Joint European Union – Council of Europe Project

"Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia" (PACS)

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Technical Paper

TRAINING NEEDS ASSESSMENT AND TRAINING CURRICULA FOR LAW ENFORCEMENT, PROSECUTORS AND THE JUDICIARY ON CORRUPTION AND ECONOMIC CRIME

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(1) TRAINING NEEDS ASSESSMENT REPORT

PACS project envisages a number of specialised trainings to be organised targeting judiciary, prosecution, law enforcement agents on corruption, economic crime, accounting and audit. The trainings aim at creating a group of key national experts who would continue training their peers once project finishes.
In that regard, a two day meeting (27-28 May 2013) was held in Belgrade in order to assess training needs.
During the course of it, the Council of Europe (hereinafter: CoE) invited the representatives of the Working Group (11 members - members' list attached in Annex 1 to this paper) to set out what they believed to be their training needs in those areas of technical assistance that would help in achieving Serbia's anti-corruption efforts. The outcome of the meeting is the proposed training programme, which is scheduled to commence in January 2014. The Council of Europe intends to conduct 2 specialised courses for trainers (4 days each), and the trainers will then, in turn, carry out 4 training sessions (2 days each). The Council of Europe hopes to train 20 personnel across the various agencies: police (including intelligence), prosecutors, judges, state audit, anti-corruption agency and tax authorities.

Input from each stakeholder

The input from each of those representatives may be set out, in summary, as follows:

Anti-Corruption Council
The Anti-Corruption Council (the Council) representative made it clear, at the outset, that the Council does not have conduct or individual corruption cases but, rather, focuses on examining developments in the typology of corruption, analysing trends, identifying legislative gaps and making recommendations in respect of both the legal and the institutional anti-corruption framework in Serbia. In addition, the Council undertakes monitoring activities in Serbia, in relation to, particularly, the judiciary, the health care sector, the media and those involved in the privatisation process. As part of its work, the Council selects what it regards as the most interesting or instructive case analyses it and produces a report in order to share learning and raise awareness.

To assist the Council's representative and the rest of the Working Group, the CoE set out its role in providing assistance to Serbia in its anti-corruption efforts: It explained that, although the CoE is unable to assist directly by playing a part in prosecuting a case, it is well-equipped to provide technical assistance and to build local capacity. The CoE asked the assembled representatives to consider those topic areas that are problematic; for example, gathering evidence, seeking and providing mutual legal assistance and deploying proactive and special investigative means. In order to develop its assistance programme fully and practically, the CoE explained that it needed to know from the Working Group the challenges that are met during the various stages of a corruption case.

The Council explained, in response, that it had submitted details to the Government of what it sees as the real issues and problems; however, there has been little interest on the part of the Government in reading the Council's reports. For its part, the Council has identified the following as real obstacles:

1. The Government itself- insufficient interest and lack of real efforts to fight corruption';
2. Inertia of institutions: they should not wait for the Government to say what should be done. Despite posting its reports, there has been no support on the issues raised from institutions such as the police and the prosecution. As a result, very little gets prosecuted or actioned;
3. The laws are, on the whole, in place, but nothing is done by way of proper implementation;
4. Enforcement of judgments remains a real challenge (they are not enforced).

It is to be noted that the Council provides anti-corruption training to public officials.

<u>The Judges' Academy</u>

The representative from the Judges' Academy identified the following as areas of concern:

i. Preventive operations;
ii. There remain some legal lacuna that still allow corrupt activity to take place and yet remain untouched by the law; although, it is recognised that some laws have been/are being amended;
iii. Investigation/watchdog institutions monitor the interference by third parties, which is still a problem. However, some headway has been made;
iv. Special prosecutors and specialist training on anti-corruption is important and has been provided, but more targeted and practical sessions are needed;
v. There are corruption cases tried by special courts/organised crime and by regular courts; each applies different rules/laws.

According to the Judges' Academy, any CoE training must include the following:

i. The experience of the anti-corruption agencies, the Council, prosecutors, special police units;
ii. Effective communication of the competence of each of the agencies;
iii. Understanding the Anti-Corruption Strategy and Action Plan;
iv. Knowledge of the legal and institutional framework;
v. Training must be practical for all agencies and the curriculum must be in 2 parts: (i) regular courts (ii) organised crime and special courts. The training must include case studies (both local and international);
vi. Use of experienced local and foreign experts. The trainers must be practitioners and competent in areas relating to anti-corruption; for example, regional co-operation, mutual legal assistance (MLA) and the European Arrest Warrant (EAW). Serbia has agreed to bilateral and multilateral training agreements specifically so that foreign practitioners can come and share their experience with the Serbian judges and prosecutors.
vii. Special Investigative Means (SIMs): The Judicial Academy is aware that 'big' cases in France and Slovenia have failed due to poor investigations (based on SIMs) and the violation of the European Convention on Human Rights (ECHR). The use of SIMs, in

particular, collaborating witnesses and the use of agent provocateur poses real challenges. The Judicial Academy is of the view that the prohibition by the Criminal Procedure Code (CPC) meant cases are taking too long and often lead to an acquittal;

viii. It is important that there is multi-agency training.

The comments of the Academy in relation to SIMs led to a discussion amongst the Group as to why they thought SIMs could not be deployed, and what the real difficulties/practical challenges are.

According to the Academy, the deployment of SIMs is relatively new in the Serbian context and often cases, in particular, anti-corruption cases, are wholly based on evidence gathered through such means. Experience has shown that there is usually either a problem with the collection of the evidence or that the procedures are not harmonised with the ECHR, and consequently the evidence has to be excluded.

The area of real concern is the use of agent provocateur, and the fine line between what is allowed/permitted, especially when a protected witness is engaged. The real challenge for the agencies is to achieve a balance between gathering of evidence and allowing the undercover agent/protected witness to participate in an active role. (The Working Group gave an example of an undercover agent who was tasked to play no role at all within the criminal group but to remain passive and gather information; however, this posed its own difficulties as the group soon realised that he was an undercover agent!). It is apparent that recent jurisprudence from the European Court on Human Rights (ECtHR) and from other European states, which has moved away from a rigid active/passive distinction, has passed many Serbian practitioners by.

The Council, for its part, is of the view that the deployment of SIMs is not a real problem in itself, but that there is a risk of failure by police or prosecution, which means that judges often have little choice but to exclude all the evidence obtained through such deployment. In some instances, where the evidence is admitted, both judge and prosecutor know that the case will inevitably come before the ECtHR, and that, if the ECtHR finds a violation has occurred, this will have the effect of undermining the Serbian legal system. (The Council was asked if they could give any actual examples where this had occurred, but it was unable to do so).

The representative of the Supreme Court of Cassation said corruption cases are divided between low (or 'petty') and high corruption; the latter are tried by Special Court. In her experience, the cases are better prepared for low level corruption cases compared to those at the higher end (involving high public officials). She explained that corruption cases are difficult to investigate and there is a real need to put in place witness protection measures and additional legislation. She felt there is a need for complete anonymity of a witness (including at the trial phase) as, at present, the identity of a witness has to be disclosed to the defence. She explained to the Group that the ECtHR looks at fair trial issues, as a whole, and does not examine each strand; thus, for example, there is nothing in law to prohibit an undercover officer giving evidence anonymously, providing that safeguards to ensure fairness are in place. Judges, she had found, had a training need in relation to understanding that the deployment of an undercover officer is not tantamount to agent provocateur. She explained that evidence

collected through SIMs can be used, but they must be balanced with sufficient safeguards and also allow the defence to cross examine.
In addition, the she said that a further need for training arose in respect of the new CPC, which allows a prosecutor to interview a defendant. Such interviewing will, of course, need to be undertaken in compliance with the ECHR.

