools (see above "Training and awareness raising").

International activities: The SCPC has become an expert in the fight against corruption and prevention of corruption often called at international level through activities carried out by OECD, Council of Europe, European Commission, UN, World Bank, IMF. In the framework of bilateral conventions, the SCPC is providing assistance through missions organised by the Ministry of Foreign Affairs. SCPC takes part in international negotiations and preparatory works led by different international organisations in the area of fighting and preventing corruption. Finally, the SPCP receives every year about 50 foreign delegations in order to provide information on the system put in place in France to fight and prevent corruption. The international activities had allowed making the SCPC known internationally and improving its image.

In 2004, GRECO pointed to the fact that only certain public departments and agencies call on the services of the SCPC, in the majority those represented in the service, and that its financial and staffing resources are limited.[14] For the next 4 years, the SCPC has set an objective to become better known in France and more actively assist national administrations to prevent corruption.

Contact details

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Slovenia: Commission for the Prevention of Corruption

The Commission for the Prevention of Corruption (Komisija za preprečevanje korupcije – CPC) was established in Slovenia in 2004 as an independent body with a mandate to reduce and prevent corruption in both public and private sectors. It has coordinative, analytical and preventive functions. While it does not have traditional investigative or prosecutorial powers, it possesses administrative enforcement powers in the areas of declaration of assets and prevention of conflicts of interest. It is also a central body for international cooperation and cooperation with non-governmental sector in the area of prevention of corruption.

Background Information

International surveys and studies have often noted that in the field of corruption the Republic of Slovenia ranks better than most of transition countries and some older EU Member States. Nevertheless, corruption is still a threat to Slovenian society and economy. In December 2000, the GRECO has issued its first evaluation report on Slovenia. It stated that Slovenia lacked a comprehensive anti-corruption strategy and had no specialised anti-corruption body responsible for coordination of anti-corruption efforts.

Following the GRECO report, in March 2001, the Government of Slovenia has established an inter-ministerial anti-corruption group. In July 2001, the Government issued a decree which established the Office for the Prevention of Corruption attached to the Office of the Prime Minister. The Office had coordinative, analytical, preventive and other tasks; it also had responsibilities relating to the enforcement of the Code of Conduct of Public Officials and was tasked to coordinate the preparation of the National Anti-Corruption Strategy.

Box 10. Recent Developments in Slovenia (August 2006)

Following parliamentary elections and the change of government in 2004, the Commissions came under persistent criticisms. Finally, a legislative proposal was put in the parliamentary procedure to abolish the Commission and its preventive and coordinative functions. The majority in the parliament and the government characterised the Commission as ineffective, lacking enforcement powers, as well as a disproportionate burden on the state budget due to its small contribution to the fight against corruption. Instead, both the parliament and the government advocated setting up a parliamentary commission, composed of members of the parliament with opposition in majority, to perform the functions of an oversight body in the filed of prevention of the conflict of interest and declaration of assets of high public officials.

Despite the public opinion polls, which favour the Commission, and concerns raised by local and international experts and academia, the law abolishing the Commission was adopted in February 2006. However, the implementation of the law was suspended by the Constitutional Court, which is reviewing the constitutionality of the new law. The decision of the Court is pending.

The fate of the Slovenian Commission gives a telling example of how an anti-corruption institution can be hindered and even abolished despite its formal independence and high public support - if there is a lack of political support and understanding of the importance of preventive and coordinative functions in the fight against corruption.

Since its inception, the Office was very active and publicly vocal. As a result, it achieved a high level of public support. However, this was not matched by an independent legal status and clearly defined competencies. Consequently, one of the priorities of the Office, in addition to preparation of the National Anti-Corruption

Strategy, was to draft a Law on the Prevention of Corruption, which would establish it as an independent institution with statutory defined powers and responsibilities in the area of preventing and controlling corruption.

In February 2004, the Law for the Prevention of Corruption entered into force. The law established an independent Constitutional Body – the CPC – which reports directly to the Parliament. The previous Office for the Prevention of Corruption was transferred into a permanent secretariat/support unit for the CPC. The CPC has coordinative, analytical and preventive tasks, and is responsible for the monitoring of the implementation of the National Anti-Corruption Strategy, the enforcement of Code of Conduct for Public Officials and is the central enforcement body for the provisions relating to the declaration of assets of public officials. Following the election of the Chairman and members of the Commission it became operational in October 2004. In the meantime, in June 2004, the Parliament adopted the Resolution on the Prevention of Corruption (National Anti-Corruption Strategy).

