

Republic of Serbia

Enhancing the effectiveness of anti-corruption bodies

Contribution for the 11th session of the Open-ended Intergovernmental Working Group on the Prevention of Corruption (June 9-10, 2020)

Fight against corruption is **one of the key strategic priorities** of the Government of the Republic of Serbia. For this reason, it is of utmost importance to have adequate system in place for measuring and enhancing the effectiveness of state authorities in preventing and combatting corruption, particularly bearing in mind the status of the Republic of Serbia as a candidate country for EU accession.

Measuring the effectiveness through regular reporting to the European Commission on the reform process

As part of the regular reporting to the European Commission on the state of the reform process currently underway in the Republic of Serbia, the Ministry of Justice, as a leading institution for the Negotiating Chapter 23, periodically prepares reports on achieved progress in the field of combating corruption.

For the purpose of preparing the contributions for the **European Commission's Annual Progress Report of the Republic of Serbia** and completing the questionnaire on corruption prepared by the European Commission, the Ministry of Justice coordinates, collects and analyses necessary information from relevant state bodies and institutions.

The questionnaire in the field of anti-corruption consists of four parts, which provide answers to questions in the following areas:

- Strategic documents – indicating the existing strategic and action documents with the implementation timeframe, the mechanism for monitoring the implementation of the strategic documents, the financial resources for the implementation of these documents, the data on the strategic documents in particularly sensitive areas, as well as the involvement of civil society and the non-governmental sector in the development and monitoring of national anti-corruption policies;
- Legislative framework – a detailed overview of the legislative framework as well as information on the compliance with the GRECO recommendations;

- Institutional framework – segregation made based on prevention and repression mechanisms;
- Results – information mainly contains statistics on annual basis, *inter alia*, this section provides statistics on criminal investigations of corruption offenses and financial investigations, data on confiscated property in cases of corruption offenses and information on final judgments as well as corruption prevention mechanisms such as asset and income declaration and verification, conflict of interest and control of financing of political activities.

In addition to preparing contributions for the purpose of the European Commission's Annual progress Report of the Republic of Serbia, the Ministry of Justice also prepares and coordinates the reporting on **Interim Benchmarks** on a six-month basis within the Negotiating Group 23.

For the purpose of reporting on the fulfilment of these benchmarks, the Track Record tables are completed in order to enter statistics and to monitor the fulfilment of the set benchmarks. Interim benchmarks have been introduced for particularly sensitive Chapters 23 and 24 aimed at monitoring progress more effectively in legislative alignment and reform in these important areas. Once the Interim Benchmarks have been fully met, the closing criteria for Chapter 23 shall be defined.

Within the EU pre-accession negotiation process of the Republic of Serbia, the Government of the Republic of Serbia adopted **the Action Plan for Chapter 23** in 2016. The Government of Serbia established the Council for the implementation of the Action Plan for Chapter 23, which monitors the implementation of the activities envisaged in this document. Detailed information on this matter as well as the process of revision of the Action Plan for Chapter 23 has been provided within the previous report for the 10th session of the Open-ended Intergovernmental Working Group on the Prevention of Corruption, available at the following link: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2019-September-4-6/Contributions_NV/Serbia_EN.pdf as well as presented at the previous plenary session, held on September 4-6, 2019.

Measuring effectiveness through the conducted gap analysis

A comprehensive **Gap Analysis** of the implementation of the National Anti-Corruption Strategy, its implementation plan and the Action Plan for the Negotiating Chapter 23 was conducted in 2018, as part of the IPA project "Prevention and Fight against Corruption". The aim of the analysis was to identify obstacles to the successful implementation of the anti-corruption measures and to identify deficiencies in their implementation, as well as to propose viable measures for overcoming these deficiencies. The analysis identified

shortcomings primarily within the coordination of measures provided for by the strategic anti-corruption documents. Based on the recommendations of the Gap Analysis, new activities have been devised and included in the draft Revised Action Plan for Chapter 23.

One of the crucial new activities included in the draft Revised Action Plan for Chapter 23 envisage the development of an Operational Plan in areas particularly vulnerable to corruption. The Operational Plan shall include, *inter alia*, impact assessment of the measures implemented under the previous two national anti-corruption strategies.