She identified the following training needs:

i. Collection/gathering of evidence.
ii. Expert evidence is not of a good standard and usually does not withstand scrutiny; often the experts change their view when they are cross examined.
iii. Judges need training on assessing evidence (what is reliable/credible, what is not).
iv. Financial forensic evidence/investigation is often left too late; efforts should be made by prosecutors to engage forensic (financial) experts at an early stage. The training should include the experts, police and prosecutors. The Council found that there was a lack of understanding of financial flows and a lack of willingness on the part of the banks to provide information.
v. There is a need to include the Anti-Corruption Strategy and Action Plan in the training programme as most practitioners are unaware of it.

<u>Prosecutor's Office (for Organised Crime)</u>
The representative of the Prosecutor's Office for Organised Crime objected to the comments of the Anti-corruption Council's representative about inertia in the prosecution and law enforcement institutions in relation with proceedings in cases initiated by the Council's reports. The representative emphasised that this statement was not true.

She agreed with the Judge of the Supreme Court of Cassation that low level corruption cases were easier to deal with, as they are mostly related to receiving and giving bribes in the health system and public administration, while the high level corruption and economic crime cases, which cause millions high damage to the State, tend to be difficult to prove, because such cases encompass high number of accused persons and evidence and complicated financial expertise.

In the view of the representative of the Prosecutor's Office for Organised Crime, currently open cases that are questioning privatisation of 24 companies are complicated, because these privatisation processes took place in the period 2004 to 2007, therefore gathering evidence is more difficult having in mind the time flow and especially lack of possibility to implement special investigating techniques such as secret surveillance of communication, secret monitoring and recording, simulated affairs and undercover agent.

It was stressed that there are currently 16 deputies of the Prosecutor for Organised Crime and each has been to a number of training courses, during which they gained new knowledge in the fields of forensic accounting, functioning of financial institutions and enterprises and companies in general. The training provided their equal engagement in the cases of corruption and economic crime.

She said that on the basis of her own experience, it is very important that each proposed training course be delivered by experts with solid understanding of Serbian legislation and

business relations in Serbia; to illustrate that need, it was said that the Organised Crime Unit, Ministry of Interior of the Republic of Serbia, Belgrade Stock Exchange and Administration for the Prevention of Money Laundering, have recently received training from experts from New York Stock Exchange and London Stock Exchange, whose experience and practice were interesting, but not possible to implement in Serbia.

Unlike the deputies of the Prosecutor for Organised Crime, the deputies from higher and basic prosecutor's offices, especially those out of Belgrade, do not get the same level of assistance and training. Also, the police, especially out of Belgrade, needs practical training, all with the aim to make the pre-trial proceedings less difficult, with emphasis on new technologies, which are being largely used by the perpetrators of corruption and economic crime.

Organised crime deputy prosecutors, as well as the judges of the Belgrade Higher Court Special Unit, already implement for a year and a half new Criminal Procedure Code which gives far more active role to prosecutors, both in the pre-trial proceedings and during the main trial. Because of the introduction of the prosecutor-led investigation, this phase of proceeding is fully dependent to prosecutors' skills, knowledge and engagement. Having in mind that prosecutor's offices and basic courts will start implementing the above-mentioned CPC in October this year, organised crime deputy prosecutors are ready to share their experience with their colleagues.

Administration for the Prevention of Money Laundering APML (FIU) representative:
The APML representative stated that its role is not understood by all the agencies in Serbia. He emphasised that the APML's competence (as the FIU) is to accept information and reports of transactions above 15,000 Euros. The APML co-operates with the other agencies and a greater understanding will help build upon that even more.

The APML suggests that a possible area for training is in relation to raising awareness amongst the officials of other agencies as to how to identify the first indications of suspicious activity, how to look at the adequacy of internal controls and how preventive measures might be taken

Ministry of Interior (MoI):
The MoI representative stated that, generally speaking, police officers do not take any operational decisions without first engaging with the prosecutor. There are a number of laws to combat corruption, and just like judges and prosecutors, police officers also need to be kept updated and trained on the new laws.

Training that would be particularly useful for MoI personnel would be:

i. Forensic accounting;
ii. Use of undercover agents (judges and prosecutors should also be included);
iii. Deployment of SIMs;
iv. Training undercover agents on techniques;
v. Seizure of computers and interrogating them;
vi. Law to protect whistleblowers/witnesses;
vii. Case management and how to manage a file (for example, how to make sure that sensitive information contained within the file is kept secure);
viii. MLA.

Training needs should be addressed not just in Belgrade, but across the territory and there should be joint training without any distinction between organised crime and general units. Multi-disciplinary teams should be a pre-requisite for any training session. The trainers themselves should be local, but there should also be input from foreign experts.

The MoI presently has in-house training which ranges from basic to high level, and it is important to build on earlier training programmes that personnel have taken part in. In addition, the MoI has commenced a series of Training of Trainers courses and has been engaged in the development of manuals.

General overview of the Working Group

The consensus between the representatives present was that:

- There is training fatigue in all the agencies.
- It is important to have local trainers, rather than foreign trainers only. However, foreign experts should be invited to participate in order that they might exchange their experiences with Serbian prosecutors, police and judges.
- There is an acute training need outside Belgrade.

28 May: Meetings with representatives from other international organisations

A meeting was held with other international organisations who are also engaged in providing anti-corruption training to the Serbian agencies. Of those invited, the OSCE and the US DOJ attended.

The OSCE has a reasonably extensive training programme for judges and police/prosecutors. The discussions between the CoE and the Group were brought to the attention of the OSCE, who agreed that training was needed on the following:

i. Deployment of SIMs. (The OSCE has delivered a number of training courses on SIMs over a period of 4½ years, and has also sponsored several study visits for a dedicated group of officers from The Counter-Organized Crime Service (SBPOK). The OSCE's assessment is that the unit does well in large cases, and the surveillance unit is regarded as the best in the region.)
ii. Financial investigations (all aspects).
iii. Proactive investigations (OSCE has provided training on this by working through cases that have failed).
iv. Public Procurement.
v. AML/tax evasion and fraud.

On policing, the OSCE will soon launch a series of trainings for 25 law enforcement and financial investigators. The training is scheduled to start at the end of August/early September 2013. It is aimed at officers with 5 years' or more experience and the training is to be rolled out to officers all across Serbia. At the end of the training phase, the OSCE intends to continue to coach and mentor those officers.

In addition, the OSCE is assisting the Task Force for Anti-Corruption in relation to the 24 cases identified by the EU as priority cases. In order to equip the officers responsible for these cases, the OSCE will run one week training courses for 15 officers at a time, and hopes to train 120 officers in 2 key areas:

i. The examination of financial statements and accounts.
ii. The conducting of financial investigations.

The OSCE conducted its own initial scoping exercise and found that there was a complete lack of understanding (both amongst prosecutors and officers) of even the most basic financial documents. The OSCE now intends to conduct a one-to-one training needs assessment as it has been found that group discussions do not assist in identifying the real training needs. It hopes to develop a training programme that is incremental, rather than running several courses which fail to develop on the earlier sessions.

The OSCE was asked if police officers and prosecutors are subject to any vetting process (as is the case in other jurisdictions where sensitive handling is required). The OSCE had indeed suggested this to the Serbian authorities, but it was seen as an 'insult' and rejected outright. The prosecutors, in contrast, were a little more open to the idea of vetting, although, overall, there was a total lack of interest.

The OSCE intends to conduct an assessment of its training programme at the end of 2013.

The OSCE has identified the following areas for continued training:

i. Evaluation of evidence (in discussions with the Group, the CoE formed a clear impression that prosecutors and judges struggle with evaluation of evidence and often just follow an expert to the extent that prosecutorial decisions seem to be led by the expert).
ii. The deployment of SIMs and human rights considerations (this is of particular concern to the judiciary).
iii. Forensic accounting.
iv. Financial investigations.

The US Department of Justice (US DOJ) has developed its training programme as part of its 'overseas prosecutorial training' and Federal prosecutors are based in-country to assist with the training and legislative drafting. The resident legal adviser is involved with all the relevant agencies, prosecutors, police, judges and tax authorities. The programme is being widened to include all economic crimes rather than just focus on corruption cases.