In the process of the preparation and adoption of the legal framework for the creation of the CPC, vivid discussions took place whether to grant the body with investigative and prosecutorial powers. Finally, investigative powers remained with the Sector for Combating Corruption which is located within the Police, and prosecution of corruption offences remained under the competencies of regular prosecution service (and in cases of corruption linked to organised crime with the specialised Group of Prosecutors for Special Matters which is attached to the General Prosecutor's Office).

Legal and Institutional Framework

- Legal and institutional framework of the CPC is determined by the following documents:
- Law on the Prevention of Corruption, 2004;
- Rules of Procedure of the Commission for the Prevention of Corruption, 2004;
- Resolution on the Prevention of Corruption in the Republic of Slovenia (the National Anti-Corruption Strategy), 2004.

Organisationally, the law establishes the CPC as an independent constitutional body (similar to an office of Ombudsman), which only report 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.

Law on the Prevention of Corruption defines the competencies of the CPC, including analytical, coordinative, preventive and educational:

- monitoring and facilitating the implementation of the National Anti-Corruption Strategy;
- monitoring, collecting and analysing statistical data on corruption;
- conducting/commissioning corruption-related surveys;

- analysing regulatory framework in different areas with aim of identifying systemic gaps enhancing the danger of corruption and proposing remedial legislative or regulatory actions;
- cooperating with all public institutions in drafting regulations relating to prevention of corruption;
- monitoring the implementation of all regulations related to prevention of corruption;
- international cooperation in the area of corruption with public and non-governmental sector;
- advising public institutions on their obligations deriving from international legal instruments and standards in the area of prevention of corruption;
- cooperating with scientific, professional, media and other non-governmental organisations and associations in the area of prevention of corruption;
- advising on drafting or implementation of codes of ethics conduct in public and private sector;
- issuing—on its own motion or on request – expert opinions and advice on issues related to the conflict of interest, gifts and other issues relating to the substance-matter of the Law on Prevention of Corruption;
- providing and assisting in education and training in the area of prevention of corruption in public and private sector;
- publication of materials related to prevention of corruption.

Furthermore, the CPC has administrative enforcement powers in the areas of:

- declaration of assets of public officials;
- receiving of gifts; and
- prevention of the conflict of interests.

The CPC can impose administrative sanctions for all violations provisions of the Law on Prevention of Corruption Act, which range from SIT 50.000 (200 EURO) to the 10.000.000 SIT (42.000 EURO).

The CPC is the central authority to continuously collect and monitor information on the financial status of legally defined categories of public officials, including all functionaries within the Government, judges, prosecutors, and members of the parliament. Failure of the public official to comply with the declaration of assets provisions in the Law on Prevention of Corruption can lead to the temporary reduction of salary or even termination of office on the proposal of the CPC. Furthermore, the CPC is a custodian of listed gifts received by public officials.

It maintains a public list of debarred companies that cannot participate in public procurement procedures due to the fact that a functionary or his/her family member indirectly or directly holds a business stake, shares or other rights on the basis of which he/she participates in the management or the capital of the business entity. For the performance of the above duties the law gives the CPC special powers to request any public institutions to present any official document for inspection and can summon public officials for interviews.

All members of the Commission are elected by the Parliament, the President and Deputy President on the proposal of the President of the Republic, one Commissioner on the proposal of the Judicial Council, one on the proposal on the Commission of the National Assembly of the Republic of Slovenia responsible for mandates and elections, an one on the proposal of the Government. The term of all members of the Commission is six years; the law requires them to have at least a university degree, ten years of work experience and be persons inspiring public trust. The CPC has a permanent Secretariat, which employs staff with different qualifications related to the work-areas of the CPC. The CPC has developed close cooperation and exchange of information with other state law enforcement, prosecution, inspection and financial bodies.

