

Multi-purpose and Multiple Anti-Corruption Agencies: Considerations for Institutional Design

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This policy brief reviews trends, strengths and weaknesses associated with two models of anti-corruption agencies (ACAs) and principles for effective ACAs with a view to contribute to the debate about the future development of the institutional anti-corruption architecture in the Republic of Armenia.

1. Background

According to international standards countries shall ensure the existence of specialized bodies for preventing corruption and specialized law enforcement bodies or persons for fighting corruption.

Armenia has several bodies with anti-corruption mandates, notably the Commission on Ethics of High-Ranking Officials (to be replaced with the Commission for the Prevention of Corruption based on the law adopted in June 2017), the Investigation Committee, the Special Investigation Service, the State Revenue Committee, and the National Security Service.

According to the law the CPC would be an independent corruption prevention body with a broad mandate to implement the system of asset declarations, ensure compliance with conflict of interest and ethics rules, support the development of the anti-corruption policy, carry out awareness raising and training, etc.

The Istanbul Action Plan Fourth Round of Monitoring report of 2018 included recommendations to Armenia regarding the selection and appointment of Commissioners of the Commission for the Prevention of Corruption, making the Commission and the Office of Civil Service fully operational, and ensuring that the institutional memory is maintained after the change. Several recommendations addressed strengthening the capacity and guaranteeing the independence of law enforcement bodies dealing with fight against corruption. (OECD, 2018)

However, as of April 2019, the Commissioners of the CPC were not selected, and debates continued about the optimal setup of Armenia's future anti-corruption bodies. One of the intensely discussed issues was the choice between a single multi-purpose (universal) anti-corruption body or separate bodies for implementing prevention and law enforcement tasks. A related issue of debate was the possibility to concentrate anti-corruption investigation functions within one of the existing or a new entity.

2. Trends in Europe

During the last ten years, several European countries have established new anti-corruption bodies or reorganized existing ones.

For example, ACAs with prevention mandates were established in Italy (National Anti-Corruption Authority, 2014), France (Anti-Corruption Agency, 2016), and Bulgaria (Commission for Counteracting Corruption and for Seizure of Illegally Acquired Property, 2018).

Specialized law enforcement or prosecutorial entities were established in Austria (Federal Office for Prevention and Fight against Corruption, 2010; Public Prosecutor's Office for Combatting Economic Crime and Corruption, 2011), Greece (specialized public prosecutor's offices, 2011), and Ireland (the Anti-corruption Unit of the Garda National Economic Crime Bureau within the national police, 2017). In Albania, the Special Anti-Corruption and Organized Crime Structure as well as Anti-Corruption and Organized Crime Courts shall start operation in 2019.

Several ACAs for different functions were reformed in Moldova (National Anti-corruption Centre to investigate offenses, exercise the anti-corruption expertise of draft legal acts, provide support for carrying out corruption risk assessments, designing and implementing integrity plans, etc., 2012; National Integrity Authority to verify the property and personal interests of public officials, oversee compliance with rules on conflicts of interest, etc., 2016) and established in Ukraine (National Agency on Corruption Prevention to elaborate, monitor, co-ordinate and evaluate the state anti-corruption policy, verify declarations of public officials, monitor compliance with rules on conflict of interest, etc., National Anti-Corruption Bureau to detect and investigate offences, Specialized Anti-Corruption Prosecutor's Office, 2015; the High Anti-Corruption Court of Ukraine, 2019).

The countries *prima facie* comply with the requirements of the United Nations Convention against Corruption (UNCAC) regarding the existence of ACAs. It is notable that the previously highly regarded model of the multi-purpose (universal) ACA where a single body carries out most preventive and repressive functions appears to have lost appeal in the last decade. Instead separate bodies are usually established for prevention, enforcement and prosecutorial functions.

Preventive bodies can have broad mandates, for example, the ACA of Bulgaria is responsible for the verification of personal interest and asset declarations, conducting administrative investigations into alleged misconduct (including by means of covert surveillance operations), conducting procedures for the seizing and confiscation of illicit assets, etc. (European Commission, 2018a)

Law enforcement bodies can be assigned preventive tasks along with their repressive functions as, for example, the Federal Office for Prevention and Fight against Corruption within the Ministry of Interior of Austria.