The US DOJ activities include:

Training and round table discussions with the relevant agencies. The round table discussions focus on best practice.

Mentoring prosecutors in on-going cases.

Support the investigations and prosecution of cases through the engagement of financial experts/forensic accountants.

The provision of equipment.

The training programme was developed in consultation with the prosecutors and, to date, the US DOJ has provided training on the following:

i. financial investigations
ii. understanding accounts, financial statements/records etc

In the experience of the US DOJ:

i. in Serbia the advantage is given to training delivered by local rather than foreign experts.
ii. Training courses should not run for more than 3 days.
iii. As the same participants attend the courses when they are re-run, they are quickly disengaged (the US DOJ has often asked for a different participants but not been very successful in that regard).

The assessment of the US DOJ is that the new CPC is likely to pose a challenge for the prosecutors, since, at present, the police was previously directly in charge for the investigative procedures. The new law will require the prosecutors to direct the investigation and they will need additional equipment and training to carry out this function.

The investigators were given some training on financial records and documents, for example, store cards; however, in the view of the US DOJ, there is sometimes a lack of understanding of the financial reports which makes the work difficult.

The US DOJ has also identified real training needs in the following areas:

i. MLA across the agencies
ii. Use of indirect evidence
iii. Money laundering: financial trends and movements, consequently, financial flows. (The US DOJ has run some training courses on analysing intelligence etc, but not in any great detail.)
iv. Prosecutors and judges need additional training: They generally just follow the recommendations of an expert; in particular, financial experts.
v. There is a real interest amongst the investigators to learn more about SIMs (e.g. simulated businesses (deployed in 2 cases), undercover agents (here there is a need to make distinction between incitement/entrapment/agent provocateur)).

At a practical level, there is a need to expand the pool of trainers and to train those outside Belgrade (most organisations focus on training those in Belgrade).

Serbia has the following training bodies:

- Judicial Academy is responsible for training judges and prosecutors
- Police Academy is responsible for training new recruits
- Centre for Advanced Education Studies (MOI) is responsible for providing continuing training for officers.

Recommendations for the Council of Europe

- Future training programmes should be practical and substantive - 'knowledge imparting' sessions should be structured in such a way that participants are not subject to straightforward classroom-style lectures and presentations.
- Training sessions should be intensive and challenging if real, practitioner-relevant, learning is to take place. For that to be achieved, there must be willingness on the part of participants to give sessions their undivided attention and to allow themselves to become fully 'immersed'.
- Each training programme should feature challenging scenario-based problems that will test and challenge the learning of each participant throughout the programme. To that end, each programme should include, at the outset, one of those 'tried and tested' exercises that will focus the attention of the participants to the programme and encourage them to face the challenges that lie ahead.
- Local experts should play a central role in each training programme. Where such an expert has not already been trained him/herself in delivering stimulating and interactive training, sessions on how to train successfully should be provided.
- The use of local experts should be complemented by foreign expertise. At this stage in its anti-corruption/criminal justice development, Serbia must have the benefit of international learning and best practices. Such an approach will also assist in building practitioner networks between Serbian law enforcement officers, prosecutors and judges and their counterparts from other European states.
- Multi-disciplinary training for investigators, prosecutors and investigative judges will almost certainly be the most effective way of delivering an intensive anti-corruption practitioner problem. It will assist in building co-ordination and co-operation and will enable each stakeholder group to understand more clearly the thinking and approach of the others. It should also go some way to ensuring that there is a common understanding of law and practice in the more difficult topic areas (such as SIMs, entrapment/provocation and financial investigations).
- In relation to judges (apart from investigative judges), it is suggested that their intensive programme is not multi-disciplinary, but is held for judges alone (albeit with experts and trainers drawn from the ranks not just of judges, but from those of law enforcement, prosecutors and defence lawyers). The reality is that there are knowledge gaps, misunderstandings and practical inexperience that need to be addressed in a detailed, up to date and interactive manner. Such an approach is unlikely to work if a group of judges find themselves 'on a learning curve' with law enforcement and prosecutor colleagues; instead, the judges are likely to be defensive, unwilling to risk being seen as lacking in knowledge and unlikely to participate fully in practical exercises that will require individual decision-making.
- Each intensive course (aimed at trainers, who will then 'cascade' downwards) should be of a total of 8 days duration. Given the professional responsibilities of the likely participants, it is suggested that each course be delivered in either 2 or 3 tranches (in other words, 4 days + 4 days or 3 days + 3 days + 2 days). It is recognised that the programme is longer than the project have anticipated; however, for meaningful delivery and knowledge-building, it is essential.

- Whilst recognising budget and time constraints within the present project, it is recommended that, if sustainable results are to be achieved, the proposed intensive 8 day courses are followed by shorter (2 to 4 day) courses delivered to specialist/would-be specialist practitioners in, for instance, financial investigations, proactive and SIMs deployment (specifically for the anti-corruption field), and shaping in detail an investigative strategy (for prosecutors and certain key law enforcement personnel).
- The discussions by the Working Group and the meeting between the CoE and other international assistance providers has succeeded in highlighting the key areas of substantive law and practice upon which training is required. Those areas are, in particular:
    - The substantive anti-corruption/economic crime penal and procedural framework within Serbian law;
    - The assessment of evidence (including direct versus indirect evidence);
    - The relationship between intelligence and evidence and the interface between the intelligence-gathering and investigative phases;
    - Developing the appropriate investigative strategy;
    - The deployment of SIMs and undercover methodology;
    - Avoiding provocation/unlawful entrapment in proactive investigations;
    - Ensuring human rights compliance throughout the 'life' of a case;
    - The gathering and use of financial evidence;
    - Expert evidence;
    - The interrogation of computers, cell phones and other electronic storage devices;
    - Obtaining/providing assistance from/to other states in criminal cases (mutual legal assistance [MLA] and administrative or informal assistance.

  It is important that the above topics are addressed in a detailed and discursive approach that does not shy away, nor gloss over, the difficult decisions and fine judgments often needed if a case is to be progressed successfully.
- It is suggested that the training materials are developed in the form of a practitioner manual (to be kept updated for ongoing reference) and accompanying scenario-based case studies.
- If the proposed training is to bring about sustainable results, it should include tuition on effective case management techniques. To that end, it is extremely important that the agencies involved agree upon a case management approach and then implement it.
- An issue closely allied to case management, and to the proper development of an investigative strategy, is having 'ownership' of certain aspects of the investigation being given to specific officers and appointing an 'Investigating Officer' (or similar title) of some seniority who will work directly with the prosecutor to shape and amend the investigative strategy as enquiries in a case are proceeding. Again, agreement between agencies will be required and practical training given. There may be some resistance or objection to such an approach; however, experience from across Europe, and elsewhere, tends to show that these are tested best practices that will serve to improve demonstrably the quality of investigations and prosecutions.

- In relation to SIMs and other deployments, it is suggested that the present formulation of training activities takes the opportunity to work with investigators and prosecutors to create pro forma to be used for deployment proposals etc. Such an approach reflects international good practice and will ensure that investigators and prosecutors are consistently applying their minds to all relevant considerations (for instance, in respect of human rights compliance and requirements under the national legal framework) when preparing and making applications for deployment orders.
- Training courses should be supplemented by on-going mentoring and network/knowledge-sharing events.

(2) TRAINING PROGRAMME & CURRICULA

This part of the Technical Paper deals with 2 separate, but inter-related considerations:

Part A sets out the good practices that should be considered for adoption by the agencies involved in detecting and prosecuting corruption and economic crime cases, and how that can be achieved (The Methodology). In addition, corruption and economic crime cases can only be dealt with effectively if the wider considerations are properly addressed. The conditions essential for the successful investigation, prosecution and adjudication of corruption and economic crime cases are identified in Part A (2).