Human and Material Resources

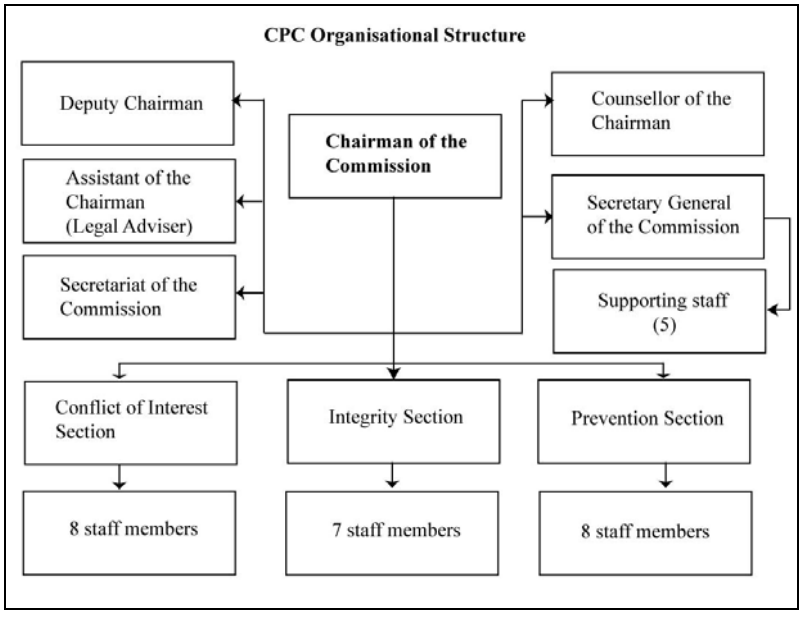
Altogether, the CPC has 11 staff members. It includes a President, Deputy and 3 Commissioners; 6 members of the Secretariat with expertise in financial, law enforcement, informatics and legal matters.

Funds for the operation of the CPC are provided by the state budget at the proposal of the CPC. The approval of its "first" budget is still pending in the Government, in the context of the political debate about the CPC's future.

Accountability

The CPC submits regular annual reports for information to the Parliament. Upon request of the Parliament or the Government or on its own initiative, it will also submit ad hoc reports on a specific issue to the Parliament or the Government. In regard to its monitoring and enforcement powers related to the declaration of assets, gifts, and conflict of interest, the CPC is also accountable and has to submit regular and ad hoc reports to the special Parliamentary Commission, the body which was established for the purpose of supervising the work of the CPC in this area and composed of the members of parliament.

Figure 25. CPC Organisational Structure



Practice and Highlights

Assistance and Cooperation with other State Institutions: In first months of its operation the CPC has signed several Memorandums of Cooperation and Exchange of Information with state law enforcement, prosecution, inspection and financial bodies. For example, in March 2005 the CPC had signed such multi-party memorandums with the Court of Auditors, State Auditor Commission and with the Commissioner for Access to Public Information providing regular and direct exchange of information and provision of expertise to each other from their respective fields in cases of violation of a regulations relating to public finance, public procurement, corruption and corruption-related offences. Memorandum also provides for a monthly review of effectiveness of cooperation among the signatories. A number of crime reports have been submitted to the prosecutor and the police for further investigations.

Declarations of assets and conflict of interest: Over 5000 public officials have submitted the data on their situation relating to both property and income, for example, real estate, movable property of high value, shares and participation in companies, other securities, funds deposited in banks, savings banks and credit and savings institutions, debts, assumed guarantees and other liabilities, and annual income which is the basis for the personal income tax. As a result of identified conflicts a number of local and state officials have been forced to resign in view of the conflict of interest.

List of debarred companies: The CPC have published a list of 577 debarred companies and undertakings which, on principle, cannot participate in the process of public procurement. These are the business entities in which the functionary or his/her family member indirectly or directly holds a business stake, shares or have other rights on the basis of which he/she can participate in the management. As an indirect result of this, a number of high local public officials have already voluntarily resigned from their posts.

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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 - State Commission) was established in 2002. It is an independent body composed of experts with legal and economic background appointed by the Parliament. The members of the State Commission meet at regular sessions. The State Commission is responsible for implementing, developing, and enforcing measures for prevention of corruption and conflict of interests in public administration. The Commission is also responsible for development and implementation of the State Programme for Prevention and Repression of Corruption. Although the Commission does not have traditional investigative or prosecutorial powers, it can summon persons suspected of corruption crimes; maintains records and monitors declarations of incomes and assets of elected civil servants, appointed functionaries, responsible persons in public enterprises, and officials in legal entities managing state funds.

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, the corruption was threatening the rule of law, democracy and economic development in the country. In a bid to confront corrupt behaviour, in April 2002, all political parties passed the Law on prevention of corruption.