3. Strengths and weaknesses of the models

The options of establishing a single multi-purpose (universal) ACA or separate ACAs for prevention and law enforcement tasks are equally acceptable in view of international standards.

Potential strengths of a multi-purpose agency:

- Clear and broad responsibility for the anti-corruption policy;
- Strength of mandate and ability to counter corruption from different angles;
- Easier co-ordination of varied tasks;
- Synergies and mutual support between prevention and enforcement functions;
- Single top management results in less bureaucracy and a simpler system;
- Hope to set up an island of integrity in the context of endemic corruption;
- Famous success stories – Hong Kong, Singapore.

Example

The Special Investigation Service of Lithuania has excelled at multi-tasking. An OECD assessment of 2017 commended the Service's proactivity in opening bribery investigations and Lithuania's efforts to safeguard its ability to investigate corruption free from undue political influence. The report also took notice of the Service's advertising strategy and its lead role in awareness raising efforts, participation in numerous anticorruption research activities, regular contacts with other government bodies, private sector and civil society representatives, and being in charge for the oversight of the National Anti-Corruption Programme. One of the few observations of concern was the possible insufficiency of the institution's budget relative to its extensive mandate. (OECD, 2017).

Meanwhile the mandate of the Special Investigation Service is not comprehensive and other institutions also carry out anti-corruption relevant functions. For example, the Chief Official Ethics Commission (COEC) supervises compliance with conflict of interest rules, the Law on Lobbying Activities, and other legal norms of official ethics of persons in the civil service assigned to the competence of the COEC.

Potential weaknesses of a multi-purpose agency:

- When such ACA fails (for example, gets politically subjugated), almost whole of the anti-corruption effort of the country fails;
- A multi-purpose ACA is internally complicated and can find it hard to focus on all tasks;
- Detrimental internal competition between departments may develop;
- The ACA's resources can be overstretched particularly because the many functions of the ACA require a larger number of qualified and reliable personnel with various specializations;
- A strong multi-purpose ACA is often politically not tolerated, it provides corrupt politicians a single target to attack at all costs;
- The ACA can arouse excessive expectations and subsequent disillusionment;
- Even a strong multi-purpose ACA cannot aggregate all anti-corruption functions, for example, the prosecutor's office is usually separate.

Example

The Central Anti-Corruption Bureau of Poland has both prevention and detection functions. Its many tasks include the verification of asset declarations of persons performing public functions as well as conducting awareness raising and educational activities. However, the Bureau has been criticized for excessive emphasis on the repressive functions (Makowski, 2016). More importantly, several sources voice concerns about the lack of independence of the institution. The Head of the Bureau is appointed and recalled by the Prime Minister who also supervises the agency through a designated minister (GRECO, 2018). In 2014, the European Commission found that the Bureau did not have sufficient guarantees against being misused as a political tool. The Prime Minister could issue ordinances and guidelines for the Bureau regarding various aspects of work. (European Commission, 2014) Given the extensive multi-functional mandate of the Bureau, being able to interfere in the work of this agency means being able to manipulate most of the national anti-corruption effort.

Potential strengths of multiple agencies:

- Each agency can focus solely on its specific mission;
- If one agency fails, the other hopefully carries on;
- An agency with a narrower mandate requires less resources;
- There is more than one anti-corruption champion in the public sector;
- Mutual checks when one of the agencies performs anti-corruption functions regarding the officials of the other agency;
- Possible positive competition between the agencies to achieve the best results;
- Prevention agencies appear less threatening and can be more tolerated by politicians;
- A prevention agency can suffice where the law enforcement is reliable.