Part B sets out the key areas for the curricula building for Serbia, and the need to ensure that the training is based on practical exercises. The training should also be aimed at developing skills in decision making and assessing and managing risk in such cases. Each stakeholder group should be invited to consider its own objectives to which the training will be geared; to assist examples of such objectives are set out.

PART A

(1). Overview of Comparative good practices that will help ensure that a case is properly built

<u>The Investigative & Prosecutorial Team</u>

i. Cases to be investigated and prosecuted by specialist anti-corruption/economic crime practitioners, working within an entity or agency that is a centre of excellence for the topic area.
ii. Investigators and prosecutors vetted or security cleared to a high level.
iii. An investigative team created that has the right blend of skills and knowledge, depending on the demands of a particular case.
iv. A properly case managed approach, with different investigators having different aspects of the investigation to 'own' and to be responsible for.

v. For each case, a team of investigators that, together, possess all necessary skills (i.e. forensics, exhibit handling, evidence gathering, financial/business records investigation);
vi. An overall senior investigator.
vii. Appropriate lines of communication between all involved, but with sterile corridors maintained where appropriate.
viii. Information shared on a need to know basis.
ix. Prosecutors entirely familiar with all relevant aspects of procedural and penal law so that a robust argument/rebuttal may be made against ill-conceived legal arguments or objections advanced by defence lawyers.

The Methodology

i. Effective co-ordination at each stage between investigator/prosecutor/investigative judge (as required at each stage).
ii. Case management that allows for the recording and ready retrieval of all actions undertaken, documents obtained and activities carried out by the investigative team.
iii. Each decision recorded in writing, with accompanying reasons/rationale
iv. Risk assessments undertaken at each key stage/occurrence, with each assessment acted upon as appropriate.
v. Independent review of investigative actions at pre-determined intervals/post-key occurrences
vi. Appropriate evaluation, development and dissemination of intelligence.
vii. Recognition that intelligence sources such as informants may be manipulative/serving their own needs and methodology/tradecraft deployed to minimise the risk of compromise etc.
viii. Targets and witnesses properly researched.
ix. The formulation of an investigative strategy, with such a strategy being dynamic and capable of being revisited as the case progresses.
x. Parameters for an investigation being rationally set (especially in a case that is very wide-ranging and in which the investigation could easily become over-stretched and overrun.
xi. Supporting/corroborating evidence sought where possible.
xii. Information/material in support of proposals/applications (e.g. for SIMs) to be set out on a pro forma to ensure that, in each case, the investigator's/prosecutor's mind is directed towards all relevant considerations. A set of pro forma should be developed. (It should be noted that such an approach is entirely proper and consistent with existing law.)
xiii. Initiation of proactive investigation and deployment of SIMs on an intelligence-led basis (i.e. when credible intelligence justifies) with appropriate authorisation and with on-going oversight and record-keeping during the course of the deployment. In addition, the SIMs deployment should be subject to continuing review, with the authorisation being cancelled as soon as justification no longer exists.
xiv. Care should be taken to avoid compromise, loss of credibility and the suggestion that any witness has been improperly induced. To that end, all actions and activities should be documented, single points of contact appointed (where practicable) and all decisions made in a proportionate manner supported by objectively justifiable rationale. Where

necessary, surveillance and video recording should be deployed in relation to investigators themselves in circumstances where there is a risk of an unfounded suggestion being later made that investigators have manipulated a situation or otherwise behaved unconscionably or oppressively.

xv. All investigative actions and prosecutorial decisions should be made in accordance with framework created by international human rights law.

xvi. Complex evidence (particularly financial and accounting evidence) presented to the court with the use of schedules and summaries in addition to, for instance, the primary financial record themselves. The primary material remains the evidence, of course, and, therefore, the procedural laws of most states will not preclude the preparation and presentation of schedules in order to make that primary material more readily comprehensible. The effect should be that it gives assistance to all parties before the court and to the court itself.

xvii. The investigation should always 'follow the money/assets'. It should also have in mind the importance of identifying the natural person who is the beneficial owner.

(2).Matters to consider when ascertaining where conditions essential for the successful investigation, prosecution and adjudication of corruption and economic crime cases are present

Legal & institutional frameworks

- Is there an adequate legal framework, including:
    - Money laundering legislation and controls;
    - Asset/income declarations for public employees and officials;
    - Criminal and administrative/civil laws that address corruption/economic crime in its widest sense (e.g., laws that cover bribery, misuse of office, embezzlement, fraud, insider trading & privatisation offences, procurement controls, money laundering) and provide for effective &dissuasive penalties;
    - Conflict of interest controls and penalties;
    - Codes of conduct/practice in the public & private sectors that include explicit no bribery clauses, along with penalties for violations;
    - The incorporation into national law and enforcement of the relevant international treaties, and conventions;
    - Freedom of information laws;
    - Whistleblower laws; and
    - Recognised accounting & auditing standards.
- Is there a true political will to detect & enforce?
- Is there a trained judiciary (all three branches), which is impartial and has guaranteed independence?
- Is there a specialist judicial (all three branches) anti-corruption capability, which is either centred within a specialist entity or is organised in such a way as to avoid dilution/too thin a spread of expertise?

- Is there an effective regulatory & licensing system for vulnerable/high risk sectors, including financial services? Are regulation standards uniform and being enforced consistently?
- Is there effective public sector audit & adequate government expenditure controls?
- Is there an adequate civil service that is based on open competition & meritocracy?

Pre-investigative & Investigative processes

- Is there a properly developed intelligence capability?
- Is there an appropriate intelligence/investigative interface?
- Have the investigative team been selected to ensure that all necessary skills are represented?
- Is there a case management system which is fit for purpose?
- Are there investigative actions 'owned' by particular officers, thereby responsible for those actions being carried out?
- Is there a Senior Investigator or Investigating Officer to work with the prosecutor to ensure lines of enquiry are undertaken and that the strategy is amended as the investigation progresses?
- Is the prosecutor meaningfully directing the case, but also seeking advice and guidance from the investigative team, from the outset?

Judicial processes

- Is the decision to open an investigation file/proceed to trial taken objectively and without favouritism/ benefit to any individual, group or class?
- Are investigative and court actions free of political reprisal?
- Is the process transparent, open to challenge and are law enforcement, prosecutors & judges held accountable for their actions?
- Is the adjudication process timely and without undue delay?
- Are penalties promptly enforced?

PART B: TRAINING & CURRICULA BUILDING

Encouragement to each stakeholder group (investigators, prosecutors and judges) to formulate a set of practical objectives which training will help achieve

In addition certain principles, being a result of a good practice in a number of EU jurisdictions shall be considered , by each stakeholder group as objectives of its own to which the training will be geared. Such objectives might include:

- Ensuring enhanced public confidence in investigation, prosecution and adjudication of high level cases;
- Enhancing transparency of the investigative and court processes;
- Developing fully effective partnerships with all institutions involved in the fight against corruption;
- While continuing to pursue 'volume' or low level cases, also taking forward more 'grand corruption' cases;

- Creating a greater degree of individual responsibility for cases;
- Resolving doubts about the legal basis undercover operations and legitimate deployment avoiding provocation;
- Ensuring adequate human and technical resources for undercover and proactive operations
- Improving the effectiveness of cases outside of Belgrade.

Curricula-Building: Training issues of particular note

Nature of the training

Corruption and economic crime cases are often complex and contain transnational elements (where simply at the money flow level or as to the transaction itself). Equally, they frequently involve many agencies. In order to manage such investigations, effective strategic co-ordination and operational co-operation are each vital. The skills and mindset required need to be enhanced and honed through multi-agency training exercises that, rather than being classroom sessions, are case/scenario-based (albeit with substantive knowledge sessions included). Such sessions should focus on two skills in particular:

i. Making rational decisions based on the exercise of sound judgment in circumstances where the decision-making and accompanying reasons are fully evidenced;
ii. Assessing and managing risk (in all its forms and at every level).