PREVENTIVE MECHANISMS

Guided by the principle that prevention is always better than cure, the Republic of Serbia has recognised the importance of the prevention of corruption.

The Ministry of Justice prepared **the Law on Corruption Prevention**, which was adopted by Parliament on the 21st of May 2019 and shall become applicable as of 1st September 2020, thus completely replacing currently in force Law on the Anti-Corruption Agency (hereinafter referred to as: the Agency).

The new Law provides improved legislative solutions and regulates with greater certainty issues of conflict of interest, accumulation of public functions, asset disclosure of public officials as well as the legal status, competencies and organisation of the Agency, considerably extending its powers and enhancing the Agency's effectiveness, as an autonomous and independent state authority with preventive, control and oversight competencies, being operational as of January 1, 2010.

As per the Law on the Agency, the Agency is accountable to the National Assembly to which it shall submit an annual report on its operations, no later than 31 March of the current year for the preceding year. Annual reports of the Agency are available at the following link: <http://www.acas.rs/izvestaji/godisnji-izvestaj/>.

Recognizing the significance of enhancing the effectiveness in a systematic manner as well as assessing it against clearly defined multi-level indicators, the Agency adopted its **strategic plan for the period 2019-2023** (available at the following link: <http://www.acas.rs/izradjen-strateski-plan-agencije/>) with the corresponding annual operation plan.

In its strategic planning, the Agency seeks to prevent the occurrence of corruption, improve efficiency and effectiveness in the exercise of its competencies, analyze and monitor the situation, identify strategic goals and operational objectives and achieve them through the implementation of the annual plans.

With the resolve to use the lessons learned for further improvement of its work and believing in the importance of strategic planning and operation, strategic goals of the

Agency have been defined. In this process, the Agency was guided by the fact that the fight against corruption is not and cannot be successful without cooperation with all stakeholders at the national and international level, especially with the citizens whose trust in the institutions and the integrity of public sector employees should be continuously built, because it is the citizens who, in various ways, suffer the negative consequences of corrupt behavior and insufficiently developed personal and institutional integrity of both the public sector employees and the holders of public authority.

Prevention, as the pillar of the Agency's activity, entails identifying the phenomena and situations that provide opportunities for corrupt behavior. These opportunities do not necessarily lead to acts of corruption, but are ever-present in the form of temptation for those who work in such environments. In addition to identification, preventive activities include the design and establishment of mechanisms with the purpose to eliminate the opportunities for corruption before they lead to corrupt behavior. The Agency is also entrusted with the competencies aimed at establishing and implementing oversight and control over the proper and purposeful use of public authority bestowed to officials so they can take care of the protection of public interest in the areas in which they carry out their duties.

Prevention of corruption also implies strengthening of citizen awareness of its harmfulness, and rooting out corruption significantly contributes to the creation of a favorable economic environment for doing business, which is essential for further economic development of the country and attracting new foreign investments, as well as for the progress in the process of negotiations for full membership in the EU.

Bearing this in mind, **the key strategic goals** of the Agency's activities pertain to:

- 1) Strengthening the integrity of the public sector (with five operational objectives);
- 2) Increasing the level of society's involvement in preventing corruption (with three operational objectives);
- 3) Improving the implementation of anti-corruption regulations (with three operational objectives);
- 4) Improving the international cooperation and implementation of international standards in the area of prevention of corruption (with two operational objectives) and
- 5) Improving the exercise of the Agency's competencies (with seven operational objectives).

The Agency pays due attention to its work to be result based and subject to measurement, through both quantitative and qualitative indicators, reflected in its operational plan as a part of the strategic plan, thus having in mind that improvement of effectiveness should be never ending process.

In that regard, corruption prevention mechanisms the Agency has been implementing, as a primarily prevention oriented institution, have been continuously analyzed as to define possibilities for its improvement and enhancement of its effectiveness, thus striving to achieve the full compliance with the national and international legal and strategic framework and priorities.

Measures could be divided into two groups, some of which largely depend on the Agency itself whilst the other ones are related to the proper cooperation and coordination with external stakeholders at both national and international level.