Examples

Romania's investigation and prosecution body National Anti-corruption Directorate (NAD) has been a target of political pressure. In 2018, the removal of the Chief Prosecutor of the NAD caused serious concerns about the compromised independence of the agency. The government actions arguably increased the reluctance of other public bodies to notify the NAD about instances of fraud and corruption. Meanwhile, the rather preventive body National Integrity Agency, also being under, notably financial pressure, remained successful in overseeing the implementation of the system to prevent conflicts of interest in public procurement and generally maintained steady track record of administrative investigations. (European Commission, 2018b)

In Ukraine, the National Agency on Corruption Prevention has been suspected for political links of its commission members and failures to fulfil certain of its functions. Meanwhile the capacity of the investigation body National Anti-Corruption Bureau strengthened. The number of pre-trial investigations increased. (OECD ACN, 2018)

The two examples show that a system with multiple bodies may be overall more resilient against destructive political interference.

Potential weaknesses of multiple agencies:

- Diffused responsibility for the anti-corruption effort;
- A complex system with several bureaucracies;
- Co-ordination difficulties;
- Risk of mutual blaming for failures;
- Risk of tunnel vision where an agency considers only narrow aspects of the anti-corruption policy;
- A prevention agency can be perceived as weak.

Examples

It has been argued that, in South Korea, the lack of investigative powers of the Independent Commission against Corruption established in 2002 and its successor the Anti-Corruption and Civil Rights Commission contributed to the stagnation of the country in fighting corruption (Quah, 2017).

The Istanbul Action Plan monitoring identified challenges in situations where several law enforcement bodies have jurisdiction to fight corruption. The lack of co-ordination can lead to situations where certain cases remain uninvestigated while others are investigated simultaneously by several agencies. Agencies also tend to assign blame to each other for the high level of corruption or failed investigations. (OECD, 2016)

Conclusion

Only a few European countries have set up fully multi-purpose ACAs (Latvia, Lithuania, Poland). Overall the multi-purpose (universal) model is riskier because the whole stake is placed on one entity. A model with several agencies appears more resilient against political attacks. Nevertheless, either approach can bring both potential success or failure.

4. Anti-corruption functions

Comprehensive anti-corruption policies comprise many different functions and tasks.

Functions of ACAs in the United Nations Convention against Corruption

The UNCAC defines the functions of ACAs in broad terms. According to Articles 5 and 6 preventive anti-corruption bodies shall prevent corruption by:

- implementing anti-corruption policies (and, where appropriate, by overseeing and co-ordinating the implementation),
- implementing practices aimed at the prevention of corruption,
- periodically evaluating relevant legal instruments and administrative measures,
- implementing collaboration between states and with relevant international and regional organizations,
- increasing and disseminating knowledge about the prevention of corruption.

Moreover, there shall be authorities (a body or bodies or persons) specialized in combating corruption through law enforcement (Article 36).

Other prevention tasks in the UNCAC

The full list of anti-corruption tasks is more extensive. The UNCAC prescribes mandatory tasks for the prevention of corruption beyond the mandate of any single preventive anti-corruption body:

- take measures that promote transparency and integrity in the public sector,
- ensure appropriate systems of public procurement,
- promote transparency and accountability in the management of public finances,
- promote integrity in the judiciary and take measures aimed at preventing corruption involving the private sector, including enhancing accounting and auditing standards,
- ensure an appropriate regulatory and supervisory regime to prevent and detect money-laundering activities, and
- involve civil society in anti-corruption efforts and disseminate information concerning corruption (the list quoted from OECD, 2015).

Besides, States Parties of the UNCAC shall consider measures such as:

- transparent and merit-based employment policies and practices, appropriate remuneration in the public sector, education and training of public officials,
- transparency in funding of political parties,
- prevention of conflict of interest in the public sector,
- codes or standards of conduct for public officials,
- facilitation of reporting of corruption by public officials,
- declarations of assets of public officials (the list quoted from OECD, 2015).

Conclusion

The scope of anti-corruption functions exceeds the possible mandate of any single agency. Regardless of the mandate of the ACA, a country's anti-corruption policy must also focus on strengthening other bodies and ensure they implement their respective roles in countering corruption.