Such training needs proper planning and preparation. In particular, the appropriate personnel/practitioners within each agency should be identified and the roles and responsibilities as set out by the law and by existing institutional frameworks should be known and understood by all. That will necessitate some pre-course work by all of those involved.

Training should be practical, properly targeted, incremental and fully immersive. It will address a whole range of both general and specialised investigative techniques, and will also encourage joint working between investigators and prosecutors at each stage. Training courses will be supplemented by the provision of detailed practitioner materials and should be followed, budget permitting, by on-going mentoring (remotely and in country).

Intelligence/evidence interface

Experience from many jurisdictions has demonstrated that an effective intelligence capability is one of the key building blocks for successful investigations of corruption and economic crime cases.

Intelligence should not be conceptually divorced from investigation and prosecution when a training programme is being designed; in particular, for law enforcement personnel, a well-developed and managed intelligence unit will support the activity of the anti-corruption and economic crime investigator at all stages of the process. It is that intelligence capability that will enable threats to be identified threats and targets and suspects prioritised. In addition, it will help inform and assist in evidence gathering and will enable an appropriate strategic perspective to be maintained when operational investigative decisions fall to be made. Moreover, all sectors of the criminal justice response should recognise its value and potential in

developing those preventive tactics vital to the pre-empting and disrupting corrupt activity and economic crime transactions.

It follows, then, that the intelligence function should be at the heart of an operation and should drive the investigative activity. The design of training must reflect this and should have, as a key output, the ability to create and implement an effective strategy to obtain and manage intelligence from:

- Intelligence agencies
- Sensitive community intelligence sources
- Covert human intelligence sources
- Prison intelligence
- Other, technical, sources
- International agencies

From intelligence to evidence

In just about any corruption or economic crime case, there will be a pre-investigation phase where intelligence or information is received, analysed and developed. The process may be simple, or complex, but it will be there.

It is important for those being trained to have in mind that:

- What starts as intelligence may need to be obtained in evidential form (either at the time or at a later stage, depending on the jurisdiction and the procedural rules as to when evidence is able to be gathered).
- The sort of evidence that is obtained is likely to be indirect.

Regard should, therefore, be had as to the various possible sources of the intelligence that brought about the opening of an investigation, and that was subsequently developed. The information might arise from:

- As part of an on-going criminal investigation;
- As part of a financial investigation following a criminal conviction;
- Suspicious activity report;
- Following an incoming mutual legal assistance request;
- Human Sources;
- Product/recordings from surveillance/interception of communications;
- Financial Profiling (Land Registry, financial institutions, utilities and telephone billing);
- Account Monitoring Order or similar (will require banks etc to provide details of specific transactions over specified period) Can be in 'real time' e.g. ATM = useful;
- Customer Information Order or similar.

Sources/informants

Training should reflect the following;

An informant will be tasked to use his relationship with the target(s) to gather information covertly. It follows, therefore, that there is likely to be a breach of the right to a private/personal life of the target(s). Thus, there must be:

- An express basis in accessible, national law that provides for the use and conduct of the informant; and
- A proper framework in place for authorisation and oversight; and
- Necessity and proportionality.

Recruitment and assessment of an informant: This should be a four-stage process:

1. Identification
2. Research:[1]
3. Assessment of information/ Character of individual
4. Assessment of character and review of such

Case management

Whether in a civil law or common law state, any complex investigation will benefit from having an approach to case management of the investigation file that allows for a clear understanding by all personnel of who has responsibility for which actions and an element of 'ownership' of key aspects of the case. For Serbian practitioners, both training and professional practice should reflect this.

Some corruption cases are simple and straightforward, with witnesses and evidence readily available. In some, a simple integrity test may have established the corrupt tendencies of an official, meaning that no further investigation is necessary. Where corruption is systemic, the challenge is one of volume. It is all too easy for an enforcement agency to devote itself almost entirely to addressing minor infractions, to the neglect of more serious and much more damaging conduct on the part of more senior officials. This may call for processes that are essentially administrative in nature, rather than invoking the full force and weight of the criminal law.

More serious corruption investigations (particularly those involving high-level or "grand" corruption) can be time-consuming, complex and expensive. To ensure the efficient use of resources and successful outcomes, the elements and personnel involved must be managed effectively. Teams working on specific cases will often require expertise in the use of investigative techniques ranging from financial audits to SIMs techniques. In complex investigations, teams may be assigned to specific target individuals, or to focus exclusively on individual aspects of the case. One group might be engaged in the tracing of proceeds, for example, while others source or interview witnesses or maintain surveillance of suspects.

[1] Research: This is the most important and vital area of recruitment; it involves conducting a full profile of the person to be approached. Those recruiting will need to make an informed prediction on how the potential informant will react when the approach is made. The type of questions to be answered are:

- Have they the character to cope with the approach and to continue to assist?
- Have you ensured that they are no way involved in any corruption activity?

To achieve this, some agencies regularly conduct a lifestyle surveillance operation in respect of potential candidates for approach, in order to assist in the assessment.

These functions should be conducted in accordance with an agreed strategy and should be co-ordinated under the supervision of the prosecutor and 'lead' investigator who should receive information about the progress of investigators on a regular and frequent basis.

The sequencing of actions can be of the greatest importance. The interviewing of witnesses and the conducting of search and seizure operations run the risk of disclosing to outsiders the existence of an investigation and, to some degree, its purpose. Thus, they should not be undertaken until after other measures have been taken that will only be effective if the target has not been alerted. On the other hand, such procedures may become urgent if it appears that evidence could be destroyed or illicit proceeds moved outside the jurisdiction of Serbia.

Co-ordinating requires competent and well-informed senior investigators. Investigative management must be flexible and take account of information as it accumulates. Investigators develop theories about what an individual item of information may mean and how the various pieces may fit together, but such theories may require refinement as an investigation proceeds. Investigators must always be open to other possibilities when new evidence appears that is inconsistent with the particular theory that is being pursued. Investigations of particular incidents of corruption will often turn up evidence of other, previously unsuspected, corruption or other forms of criminal activity.

As an investigation proceeds, information should be made available promptly to those who may require it. It should be retained in a format that is cross-referenced and is quickly accessible so that it can be reviewed as needed and so that links to other relevant information can be made.

Each piece of information should be assessed for its relative reliability, sensitivity and confidentiality. The assessment should be linked to the information itself as the degree of sensitivity may not be apparent to those unfamiliar with the information.

The training for investigators and prosecutors/investigative judges should reflect the above, but in a context workable in Serbia.

Investigative Management Techniques

Investigations should be focused in terms of resources deployed and guidelines followed. This includes using staff in the most cost-effective manner and developing terms of reference that contain a comprehensive list of all the needed resources (human, financial, and material) for a successful investigation. A policy document that includes a clear description of the facts that have given rise to the investigation and all decisions made during the investigation along with necessary justifications is also an important tool for the investigation team.

Investigative Strategy

Training should be focused on enabling the prosecutor to join with the investigators in formulating a strategy. In this regard, the following questions will be asked:

- What are the elements of the crime being investigated?
- What evidence of these elements exists in hand or could easily be developed?
- Of the evidence that needs to be obtained, how can it most appropriately be acquired (e.g., reactive gathering, SIMs etc.)?

It is important that there is an effective implementation of the overarching strategy. To that end, it is important that the areas of responsibility and accountability are documented and agreed.

Before starting an investigation, clear and comprehensive terms of reference should be drafted. These should contain a comprehensive list of all the resources anticipated as being needed.

In addition, a policy and procedures document should be maintained. This should include a clear description of the facts giving rise to the investigation; all decisions taken during the investigation, along with their justifications.

Use of a 'Senior' or 'Investigating' police officer as a case 'lead'

The Serbian authorities should consider, as a preface to the training and as part of the training, the use of a Senior or Investigating Officer to be responsible to the prosecutor and to work with him/her in the criminal investigation. With the prosecutor, this officer should set the various lines of enquiry relevant to the investigation to ensure it remains focussed and will concentrate on the principle issues.