The law has foreseen the establishment of the State Commission for Prevention of Corruption, and approximately six months later such 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 fight against corruption in FYROM. These include insufficiently developed system of separation of powers; absence of independent institutions for the prevention and repression of corruption; lack of the 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 anticorruption 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 State Commission, is the law on Prevention of corruption, adopted by the Parliament in 2002[15]. It was further amended in 2004, providing the State Commission with a status of legal entity and increasing the office term of its members from 4 to 5 years[16]. The legal mandate of the State Commission includes prevention of corruption and of conflict of interest in public service.

The State 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 State Commission, the Commission is an independent statutory institution and it is neither parliamentary, nor governmental body. State Commission is responsible for development and adoption of the State Programme for Prevention and Repression of Corruption. In addition, the Commission is legally bound to adopt annual programmes and plans for implementation of the State Programme. The State Commission receives complaints from the public and can initiate cases for investigation by the prosecutorial bodies.

Article 55 of the above Law sets forth the following competences of the State Commission:

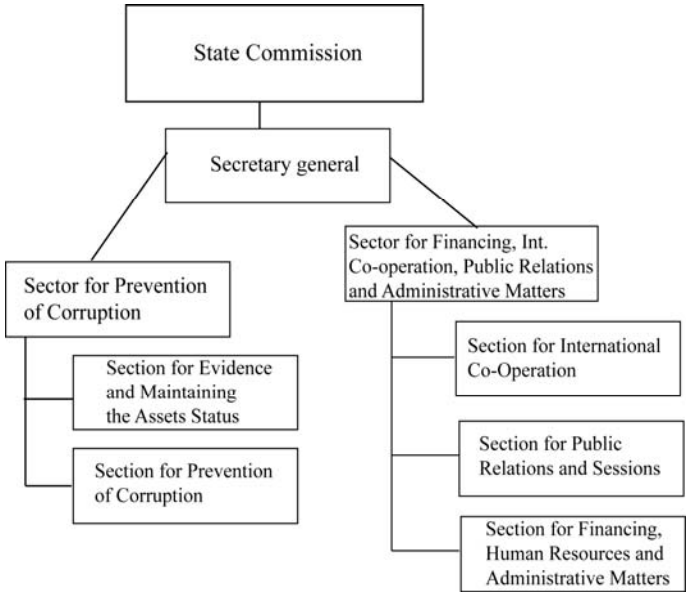
- Adopt National Programme for Corruption Prevention and Repression of Corruption and annual programmes and plans for the implementation of the National Programme;
- Give opinions on proposed laws relevant for corruption prevention;
- Take initiative before the competent bodies regarding control of income and property of political parties, trade union 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 person17 in a public enterprise or in other legal entity managing state funds;
- Consider cases of conflict of general and personal interests, determined by this Law;
- 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 as defined in this Law; and
- Undertakes education activities for institutions in charge of detecting and prosecuting corruption and other forms of crime.

The Commission operates through regular sessions. In 2004, the Commission hold 56 sessions; in 2005 – 63 sessions. Decisions are taken by vote at the session of the State 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 State Commission. At some sessions, a person suspected of corruption is summoned with an aim to clarify certain issues important for the decision-making to initiate a procedure before other bodies.

The State 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 the Prevention of Corruption.

Once the information is requested by the State Commission, competent bodies and legal persons have obligation to provide it without any delay; this can not be influenced by considerations of state, official or other secret. In the performance of its tasks, the State Commission may request to make direct inquiry into the spending of the funds of bodies and legal persons managing state funds.

Figure 26. Organisation structure of the Secretariat of the State Commission



Human and Material Resources

The National Commission is composed of seven members. The members are appointed by the Assembly of the Republic of Macedonia for a term of five years, without the right to reappointment. The members of the National Commission shall be appointed from among the distinguished experts in the legal and economic field and who fit the profile for the office. The National Commission elects a Chairman from among the members, for a term of one year, without the right to re-election.

In addition to their work for the National Commission, its members have regular professional jobs. They receive remuneration for their work at the Commission in the amount prescribed by Law. There is an intention to make the work at the Commission as the sole employment of its members as from next election in November 2006.18 Administrative, expert, and technical support to the State Commission is provided by a Secretariat administered by the Ministry of Justice.

The State Commission is financed from the state budget. Every year, the State Commission prepares a budget estimate, whose final approval 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 2004, the annual budget of the Commission amounted to 137,000 euros; in 2005, it is foreseen to increase the funding to 192,000 euros.

Accountability

The names of the members of the State Commission are proposed to the Parliament by the Parliamentary Commission for Election and Appointment of High Officials. The State Commission, therefore, is answerable to the Parliament for its work. The Law provides that the State 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 State Commission also submits Annual

Report of its work, measures and activities undertaken to the Parliament of the Republic of Macedonia, and forwards it to the President of the Republic, the Government of the Republic of Macedonia, as well as the national media[19].