5. Principles for an effective ACA

Requirements of treaties

The UNCAC (Articles 6 and 36) and the Criminal Law Convention on Corruption (Article 20) pose similar requirements. First, ACAs shall have the necessary independence to carry out their functions effectively and free from any undue influence. Second, ACAs shall have necessary resources (financial and other) and training for staff.

Jakarta Statement on Principles for Anti-Corruption Agencies

The Jakarta Statement was adopted at a meeting of current and former heads of anti-corruption agencies, anti-corruption practitioners and experts in 2012.¹ The document sets out principles on:

- **mandate** of ACAs (clear mandates for prevention, education, awareness raising, investigation and prosecution),
- **collaboration** (working relations with other agencies and stakeholders),
- **permanence** (established by proper and stable legal framework),
- **appointment** (ACA heads appointed through a process that ensures their apolitical stance, impartiality, neutrality, integrity and competence),
- **continuity** (in the event of suspension, dismissal, etc. of the ACA head),
- **removal** (security of tenure for the ACA head and removal through a legal procedure as for a key independent authority),
- **ethical conduct** (ACA's code of conduct),
- **immunity** (protection against malicious civil and criminal proceedings for ACA heads and employees),
- **remuneration** (to allow for the employment of enough qualified staff),
- **ACA's authority over own human resources,**
- **adequate and reliable resources,**
- **financial autonomy,**
- **internal accountability,**
- **external accountability,**
- **public reporting,**
- **public communication and engagement.**

For further principles, consult also the European Partners against Corruption (EPAC)/ European contact-point network against corruption (EACN) Anti-Corruption Authority Standards.²

Appointment and removal of the head of an ACA

The appointment and removal procedures are critical for the success of an ACA. Both the appointment of an unfit and/or biased official and the impossibility to remove such head of an ACA can thwart the agency. Meanwhile a sitting head of an ACA must be protected against unjustified removal.

Selection and appointment procedures differ in respect to the number of involved branches of state authority (single or several), the involvement of non-state stakeholders, the use of special selection panels, eligibility criteria, etc. A paper by the U4 Anti-Corruption Resource Centre recommends that appointments and removals are carried out:

- in an open process that includes several stakeholders,

¹ Available at: https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf [Accessed 05/04/2019]

² Available at: <https://www.epac-eacn.org/downloads/recommendations> [Accessed 05/04/2019]

- with broad consultation and/or ratification by more than one branch of government, as well as consultation with civil society,
- based on clear and transparent criteria for candidate eligibility and for behaviour that leads to early removal from office. (Schütte, 2015)

Typically, a political body such as the parliament, government or presidency or several such bodies jointly appoint the head of an ACA. As political entities they have a degree of legitimate discretion in their decision. However, they should be bound by certain criteria regarding the candidate such as professionalism, reputation, outstanding achievements and experience, previous tenure in a managing position, strategic thinking and leadership (OECD, 2013). Professional vetting panels or multi-stakeholder nomination procedures can work as filters to make sure that only eligible candidates could be appointed.

Removal criteria and procedures also vary. Law makers should avoid as much as possible defining vague grounds for removal such as “misbehaviour” or “incompetence” unless these are sufficiently specified in legal acts and case law. A professional panel or court can be involved to assess the presence of the grounds for removal.

Beyond formal principles

It is important that an ACA solves problems rather than creates new ones. An ACA is never installed in an empty space but within a system of other public bodies. Relations between the ACA and other bodies should be designed to minimize inefficiencies. Clarity about what institution does what is essential in this regard. An inefficiency, which persisted for years in Latvia, was a dispute on whether the ACA or the State Revenue Service shall verify asset declarations of public officials. Such predicaments should be avoided. Decision makers should also ensure that a certain institution is responsible for each key anti-corruption task.

A new ACA should build on existing achievements. Where possible, it should engage knowledgeable and trustworthy staff members who carried out anti-corruption tasks before. In addition to possessing experience and technical skills, the head of ACA should be prepared to carry out his/her leadership role— provide a positive vision, lead by example, motivate staff and champion the anti-corruption cause in the public.