The Senior or Investigating Officer will also be responsible for developing the various strategies in support of the overall objectives of the investigation; these will include:

- Scene strategies
- Forensic strategy
- Search strategy
- Victim and witness strategy
- SIMs strategy
- Intelligence strategy
- Suspect strategy
- Closed circuit television (CCTV) strategy
- Community strategy
- Media strategy

Taking evidence from witnesses in corruption/economic crime cases

This is a vital component in any investigation; there is a definite training need. Various models exist for the effective interview/examination of a witness; the correct approach in Serbia needs to be agreed upon. An indicative standard is the PEACE model:

P - Planning and preparation.
E - Engage and explain.
A - Account clarification and challenge
C - Closure
E – Evaluation

To be effective, the interviewers must be able to:

- Plan the interview by carefully assembling of facts
- Establish a rapport with interviewee

- Listen effectively
- Question account appropriately at the right time.

Other issues for consideration include:

- Witness protection
- Management of reluctant witnesses
- Welfare and support of witnesses

Financial Investigations

In Serbia, financial investigations as part of the substantive criminal investigation, rather than as a prelude to temporary seizure/confiscation applications, have, in practice, been largely neglected. Training needs to demonstrate and introduce the true potential of such investigations. The reality is that financial enquiries into the life-styles, bank accounts and personal dealings of suspected corrupt individuals have been shown to be a successful method of proving criminal acts, particularly when investigating allegedly widespread large-scale corruption.

SIMs

SIMs are available within the Serbian legal framework, but much confusion exists, which needs to be trained upon.

With planning of training in mind, the following background should be borne in mind:

- Traditionally criminal investigations into allegations of corruption or economic crime have been reactive in nature, with offences being enquired into after they have been committed by the gathering of evidence from witnesses as to fact and with the piecing together of documentary evidence, such as financial records.
- Such investigations have been generally effective where, for instance, there is a suspect or defendant who has been willing to co-operate with the authorities and to denounce and give evidence against his criminal associates, or where there is a detailed 'paper trail' of financial transactions.

However, the nature of corruption and of many types of economic crime means that there is unlikely to be any independent witness to the transaction itself and that very often those implicated are not willing to 'break ranks' to assist the prosecutor (or, even if there are, they lack credibility). Moreover, it is more than likely that the documentary record available is insufficient to form a principal arm of the prosecution's case.

For all of the above reasons, and with the increasing capability of law enforcement to gather and analyse intelligence, proactive investigations are being used with more and more frequency in a wide range of jurisdictions to combat corrupt or financially illicit behaviour. As the name suggests, a proactive investigation gives the investigator the opportunity to detect and interdict suspects during the course of their criminality taking place; in addition, it may result in evidence being obtained to prove 'historic' offending.

The nature of a proactive investigation means that it usually includes the deployment of covert, intrusive techniques or SIMs. Such an approach is not new. However, across Europe, there last

fifteen years or so have seen an ever increasing reliance on intelligence led detection making use of these techniques. Indeed, where it is suspected that, for instance, a law enforcement officer has corrupt connections to organised crime or there is bribery within a tightly confined commercial sphere, covert means (so long as they can be justified) may be the only way forward.

These are means or techniques used to gather evidence and/or information in such a way that they do not alert those being investigated. Invariably their deployment will involve a breach of the right to a private life, which will have to be justified by those carrying out/authorising the operation.

Some obvious examples of special investigative techniques include controlled delivery, surveillance (including electronic surveillance), and the deployment of undercover agents.

Challenges

The very nature of special investigative techniques is such that their deployment is likely to give rise to later challenge before the court on the basis that fundamental rights (e.g. under the European Convention on Human Rights (ECHR)) have been breached, the activities of law enforcement have been unconstitutional, and/or the operation was unlawful under national law.

When planning any covert deployment, it should be remembered that the rights of an individual must be safeguarded and that the only breaches that occur are those that are justifiable and authorised. All decisions by those planning and authorising an operation will, almost certainly, be scrutinised and challenged.

Therefore, the training must reinforce that a SIMs technique, whether for intelligence-gathering or evidential purposes, must only be used when:

- There is an express basis in accessible, national law that provides for it; and
- There is a proper framework in place for authorisation and oversight; and
- Means are available; and
- Proper practice in the application of SIMs is established; and
- SIMs are implemented by staff trained in these matters; and
- Its use is necessary and proportionate.

When considering any sort of deployment that will involve intrusion, the question that should always be asked is: "Am I able to gather the intelligence/evidence sought in another, less intrusive, way?"

'Provocation' or 'Entrapment'

There is much confusion amongst Serbian practitioners at all levels in this regard. The common understanding in Serbia is generally conservative and is generally at odds with, and much more conservative than, the ECtHR case law and other European state jurisprudence. Training must focus practically therefore on explaining and illustrating that:

Entrapment is, generally, not comprehensively defined in national law, although in some European States the Criminal Procedure Code (or equivalent) will state that provocation takes place where more than merely an opportunity to commit a crime has been given.

For present purposes, and in its widest sense, entrapment or provocation refers to any involvement of police operatives, or other agents of the state, in any form of trick or trap to obtain evidence of the commission of an offence, where more than merely an opportunity to offend has been given to the target(s). Importantly, current case law has moved away from the traditional distinction between passive (acceptable) and active (unacceptable) behaviour.

Of course, the fact that there has been a trick or a trap in a covert operation does not necessarily mean that the evidence gathered will be regarded as unfair or improper. This reflects the understanding that such tricks may be essential when investigating certain form of crimes, especially where there is no victim to report the offence. An example of the type of crime where entrapment methods are used are offences of drug dealing, or indeed corruption, where it may be the only way to gather evidence against a given offender.

Entrapment is likely to be raised and argued as an issue by the defence where they have no other line of attack against the prosecution case, or where the evidence obtained is, in itself, so powerful as to be conclusive.

In Serbia and in most European states the Criminal Procedure Code, or equivalent, will normally prohibit provocation or entrapment. If provocation has been found, the case will be stayed. If the prosecutor finds provocation on the evidence before trial, then either the prosecutor will dismiss the case or apply to the court for dismissal (depending on the jurisdiction). Sentence can usually be reduced if a degree of provocation, but insufficient to order a stay. In general, the test for the court will be: has the right to a fair trial been violated? This test varies in application from state to state. Some states will focus on whether the proceedings of the trial, including questioning of witnesses etc, will be fair; others will apply a test which mirrors that of common law jurisdictions: Is it fair to try the defendant at all?

<u>Distinction between direct and indirect evidence</u>

When discussing direct and indirect methods of proof, one has in mind the distinction between direct and indirect (or 'circumstantial') evidence. Direct evidence is that which, if believed, proves the existence of a particular fact without any inference or presumption being required. Indirect evidence relates to a fact or matter, or a series of facts or matters, other than the particular fact that are sought to be proved. The party offering indirect evidence argues that the indirect evidence, by reason and experience, is so closely associated with the fact to be proved that the fact to be proved may be inferred from the existence of what is circumstantial (i.e. indirect).

Indirect evidence is, of course, adduced in the full range of criminal cases. However, it is of particular importance in a corruption or economic crime case where, as we have seen, there may be no, or very little, direct material proving a transaction or the involvement of the parties to it. For such cases, financial evidence will be of significance: Sometimes an investigator may be

able to link specific financial transactions directly to the criminal conduct that is being alleged; however, even when financial transactions cannot be directly linked, evidence of asset movement, of property purchases, or of unexplained wealth may, in itself or with other evidence, give rise to the inference that the asset or wealth concerned came from an illicit source.

Likely sources of indirect evidence in a corruption/economic crime investigation:

- Accomplice evidence (when not direct);
- Partial admissions by suspect re financial dealing;
- Financial audit trails, including assets, lifestyle and expenditure;
- Expert evidence, particularly from analysts or forensic accountants;
- Unlikelihood of legitimate origin of money or asset;
- Unusual or inexplicable business dealings (e.g. a 'bad deal' / a venture losing money);
- Evidence of bad character (in some jurisdictions);
- Physical contamination of cash (i.e. banknotes);
- Corroboration by lies (in some jurisdictions);
- Inferences from silence (in some jurisdictions);
- Covert surveillance and other covert product (when not direct);
- False identities, addresses and documentation;
- Association with other individuals, organisations, or locations.