Measures, initiatives and practices undertaken by the Agency with an aim to increase effectiveness in the past two years include:

- Internal restructuring in the form of more functional organizational units and mechanisms for internal coordination in order to operate as a consistent entity and in compliance with the extended scope of competences provided for by the new or amended pieces of legislation, such as the new Law on Corruption Prevention as well as the Law on Lobbying preceded by the state of play analysis and corresponding challenges which should be overcome;
- Increased budget funds for the proper functioning of the Agency;
- Expanded support through international development assistance in parallel with the enhanced absorption capacity;
- Implementation of merit based procedures for promotion and retention of highly qualified personnel as well as attracting the new employees;
- Capacity building through various specialized training programs in cooperation with prominent international and national experts;
- Increasing the number of corruption prevention tools adopted and the level of quality of its implementation;
- Introduction of the new corruption prevention mechanisms and providing support to its proper application;
- Prioritizing its control competences in line with the risk assessment criteria;
- Enhancing possibilities for data exchange among the relevant institutions;
- Bolstering IT infrastructure of the Agency, on the basis of the state of play analysis and Strategy for IT development, currently being drafted;
- Proactive acting through increased initiation of proceedings *ex officio*;
- Decreasing backlog of cases from the previous years;
- Introduction of various modalities of cooperation with youth, media and civil society;
- Consolidation and harmonization of existing data bases, records and evidences kept by the Agency, including through IT tools;

- Substantial improvement of the existing procedures and documents, on the basis of the past experience;
- Analysis of the business processes and simplification of internal procedures, thus eliminating redundant ones as to focus time and resources to more efficient and effective work of the Agency's staff.

The new **Law on Lobbying**, which was adopted by Parliament on 9th of November 2018, entered into force on the 14th of August 2019.

The Law stipulates, inter alia, that the Agency maintains a Register of lobbyists and a Register of legal entities conducting lobbying as well as separate records on Foreign natural persons and legal entities conducting lobbying. The Director of the Agency issues a decision on entry and removal from the Register of Lobbyists or the Register of Legal entities conducting lobbying. The Agency also performs the control of the contents and the manner of maintenance of the records on lobbyist contacts for officials, kept by authority bodies. The Agency may impose a measure on the lobbied person and the responsible person in the authority body, in accordance with the law that governs prevention of corruption, or initiate disciplinary proceedings, i. e. conduct administrative enquiries and issue administrative sanctions. The Agency can also submit a request for misdemeanour proceedings against lobbyist, legal entity conducting lobbying, lobbied person and responsible person in authority body, lobbying beneficiary-natural person and legal entity, for certain misdemeanours.

The Agency finalized all preparatory activities in a timely manner, including adoption of the Code of Conduct for Participants in Lobbying; Rulebook on the format and content of forms for request, notices and records and the manner of keeping registers and special records in the lobbying process and Rulebook on Programme of Trainings for Lobbyists. In addition, the Agency established Register of Lobbyists; Register of Legal Entities which conduct lobbying and Separate Records on Foreign Natural and Legal Entities which conduct lobbying.

In 2020, the Agency conducted three cycles of trainings for lobbyists. In total, 46 participants attended trainings and 25 of them have passed the test so far.

The Republic of Serbia was commended by the Council of Europe for passing such an innovative and modern law since many member states of the Council of Europe do not yet have regulated lobbying activities within their legal systems.

Being particularly mindful that fighting corruption is a right and duty of every person, the Government of the Republic of Serbia has gone a step further in promoting and ensuring safe environment and adequate legal protection to persons that are ready to report corruption or mere suspicion of its existence. As a result, **the Law on Whistle-blower protection** was adopted in 2015, which is in line with the Council of Europe

recommendations and which has been assessed by international and domestic experts in the field as an effective tool in protecting human rights and freedoms.

In modern regulatory era, this law represents a strong partnership that has been created between the State and its citizens in fighting corruption. The Government of the Republic of Serbia was engaged in increasing and disseminating knowledge amongst its citizens about the prevention of corruption and available means of reporting wrongdoings via the campaign “Report Corruption”.

REPRESSIVE MECHANISMS

With the adoption and implementation of **the Law on Organisation and Competences of State Authorities in Combating Organized Crime, Terrorism and Corruption** (hereinafter: the Law) which came into force on the 1st of March 2018, the Republic of Serbia has significantly enhanced its legislative framework by ensuring efficient and modern system of repressive authorities.