Conclusion

Necessary independence and resources are the most fundamental preconditions for an effective ACA. Credible anti-corruption efforts must be able to turn against the interests of powerful politicians and business people when they engage in corruption. The capacity to represent a restraint on corrupt actors through law enforcement or preventive systems is the essential property of an ACA. Guarantees of independence such as rules against interference and balanced involvement of several branches of authority and stakeholders in ACA-related proceedings are essential.

6. Factors and risks to be considered

Contextual factors

A study by OECD distinguished six factors to be considered when adapting the model and form of anti-corruption functions to the local context:

- Estimated level of corruption in the country (endemic corruption may warrant an ACA with more extensive powers);
- Integrity, competence and capacities of existing institutions (low integrity of existing institutions requires higher independence of the new ACA);
- New ACA vs. specialisation of existing institutions (set up a new body if supporting and relying on existing institutions are unlikely to ensure the implementation of the anti-corruption policy);
- Constitutional framework (constitutional barriers against a new independent institution must be considered);
- Existing legal framework and the national system of criminal justice (consider the distribution of competencies between the police, prosecution, investigative magistrates, courts);
- Available financial resources (sufficient and sustainable potential funding from the national budget and other sources is a precondition for a strong ACA) (OECD, 2013).

The independence of other pillars of integrity such as the judiciary or the media is also decisive for the success of an ACA. Where their independence is compromised, it would be wrong to believe that a super strong ACA can compensate for this weakness. Therefore, setting up and operating an ACA must be accompanied by institution building in other sectors of the state and the broader society.

Risks

Creation and operation of an ACA are fraught with many risks. The following table lists a few of possible risks and strategies for their mitigations. The designers of a new ACA should pay attention to as many risks as possible and consider safeguards to mitigate the risks.

| Risks | Selected mitigation strategies |
|---|--|
| Political attacks against the ACA | Protection against arbitrary removal of officials Legal guarantees for adequate budget Possibilities for the ACA to communicate its position to the public |
| Failure due to the lack of resources | Legal guarantees for adequate budget Realistic planning of human resources and equipment relative to the functions of the ACA |
| Failure due to the lack of own motivation | Due appointment procedure for ACA leadership |

| | |
|--|--|
| | <p>Proven commitment to the anti-corruption cause as a factor in selecting ACA officials</p> <p>Performance targets for the ACA</p> <p>Oversight bodies, for example, parliamentary committees, which include representatives of multiple political groups – ruling and opposition</p> |
| The ACA undermined by failure to meet unrealistic expectations | <p>Clearly formulated mandate</p> <p>Communication about the role and weight of the ACA in the overall anti-corruption policy</p> |
| Powers and procedures inadequate to the task of the ACA | <p>Legal guarantees for access to information and data</p> <p>Avoiding hurdles in operational procedures</p> <p>Full investigative powers as far as required relative to the mandate</p> |
| Lack of co-operation or struggles with other entities | <p>Clear delineation of the mandates of the ACA and other entities</p> <p>Setting terms of co-operation in memoranda of understanding</p> <p>Where possible, avoiding dependence of the ACA on other entities</p> |
| Isolation from the public | <p>Advisory arrangements with the civil society</p> <p>Regular public reporting on performance</p> <p>Effective communication strategy</p> |
| Abuse of powers by the ACA | <p>Judicial review of ACA decisions</p> <p>Clearly defined powers</p> <p>Internal ethics, monitoring, and disciplinary mechanisms</p> <p>Adequate safeguards in the criminal procedure (for law enforcement ACAs)</p> |
| The ACA becomes partial or corrupt | <p>Another body competent to investigate corruption-related offences by ACA officials</p> <p>Provision of reasoning for decisions not to pursue cases</p> <p>Oversight bodies such as parliamentary committees, which include both ruling and opposition representatives</p> |

Conclusion

No country should design its anti-corruption architecture based solely on international standards while neglecting the local context and risks. Known risks should be mitigated in the design of the ACA. Countries should consider reasons why previous anti-corruption efforts did not fully succeed and what features would allow the new ACA/s to make a difference. These considerations should inform the new institutional design.