Practice and Highlights

State Programme for Prevention and Repression of Corruption: According to its statutory obligations, in 2003 the State Commission developed and adopted the National Programme for Prevention and Repression of Corruption. The programme contains recommendations on measures to be taken in order to establish an efficient system for the prevention and suppression of corruption. To implement the Programme, an action plan was developed in 2004. It contains short-term, mid-term and long-term objectives, as well as a system to monitor and evaluate the implementation. One of the highlights of the State Programme is the reform of the judiciary. Other important recommendations include reduction of discretionary powers of state officials, including abolition of immunities, inter-agency cooperation. The Commission is in charge of monitoring the implementation of the programme. While the programme forms part of the overall programme for European integration of the Republic of Macedonia, it has not been officially adopted by the Government.

In order to ensure public and political support to the implementation of the Programme, the Commission works closely with relevant State bodies, local governments, the media and the civil society. To report on the implementation of the State Programme, national conferences were organised by the Commission in June 2004 and June 2005. One of the conclusions which emerged from the conferences was that other government and state bodies should be more actively involved in the implementation of the programme. On the other hand, most of the legal changes proposed by the State Programme were adopted.

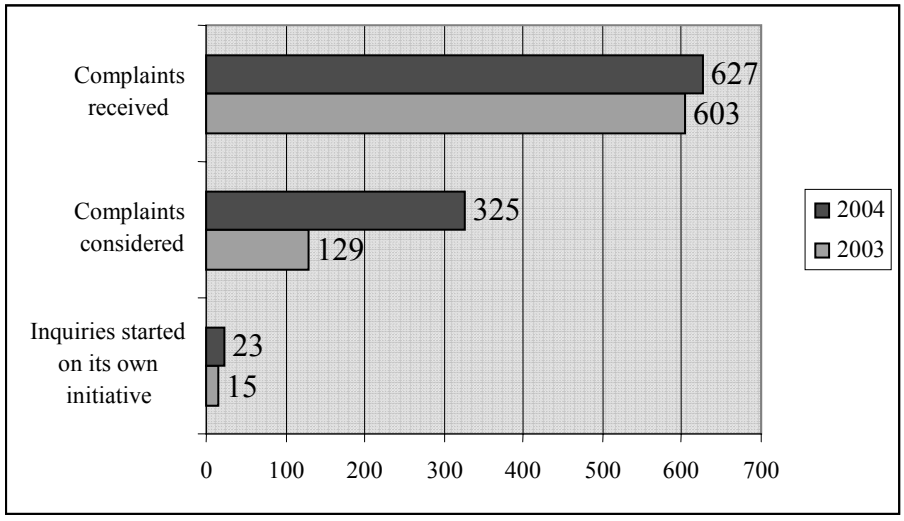
The current process of decentralisation and local self-government reform appears as potential risk for abuses and corruptive behaviour of holders of public functions at local level. Therefore, the Commission has recently focused at the development of anti-corruption preventive measures in the context of this reform.

Property declarations: Once a public official is elected, appointed, terminates the function or there is a significant change in the financial situation, he or she has the obligation to submit a property declaration to the State Commission. The Commission received 2,742 declarations in 2003 and 91 additional ones in 2004. According to the Amendments to the Law on Prevention of Corruption, all civil servants are obliged to submit property declarations. As a result, in 2005, additional 7,686 declarations were received. The State Commission submitted 78 denunciations of failure to submit declaration to the Court in 2003 and 31 in 2004. Out of cases submitted in 2004, the Court imposed fines in 8 cases and reprimand in 13 cases. Further, the State Commission can ask the State Revenues Office to check the legality of the property situation of some officials. In 2004, the Commission submitted 6 such requests.

Corruption Complaints and Inquiries: Citizens can file complaints with corruption allegations to the State Commission. The Commission will then examine whether the complaint is pursuable. It will either start an enquiry itself and examine the allegations - it can request additional information from relevant state bodies – or forward the complaint to competent state bodies. In 2004, more that a half of the complaints were considered as non-pursuable and about one third were referred to other institutions either with

recommendations of action or for further processing. While the number of processed complaints increases, the Commission considers that it does not have enough resources to respond to all requests.