Special anti-corruption departments were established in four High Public Prosecutor Offices, as well as in four High Courts that became regional anti-corruption centers. Anti-corruption Department was also established within the Criminal Police Directorate, with specific sections set up in nine cities. These regional centers are handling exclusively corruption cases; thus bringing together the concentration of skills and knowledge with specialised competences in this matter. This kind of organisational structure has led towards a greater focus on corruption cases and higher efficiency of the competent authorities. As a result of implementation of the Law, more than 900 final judgments were passed for corruption offenses. The Ministry of Justice is using this number as an indicator to measure the effectiveness of anti-corruption repressive authorities. Therefore, the available tools for fighting corruption proved to be effective mechanisms in combatting corruption.

Liaison officers

In order to improve interagency cooperation and ensure long-term sustainability, a network of liaison officers was developed. At least two employees from each of the 13 relevant authorities and organisations (i.e. Anti-Corruption Agency, Public Procurement Administration, Customs Administration, Administration for Prevention of Money Laundering, State Audit Institution, Tax Administration, etc.) were appointed as liaison officers. Each of the designated employees underwent specialised training on the topic of communication and cooperation with the public prosecuting authorities, as well as for work in multidisciplinary teams. Owing to these specialists and their "linking" role, the

prosecuting authorities are obtaining necessary data, information and clarifications promptly and easily.

Task forces

The Law offers a completely new tool to prosecuting authorities. It established an opportunity for most complex cases to be dealt with via the “task force” method. Task forces may be established at the Prosecutor's Office for Organised Crime and at the special departments within high public prosecutor's offices for the suppression of corruption for the purpose of detecting and prosecuting criminal offences within their competences, i.e. corruption cases. The prosecution authorities embraced the new method of operation. Six task forces have been established thus far. Four of them have successfully completed their tasks, which led to indicting 98 natural and two legal persons. Two task forces are still active.

Financial forensics service

Serbia has established a financial forensic service for the first time. The engaged financial forensic experts played significant role in the investigations by analysing financial documentation in a number of pre-investigative cases, providing suggestions to the deputies of the public prosecutor for gathering additional documentation aimed at identification of relevant financial flows and producing reports on the analysis of financial flows.

Training

Special attention has been paid towards establishing adequate capacity of the competent authorities. Numerous specialized trainings intended for judges, public prosecutors and employees of the institutions where liaison officers were designated have been organised through joint efforts of the Ministry of Justice and Judicial Academy with the support of IPA Project “Prevention and fight against corruption” and OPDAT.

Apart from that, the Ministry of Justice significantly strengthened personnel capacities of special departments for the suppression of corruption in four high courts and four public prosecutor offices by increasing the number of administrative staff by approximately 70%.

Proposal of the measures to be further undertaken from the perspective of the broader scope of prevention and repression related anti-corruption bodies

- Continuation of improvement of technical capacities of the specialized bodies in the area of combating corruption;
- Continuation of compliance of financial and human capacities with the operational needs;
- Unceasing experience exchange through various modalities, including study visits;
- Specialization of the organizational units within the relevant institutions as to enhance both internal and external cooperation aimed at corruption prevention and repression;
- Analysis of implementation and a proper amending of the legislation in force, including revision and introduction of the new corruption related offences.

Concluding remarks

When introducing and applying the respective measures, the competent institutions of the Republic of Serbia strongly rely on the lessons learned, challenges encountered in pursuing its comprehensive competences as well as experience and best practice exchange with the relevant institutions at both national and international level.

The Republic of Serbia also highly appreciates the valuable benefits of the monitoring processes, using external reports to assess the effectiveness of the anti-corruption bodies in fighting corruption and using the recommendations made to strengthen the state authorities in combatting corruption, therefore in achieving most important strategic goals of the Republic of Serbia.

The Republic of Serbia is fully aware of the significance of international cooperation, building strategic partnerships and identification of innovative mechanisms for assessing effectiveness of anti-corruption bodies as well as fully committed to establishing and reinforcing synergies among UNCAC State Parties at the forthcoming 11th session of the Open-ended Intergovernmental Working Group on the Prevention of Corruption and through joint endeavours in the future.