7. Involvement of civil society

Civil society is instrumental for the success of ACAs. EPAC/EACN 10 Guiding Principles and Parameters on the Notion of Independence of AC Bodies include the ability and responsibility of an ACA to co-operate with and address civil society and other stakeholders at all times at its own discretion without prior consultation or approval, and to be addressed by those, all to safeguard the ACA's overall transparency, accountability and legitimacy (EPAC/EACN, 2011).

Policy co-ordination councils

Multi-stakeholder councils for planning, co-ordinating and monitoring of anti-corruption policies are a specific form of anti-corruption institutions. By design, they are convenient for the inclusion of civil society representatives who can be full members or observers.

Example

The Anti-Corruption Council of Georgia develops anti-corruption policy and fulfils co-ordination, monitoring and recommendation functions. The Council comprises 55 members, of which 17 observers represent NGOs, international entities and business associations. (Ministry of Justice of Georgia)

Consultative councils of ACAs

Some ACAs establish permanent councils for the involvement of the civil society. Such councils may not necessarily become decision makers but can ensure a permanent link between the civil society and the ACA.

Example

The Corruption Prevention and Combating Bureau of Latvia has a public consultative council. The council's tasks include the identification of opinions of various societal groups and experts on corruption risks, evaluation of the implementation of corruption prevention policy, participation in the development and implementation of planning documents and legislation in the field of corruption prevention, facilitation of the implementation of the Bureau's strategy, provision of recommendations and proposals to the Bureau, etc. (Korupcijas novēršanas un apkarošanas birojs, 2016)

Involvement in the governance of ACAs

In a few ACAs, civil society representatives have a role in actual governance proceedings.

Example

In Moldova, the Integrity Council comprises seven members including two civil society representatives selected by the Ministry of Justice based on competition. The Council has extensive powers defined by law. The powers include organizing competition to the posts of the chairperson and deputy chairperson of the National Integrity Authority, approving the strategy and action plan of the Authority, submitting to the President of Republic a proposal for the appointment, suspension or dismissal of the chairperson or the deputy chairperson, overseeing the submission of property and personal interests declarations by the chairperson, deputy chairperson and integrity inspectors, verifying their property and personal interests, detecting violations of the legal regime of conflicts of interests, incompatibility, prohibitions and restrictions by the chairperson, deputy chairperson and integrity inspectors, detecting violations of the legal regime of declaration by the chairperson and deputy chairperson (Law on the National Integrity Authority, Article 12).

Co-operation agreements

ACAs and civil society stakeholders can define the terms of co-operation in memoranda of understanding or similar agreements.

Example

The National Anti-Corruption Authority of Italy has concluded memoranda of understanding with numerous entities, for example, Transparency International – Italy in 2016.³The parties to the memorandum agree to co-operate in carrying out initiatives to promote the dissemination of the culture of legality, public ethics and transparency, including through the organization of information campaigns, conferences, public debates and collaborative initiatives. In particular, Transparency International – Italy commits to inform the Authority on the most important reports sent by citizens through the Anti-Corruption Alert platform – ALAC.

Conclusion

The most appropriate form of arrangement between an ACA and civil society should be chosen based on concrete circumstances. Regardless of the choice, perhaps the most important function of such arrangements is to ensure a dialogue that holds the ACA publicly accountable and empowers civil society actors to express their concerns. In countries with serious corruption challenges, it is essential to create and maintain the channels of dialogue both between public authorities and the civil society as well as among the civil society actors themselves to facilitate consensus building.

³ Available at:

<https://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/ProtocolliIntesa/Prot.ANAC.Transparency.26.01.16.pdf> [Accessed 05/04/2019]

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This policy brief was developed as a follow-up to stakeholder consultations held in Armenia within the frames of the Engaged Citizenry for Responsible Governance project implemented by Transparency International Anticorruption Center with support of the United States Agency for International Development (USAID). The contents of the brief are the sole responsibility of the author and do not necessarily reflect the views of USAID or the United States Government.

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