Figure 27. Complaints and Inquiries Received by the State Commission



Source: State Commission, Annual Report 2004

Research and Analysis: the State Commission is involved in research and analyses the data derived from specific cases of corruption.[20] One of the competences of the State Commission is to give opinions on draft legislation related to prevention of corruption as well as prepare draft laws. Until this moment, the State Commission has given 21 opinions on draft laws, including the Law on money laundering prevention, Law on public prosecutors' office, Law on state audit, Law on the courts, and others, and prepared draft laws on Financing of political parties, Free access to information of public character, Code of elections, Prevention of conflict of interests.

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Albania: Anti-Corruption Commission and Monitoring Group

The Governmental Commission for the Fight against Corruption in Albania was established in 1999 as an inter-ministerial body. Its mandate is to lead and supervise the implementing of the National Anti Corruption Plan, and to prepare government's decisions concerning the Plan. The Commission also has oversees the activities of the Anti-Corruption Monitoring Group.

The Anti-Corruption Monitoring Group was established by the government in 2000. It is composed of a non-permanent Board and Permanent Anti-Corruption Unit attached to the office of the Minister of State. The Group monitors the implementation of the National Anti-Corruption Plan, and develops progress reports to the government.

Background Information

In the late 1990s several international surveys, including the Business Environment and Enterprise Performance Survey (BEEPS) carried out by the World Bank and the EBRD, indicated that Albania was perceived as one of most corrupt countries in Europe.[21]

In 1997, corruption was put high on the political agenda in Albania. The government has launched a discussion about a national programme to fight corruption. In February 1998, an anti-corruption Steering Group was established, with strong support from the international community, and composed of high-level government officials. The Steering Group was an inter-ministerial co-ordinating body in charge of analysing information received through the surveys.

As a result, in 1998 the Government of Albania adopted the Decision No. 515, by which it approved the Action Plan of the Fight against Corruption - the first official reform programme against corruption. The Action Plan focuses on specific measures in the three main areas: law enforcement; prevention; and public awareness and education. The aim of the Action Plan is to involve civil society, business community, trade unions, international organisations and other partners in its implementation. This Action Plan is regularly updated, and became known as "the Matrix".

The Matrix was developed in close co-operation with the international community. It was developed as a broad and comprehensive set of more than 150 specific measures relating to the rule of law, economic policy, administration, public procurement, audit and public awareness. The Matrix is a living document, updated and revised on an annual basis. So far the focus was on establishing a legal framework, structures and defining functions and responsibilities of various actors. The future perspective will be focused on the policy implementation, in particular, on the development of civil society involvement.

To oversee the implementation of the Matrix, two specific high-level bodies have been established, including the Governmental Commission of the Fight against Corruption (GCFAC) at minister's level and the Anti-Corruption Monitoring Group (ACMG) at the highest civil servant level. The GCFAC was established in 1999 and the ACMG - in 2000. With this establishment of the two bodies, Albania, for the first time, received a permanent structure for the fight against corruption.

The creation of the ACMG - from its conception throughout its first years of operation - was closely supported by the Council of Europe. It was funded by the Swedish Development and Co-operation Agency[22].

Box 11. Recent Developments in Albania (May 2006)

Following the general election in 2005, the new Albanian Government set out to overhaul existing anti-corruption institutional framework, which led to the decision to abolish of the Anti-Corruption Monitoring Group (ACMG) and the Anti-Corruption Unit. The main reasons cited by the Government were the overtly technical nature of the ACMG, its lack of administrative enforcement capacities, and, most notably, the lack of political accountability within existing agencies.

Instead, a new system of anti-corruption institutions is currently under development. The main aim of the reform is to increase political accountability within policy-setting anti-corruption institutions and reinforce their capacities by merging administrative control with analytical and preventive anti-corruption functions. Following these amendments, two new anti-corruption bodies were established in Albania:

- The *Anti-Corruption Task Force* - a high level/political body responsible for defining strategic objectives, priorities, and measures in the fight against corruption as well as ensuring clear and transparent mechanisms of political accountability in the implementation of these measures;
- The *Directorate of Internal Audit and Anti-corruption* (DIAC) - a technical body within the Prime Minister's Office, which is charged with performing traditional internal administrative control functions and carrying out preventive and analytical work to fight corruption.

Legal and Institutional Framework

The GCFAC derive its authority, tasks and responsibilities from the Decision of the Council of Ministers No. 470, adopted in October 1999, amended by the Decision No. 513 of November 1999. The ACMG is based on the Order of the Prime Minister No. 252, adopted in September 2002.