INVESTIGATORS, PROSECUTORS & INVESTIGATIVE JUDGES:

TRAINING COURSE ON THE INVESTIGATION & PROSECUTION OF CORRUPTION & ECONOMIC CRIME CASES

Human Resources: 3 local trainers, plus 3 foreign trainers (not required for each day) comprising prosecutor, investigator and financial investigator.

Materials: Practitioner Manual and Case Studies

Duration: 8 days (but split into 2 or 3 tranches)

Draft programme

Day One

0900 – 0930:
Introductions

0930 – 1100:
Bribery, corruption & economic crime: What are they? An overview of typologies etc.

1100 – 1115: Coffee

1115 – 1300:
Respective roles of investigators & prosecutors. How to ensure enhanced co-ordination between investigator & prosecutor. The risks of investigating/prosecuting corruption cases and ensuring integrity. Common pitfalls in corruption investigations.

1300 – 1400: LUNCH

1400 – 1515:
The international anti-corruption/countering economic crime framework (including UN instruments [UNCAC/UNTOC] and AML initiatives).

1515 – 1530: Coffee

1530 – 1645: The European anti-corruption/countering economic crime framework (including CoE & EU instruments and AML initiatives).

Day Two

0900 – 1030:
Corruption & economic crime: The criminalisation framework in Serbia (to include the elements of each crime and the liability of both natural & legal persons).

1030 – 1100:
Successfully investigating & prosecuting corruption & economic crime cases (I): A checklist.

1100 – 1115: Coffee

1115 – 1300:
Successfully investigating & prosecuting corruption & economic crime cases (II): An overview of the essential pre-conditions and tools. [To include case selection/evaluation and a comparative analysis of good practices].
1300 – 1400: LUNCH

1400 – 1515:
Practical Exercise 1 (international & Serbian national criminalisation frameworks).

1515 – 1530: Coffee

1530 – 1645:
Practical Exercise 2 (role of the investigator/prosecutor and meeting potential challenges)

<u>Day Three</u>

0900 – 1000:
Intelligence capability (including financial intelligence) as a pre-condition to successful anti-corruption/economic crime investigating.

1000 – 1100:
Informants (human sources) as intelligence sources: Key issues for investigators & prosecutors

1100 – 1115: Coffee

1115 – 1215:
Moving from intelligence collection to evidence gathering.

1215 – 1300:
Practical Exercise 3 (Intelligence)

1300 – 1400: LUNCH

1400 – 1445:
Practical Exercise 3 (continued)

1445 – 1530:
Proactive & reactive investigations: Key points to consider

1530 – 1545: Coffee

1545 – 1645:
Formulating an investigative strategy

Day Four

0900 – 1000:
Case management: The Essentials

1000 – 1100:
Reactive investigations: Direct & Indirect Evidence (including documentary evidence and 'books & records' evidence from accounts)

1100 – 1115: Coffee

1115 – 1215:
Reactive investigations: How to assess evidence

1215 – 1300:
Reactive investigations: The process of recording the evidence of a witness

1300 – 1400: LUNCH

1400 – 1445:
The expert witness

1445 – 1530:
The protected witness

1530 – 1545: Coffee

1545 – 1645:
The relationship between 'whistleblowing' and witness protection (esp. as to issues at trial).

Day Five

0900 – 1000:
Reactive Investigations: Financial evidence, including probative material from accounts & audits

1000 – 1100:
Practical exercise 4: A reactive investigation

1100 – 1115: Coffee

1115 – 1300:
Practical exercise 4 (continued; to include exercise 'debrief')

1300 – 1400: LUNCH

1400 – 1515:
Proactive Investigations: The different forms in Serbia and abroad (an overview of UC operations, sting operations, integrity testing and *in flagrante*) and the challenges they present to the investigator & prosecutor

1515 – 1530: Coffee

1530 – 1645:
Special Investigative Means (SIMs): What are the various forms of SIM deployment and what are the legal conditions for each?

Day Six
0900 – 1015:
SIMs and human rights compliance/constitutional challenges.

1015 – 1115:
SIMs, UCs and provocation/entrapment.

1115 – 1130: Coffee

1130 – 1200:
Proactive investigations: Key learning points and guidance on the assessment of proactively/covertly obtained evidence.

1200 – 1300:
Practical exercise 5: Conducting a proactive investigation into corruption and economic criminality

1300 – 1400: LUNCH

1400 – 1515:
Practical exercise 5 (continued, to include debrief): Conducting a proactive investigation into corruption and economic criminality

1515 - 1530: Coffee

1530 – 1645:
Practical exercise 6: Provocation/entrapment (to include debrief)

Day Seven

0900 – 1000:
Financial Investigations as part of a corruption or economic crime case. The purpose, the types of enquiry and the range of potentially probative material.

1000 – 1100:
Tracing assets, looking behind the legal person and identifying beneficiaries.

1100 – 1115: Coffee

1115 – 1200:
Analysis and presentation of financial, accounts-based and business-related evidence.

1200 – 1300:
Practical exercise 7: Gathering, evaluating & presenting financial (including accounts) evidence.

1300 – 1400: LUNCH

1400 – 1445:
Practical exercise 7 (continued, to include debrief)

1445 – 1530:
Temporary seizure/restraint & confiscation in corruption & economic crime cases.

1530 – 1545: Coffee

1545 – 1645:
Sensitive/confidential material & the investigation file: Steps to safeguard confidentiality and secure fairness to the defendant.

Day Eight

0900 – 0930:
International co-operation in corruption & economic crime cases: Overview, different forms of assistance and explanation of terms.

0930 – 1030:
Mutual legal assistance (MLA) and administrative (or, 'informal') assistance: The principles and their practical application in corruption & economic crime cases.

1030 – 1115:
Making requests for financial evidence gathering and asset recovery.

1115 – 1130: Coffee

1130 – 1200:
Writing a letter of request

1200 – 1300:
Extradition requests in corruption & economic crime cases

1300 – 1400: LUNCH

1400 – 1530:
Practical exercise 8: Making a request for evidence gathering to another state.

1530 – 1545: Coffee

1545 – 1645:
Programme conclusions & key learning points.

JUDGES:

TRAINING COURSE ON THE INVESTIGATION & PROSECUTION OF CORRUPTION & ECONOMIC CRIME CASES

Course as above, but with emphasis onn understanding law enforcement and prosecutorial processes, evaluating defence challenges, evaluating direct and indirect evidence and setting out detailed judgments.

Duration: As above, 8 days (but split into 2 or 3 tranches).

Trainers: 4 local (judge, prosecutor, investigator, defence lawyer) plus 3 foreign experts (judge, prosecutor and defence lawyer).