The GCFAC is composed of 13 representatives of the Government and public institutions; it is headed by the Prime Minister.

The work of the ACMG is coordinated by the Minister of State to the Prime Minister. The ACMG's functions are to:

- Monitor, coordinate and advise ministries and central institutions on the implementation of the Action Plan for the Prevention and Fight against Corruption;
- Discuss, analyse and approve reports concerning the implementation of the Action Plan;
- Recommend to the GCFAC or to the Council of Ministers, through the Minister of State, strategic changes in preventive measures and initiatives.

The ACMG Board includes top-level public servants (Ministry of Justice, Anti-Corruption Unit at the Council of Ministers, Judiciary Inspection at the Ministry of Justice, Department of Public Administration, Legal Directorate at the Ministry of Finances, etc) and representatives of civil society.

The secretariat of the ACMG Board is provided by the Anti-Corruption Unit (ACU), which acts as an executive structure to the ACMG Board. The ACU is attached to the

Office of the Minister of State. The ACU has the following analytical, coordinative, preventive and promotional tasks:

Collection of Information: collect and process data from the relevant institutions on progress achieved in the implementation of the Anti-corruption Plans by classifying the results and their impact;

Analysis: conduct reviews and analysis of different systems within the public administration to identify possibilities of correction within these systems and recommendations for improvements;

Legal drafting: undertake legal initiatives and provide technical expertise and opinions with respect to relevant legislative reforms in the fight against corruption;

Prevention: propose strategic, technical and operational amendments to the Anti-corruption Plans as well as changes in the anti-corruption systems and mechanisms in the different structures of the public administration;

Co-ordination: coordinate the process of implementation, reporting, and monitoring of the Anti-corruption Plans among all institutions of the central administration, independent agencies as well as civil society, business community and media;

Promotion: organise, initiates, and coordinates preventive, educational and public awareness activities in support of the fight against corruption as well as promotes the increase of transparency of the public administration;

Guidance: collect relevant information and provide advice on specific activities with all institutional Contact Points;

Representation: represent the ACMG and the Government at specialised anti-corruption institutions at regional, European and international level.

Human and Material Resources

The permanent anti-corruption body of Albania – the ACU – has 6 staff members that are all civil servants and include 1 Director and 5 Inspectors specialised in:

- economics and finance;
- legal and judicial issues;
- public administration issues;
- public order issues; and
- relations with the media, civil society and public information.

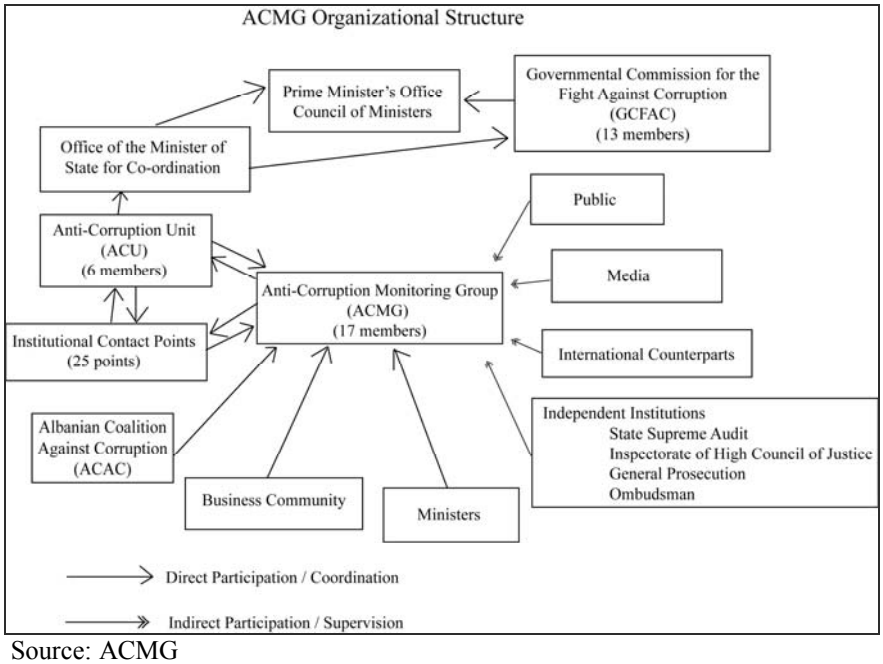
The ACU does not have a separate budget; its budgetary allocations are made through appropriations from the annual budget of the Council of Ministers.

Accountability

ACMG reports to the Council of Ministers and to the GCFAC, headed by the Prime Minister. Every three months a summary of the ACMG reports is presented to the Government. All reports discussed in the meetings of the ACMG are made public through media and Internet and presented to the GCFAC.

The ACMG is also open to the non-governmental organisation working in the area of corruption. Any interested party can be invited to participate as observer in the meeting of the AMCG Board.

Figure 28. Organisational structure of ACMG



Source: ACMG

Practice and highlights

Anti-corruption policy development: Overall, the preparation and adoption of the Matrix and the establishment of the institutional system for its implementation is in itself an important achievement for Albania.[23] The following projects promoted the implementation of the Matrix:

Legal and Institutional Developments: The ACMG has contributed to the elaboration and adoption of the following laws: The Law on Declaration and Control of the Assets and Financial Obligations of the Elected Persons and Some Public Officials; the Law On the Rules of Ethics in the Public Administration; the Law on Prevention of Conflicts of Interest in the Exercise of Public Functions.

Reforms of judicial police system: Albania has established the Judicial Inspectorate at the High Council of Justice and Specialised Section on economic and financial crime at the Ministry of Public Order. The capacity of anti-corruption judiciary was further strengthened by adoption of the Law on the High Council of Justice.

International cooperation in Financial Investigations and Money Laundering: There have been developments with regard to the revision of the legal framework and institutional establishment, including the adoption of the Law on the internal audit in the public sector; amendments in the Law of public procurements; amendments of the Law on the prevention of money laundering; law on the protection of the competition, and other legal acts. The National Committee for the Coordination of the Fight against Money Laundering was established; it is chaired by the Prime Minister.

Creation of Specialised Units: In order to strengthen the investigation and prosecution of economic crime, as well as to prevent it, a specialised structure dealing with economic crime (including corruption) has been set up at the office of Prosecutor General. Furthermore, following the adoption of the Law on State Police in November 1999, a decision was adopted by the Government in January 2001 on the structure of the Ministry of Public Order and of the General Directorate of the Police. According to this new structure, there the Office of Economic and Financial Crime was created, containing three responsible units to combat financial crime and money laundering, fraud, and corruption.

In 2003 – 2004 other new specialised structures have been established: the High Inspectorate for the Declaration and Control of the Assets; the Organised Crime Task Force for the investigation of criminal acts in the fields of organised crime; the Sector of Fight against Economic Crime at the Tirana District Court Prosecution Office; the General Directorate of Police has introduced new structures of the police; the Directorate of Fight against Organised Crime and Protection of Witnesses, and others.

Preventing Bribery of Public Officials in Business Transactions: Preventing and deterring bribery of officials in business deals require first of all making bribery of public officials a crime, to levy significant penalties on those who bribe, including companies, and to ensure that jurisdiction, investigation and prosecution are effective. The Criminal Code establishes an additional jurisdiction in relation to criminal offences committed against the interests of Albania and its citizens by foreigners abroad. Further analysis of case law will be required to assess if this additional jurisdiction applies to the offence of bribery of public officials.

Other important developments in this field include amendments in the criminal code on corruption offences, amendments in the criminal procedure code on special investigative means, the "anti mafia law" on the prevention and fight against organised crime, the Law on Witnesses Protection and Collaborators of Justice, the Law on Organisation and Functioning of the Serious Crimes Courts, ratification of the additional protocol of the European Criminal Convention on Corruption, adoption of the Law on Measures against Financing of Terrorism.

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Specialised Anti-Corruption Institutions

REVIEW OF MODELS

Anti-Corruption Network for Eastern Europe and Central Asia

International anti-corruption treaties, including the UN Convention against Corruption, require member states to establish two types of anti-corruption institutions – one to prevent corruption and the other to combat corruption through law enforcement. The treaties also establish standards for such anti-corruption institutions – they should be independent, specialised and have sufficient resources to meet their challenging tasks. This book analyses the main functions of prevention and combating corruption and discusses practical ways to ensure the independence, specialisation and resources of anti-corruption bodies.

The book further studies the different forms of specialisation which exist in different countries and describes 14 anti-corruption agencies from around the world, including preventive, law-enforcement and combined or multipurpose agencies. Analysis of key factors which can lead anti-corruption bodies to success or failure, together with a rich body of country specific information, practical facts and contact details will make this book a useful tool for those policy-makers who seek to strengthen anti-corruption institutions in their countries.

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