ANNEX

ALTERNATIVE PROPOSAL FOR

THE ADVANCED MULTIDISCIPLINARY TRAININGS

THE ADVANCED MULTIDISCIPLINARY TRAINING A

TRAINING TITLE	Legal framework as a basis for the efficient prosecution of corruption cases
Who Should Attend / Target Group for Train the trainers	Representatives from: Ministry of Justice and Public Administration Ministry of Interior Republic Public Prosecutor's Office, Prosecutor's Office for Organised Crime – prosecutors Supreme Court of Cassation, Appellate courts, Higher Courts– judges Judicial Academy Police Academy
Overview of the training	This training is prepared for future trainers to obtain extensive knowledge of the legal framework specificities and roles of different government agencies in investigating and preventing corruption
Training Requirements	Presenters will be from: Ministry of Justice and Public Administration Supreme Court of Cassation or other Court Republic Prosecutor's Office or Prosecutor's Office for Organized Crime Anti-Corruption Council Anti-Corruption Agency Ministry of Interior – The Counter-Organized Crime Service (SBPOK) Foreign experts
Training materials for the course	Relevant laws including interpretative notes to be available for all participants
Training Duration	2 days
Training Objectives	The participants will learn about:

	1. Legal framework: Law On Accounting And Auditing Law on State Audit Institution Law on Anti-Corruption Agency Criminal Code and the Law on Criminal Procedure – crimes of corruption Law on the Seizure of Property Stemming from Criminal Acts Strategy for the Fight against Corruption 2. The role of the Anti-Corruption Agency State Audit Institution Police Public prosecutor Directorate for Management of the Seized and Confiscated Assets 3. Specific interpretation of the laws and ways to overcome the problems that occur in the practical implementation of the laws (through the case study examples)
Number of participants	10
Location and other Requirements	Internet, each participant to have lap-top and USB

Agenda

	h	Subject Title	Presenter
Day 1			
	1.30	Anti-corruption Strategy and Action Plan	Ministry of Justice and Public Administration
	1.30	Presentation of the legal framework for proceedings of corruption cases – identified problems in the investigation of corruption criminal cases	Republic Prosecutor's Office
Lunch break			
	1.30	The role of the Anti-corruption Agency / scope of work / case study	Anti-corruption Agency
	1.30	The role of the State Audit Institution / scope of work / case study	State Audit Institution
Day 2			
	1.00	The role of internal audit in ministries and public companies	Expert for internal audit
	1.00	The role of the Public Procurement Office in the fight against corruption	Expert for public procurement
	1.00	Hidden money and its transformation	Expert for forensic accounting
Lunch break			
	1.00	Case study	Special / Higher Prosecutor's Office
	1.00	Case study	Higher Court / Appellate Court / Ministry of Justice and Public Administration / Republic Prosecutor's Office
	1.00	Discussion – what's missing for more efficient processing of corruption crime cases	Higher Court / Appellate Court / Ministry of Justice and Public Administration / Republic Prosecutor's Office

THE ADVANCED MULTIDISCIPLINARY TRAINING B

TRAINING TITLE	Available data/source in the Serbian governmental institutions
Who Should Attend / Target Group for Train the trainers	Representatives from: State Audit Institution State Audit Office for IPA programs Anti-Corruption Agency – department for the control of the financing of the political parties Anti-Corruption Agency – department for the control of the assets disclosures of the PEP Ministry of Interior –The Counter-Organized Crime Service (SBPOK) – Units in charge for corruption and financial crime Ministry of Interior – Working Groups
Overview of the training	This training is prepared for future trainers with emphasis on available data/source in the Serbian governmental institutions
Training Requirements	Presenters will be from: National Bank of Serbia Central Securities Depository and Clearing House Administration for the Prevention of Money Laundering Tax Authorities Custom Business Registration Agency Anti-Corruption Council Anti-Corruption Agency Ministry of Interior – SPBOK National experts for related matters
Training materials for the course	List of available data/sources in relevant institutions in Serbia with links List of available data/sources in relevant institutions in EU countries
Training Duration	3 days
Training Objectives	The participants will learn about:

	1. Available data/sources from relevant institutions such as: National bank of Serbia, Central Securities Depository and Clearing House, Administration for the Prevention of Money Laundering, Tax Authorities, Custom Authorities, Business Registration Agency, Anti-Corruption Council, Anti-Corruption Agency, Privatization Agency, Belgrade stock exchange, Real Estate Cadaster, Portal of Serbian Courts 2. Different type of data per institution 3. What kind of request to send to the different institutions 4. Where to find and how to interpret specific data 5. Case studies.
Number of participants	10
Location and other Requirements	Internet, usb and laptop for each participant

Agenda

	h	Subject Title	Presenter
Day 1			
	1.30	National Bank of Serbia – accessible databases	National Bank of Serbia (NBS)
	1.30	Anti-corruption Agency – Databases of the assets disclosures of assets of the high level officials	Anti/corruption Agency
Lunch break			
	1.30	Business Registers Agency – accessible databases	Business Registers Agency
	1.30	Case Study 1 – usage of data available at NBS, Central Securities Depository, Business Registers Agency, Immovable Property Registration Office, court websites	Expert for forensic accounting
Day 2			
	1.30	Privatisation Agency – analysis of accessible data	Privatisation Agency / Expert for privatisation and bankruptcy
	1.30	Central Securities Depository – accessible databases	Central Securities Depository
Lunch break			
	0.30	Case Study 1 NBS, Central Securities Depository, Business Registers Agency, Immovable Property Registration Office, court websites / part II	Expert for forensic accounting / Financial investigator
	1.30	Tax Administration – data and databases	Tax Police

	1.00	Anti-corruption Agency – financing of political parties	Anti-corruption Agency
Day 3			
	1.30	Ministry of Interior – SPBOK – case study	MoI
	1.30	Administration for the Prevention of Money Laundering – data and databases	Administration for the Prevention of Money Laundering
Lunch break			
	3.00	Case study 2 – NBS, Central Securities Depository, Business Registers Agency, Immovable Property Registration Office, court websites	Expert for forensic accounting / Financial investigator

THE ADVANCED MULTIDISCIPLINARY TRAINING C

TRAINING TITLE	Investigation on Financial Crime
Who Should Attend / Target Group for Train the trainers	Representatives from: State Audit Institution State Audit Office for IPA programs Anti-Corruption Agency – department for the control of the financing of the political parties Anti-Corruption Agency – department for the control of the assets disclosures of the politically exposed persons (PEPs) Ministry of Interior –SPBOK, Units dealing with corruption and financial crimes
Overview of the training	This training is prepared for future trainers on financial crime investigations
Training Requirements	Presenters will be: Forensic accountants Accountants Auditors Court experts
Training materials for the course	1. Use of IT technics in prevention and detection of criminal acts 2. Audit planning based on risk 3. Audit of criminal act and forensic accounting 4. Forensic audit
Training Duration	3 days
Training Objectives	The participants will learn about: 1. Different types of financial crime 2. Forensic accounting 3. Interpretation and evaluation of the forensic accounting evidence 4. How to read Financial Statements 5. Red flags in accounting records – corruption cases 6. Process of Audit 7. Different types of Audit Reports, how to interpret them 8. Evidence in the Auditor's Office,

	Management Letter, papers of Audit 9. Practical work on live case – how to read Financial statement and Audit report between numbers and lines
Number of participants	10
Location and other Requirements	Internet Each participant to have lap-top and USB

Agenda

	h	Subject	Presenter
Day 1			
	1.00	Various types of financial crime	Expert for forensic accounting / Financial investigator
	1.00	Business and accounting documentation	Expert for forensic accounting / Financial investigator
	1.00	Red alerts in accounting documentation	Expert for forensic accounting / Financial investigator
Lunch break			
	1.30	Financial reports	Expert for finance reporting / Court expert / Financial investigator
	1.00	How to quote notes from finance reports	Expert for forensic accounting / Financial investigator
	0.30	Case study 1 – reading notes	Expert for forensic accounting / Financial investigator
Day 2			
	1.30	International standards for financial reporting / International accounting standards	Expert for the International standards for finance reporting / Court expert / Financial investigator
	1.00	Basics of forensic accounting	Expert for forensic accounting / Financial investigator
	0.30	Case study 1 – reading notes	Expert for forensic accounting / Financial investigator
Lunch break			
	1.00	Auditing procedure	Expert for audit / authorised auditor
	1.00	Audit reports, letter to managers	Expert for audit / authorised auditor
	1.00	Case study 2 – analysis of relevant	Expert for forensic accounting

		documentation	/ Financial investigator
Day 3			
	1.30	Interpretation and analysis of a forensic report	Court expert
	1.30	State Audit Institution – audit report presentation	State Audit Institution
Lunch break			
	3.00	Case study 3 - analysis of relevant documentation and financial reports	Expert for forensic accounting / Financial investigator