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Technical Paper: Analysis of key preventative anti-corruption policies from a selection of European countries

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Abbreviations

CEE	Central and East Europe
CIVIT	Commission for Evaluation, Transparency and Integrity of Public Administration
DPA	Department for Public Administration
GGAC	Good Governance and Anti-Corruption
GRECO	Group of States Against Corruption
OIV	Independent Performance Evaluation Units
UNCAC	United Nations Convention against Corruption

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Introduction and methodology

The purpose of this paper is to provide an overview and analysis of some of the most important preventive anti-corruption policies from a selection of European countries. The starting point are recently updated Italian policies, framed within a 2012 law, which has generated considerable interest from Tunisian authorities.

The key preventive anti-corruption mechanisms addressed by this law will be compared to solutions found in a number of Central and East European (CEE) countries, with an emphasis on those that have still not joined the European Union.

The purpose of comparison with CEE countries is the similarity of transition challenges which both the Tunisian authorities and their CEE counterparts confront. Post-socialist states have been grappling since the early 1990s with multiple transitions from planned to market economies, from authoritarian to democratic political systems, from cumbersome bureaucracies to efficient modern public administrations. Further, former Yugoslav states in Southeast Europe have had the additional burden of post-conflict reconstruction, and some, of the legacy of corrupt kleptocratic regimes. Most of these states are among the poorest in Europe. In this respect, the challenges are quite different from those in Italy, which has enjoyed more than half a century of stability and development, and which stands as the Euro-zone's third-largest economy and the world's seventh-largest.

Scope of analysis

Preventive anti-corruption measures address a broad variety of issues. Considering only the issues outlined in the United Nations Convention against Corruption (UNCAC) chapter dedicated to prevention (Chapter II), the issues can be summarized as follows:

- implementation of effective, coordinated anticorruption policies
- existence of a body or bodies that prevent corruption
- merit-based human resource management
- promotion of integrity, honesty and responsibility among its public officials
- development of effective public procurement and management of public finances
- transparency in its public administration, including with regard to its organization, functioning and decision-making processes,
- strengthening integrity and to prevent opportunities for corruption among members of the judiciary and prosecution services
- measures preventing corruption involving the private sector
- participation of society in the fight against corruption, and,
- measures to prevent money-laundering.

It is beyond the scope of this paper to address all these issues in depth, and hence the analysis will be restricted to key corruption prevention policies addressed by the new Italian law: anti-corruption institutions, conflict of interest regime, and anti-corruption policies. Analysis will look beyond the legal framework to the process of implementation, highlighting lessons that have emerged during that process.

Methodology

The paper is based on an analysis of existing regulatory frameworks reviewed either directly or drawing on analyses of international organizations such as the Council of Europe/GRECO and the OECD, relevant legislation, and presentations of analysed institutions' web sites. The material also draws on the author's own analysis conducted over more than a decade of engagement on anti-corruption reforms in Central and Eastern Europe and elsewhere around the world.

Unless a specific source for is cited, all errors are the responsibility of the author.

Summary

This paper provides an overview and analysis of some of the most important preventive anti-corruption policies from a selection of European countries. The starting point are recently updated Italian policies, framed within a 2012 law, compared with solutions found in a number of Central and East European (CEE) countries.

The purpose of comparison with CEE countries is the similarity of transition challenges which both the Tunisian authorities and their CEE counterparts confront. Post-socialist states have been grappling since the early 1990s with multiple transitions from planned to market economies, from authoritarian to democratic political systems, from cumbersome bureaucracies to efficient modern public administrations. Further, former Yugoslav states in Southeast Europe have had the additional burden of post-conflict reconstruction, and some, of the legacy of corrupt kleptocratic regimes. Most of these states are among the poorest in Europe. In this respect, the challenges are quite different from those in Italy, which has enjoyed more than half a century of stability and development, and which stands as the Euro-zone's third-largest economy and the world's seventh-largest.

The analysis focuses on three preventive anti-corruption issues addressed by the new Italian law: preventive anti-corruption institutional arrangements, conflict of interest, and corruption risk assessments. This limited selection of themes demonstrates that the Italian law does not aspire to create a comprehensive corruption prevention system and should be not approached as such. The law also does not seek to fully regulate any one of the issues, but rather provides partial solutions, building on and refining an already-existing framework.

Preventive anti-corruption institutions

The 2012 Italian anti-corruption law is often said to have established a National Anti-Corruption Authority. In fact, the law designates an existing institution as such for the purposes of international cooperation, but in fact, another body formerly performed that function and continues to fulfil a number of other, complementary corruption-prevention tasks.

The Italian institutional architecture is complex, with a considerable level of *mainstreaming* of corruption prevention responsibilities. This means that both the development and implementation of such policies are the responsibility of each and every public institution. The approach expands on transparency and quality- and performance-management processes initiated with a 2009 public sector reform initiative, which in turn drew on existing internal audit practices.

The newly designated National Anti-Corruption Authority -- the Commission for Evaluation, Transparency and Integrity of Public Administration (CIVIT) – plays a predominantly advisory and supervisory role. For instance, it monitors compliance and effectiveness of institutions' anti-corruption efforts and advises these bodies on strengthening their efforts. Other central-level bodies perform other complementary supervisory roles (e.g. monitoring asset declarations of public officials) or anti-corruption policy development (e.g. preparing the national anti-corruption plan or defining criteria for job rotation in vulnerable posts).

Central and East European preventive anti-corruption institutional frameworks differ considerably, largely due to the circumstances in which they were established. Compared to West European countries that have been building corruption-prevention systems for decades, the process in the CEE was rather rapid and comprehensive, since new, previously-unknown governance mechanisms had to be instituted at the start of transition from socialism. Hence, in the region one finds many new bodies specializing in specific corruption-prevention issues. One also finds a number of specialized anti-corruption agencies performing multiple corruption-prevention functions (some even in combination with law-enforcement), yet even in these cases, other corruption prevention bodies continue to exist. The overview of the experiences confirms that there is no single *best* model for institutionalizing corruption prevention functions, and each country must construct a unique framework based on its political and economic situation, constitutional framework, legal tradition, administrative capacities, and resources.

If a single lesson is to be distilled from the CEE experience, it concerns the importance of effective oversight. While the form and structure of the various bodies varies depending on the issues they are mandated to address and their level of engagement (e.g. policy development vs. supervisory), the common factor that has contributed to advances on particular corruption-prevention processes is effective institutional oversight, which includes appropriate levels of independence, authority (including sanctioning powers) and resources.

Conflict of interest

For the purposes of this paper, conflicts of interest are segmented into two main types: "structural", which arise by definition when performing simultaneously incompatible functions, and "situational", which arise in specific situations or decisions where a competing private interest appears unpredictably.

The main instruments for preventing and monitoring "structural" conflicts of interest are asset declarations and incompatibilities rules, while guidance for managing "situational" conflicts of interest is often (though not always) framed within codes of conduct. The Italian approach in tackling conflicts of interest is not dissimilar from those of Central and East European countries, although the Italian articulation of the concept of conflict of interest, with the emphasis on the threats posed by both real and *apparent* conflicts of interest, is exemplary. Nevertheless, effectively enforcing provisions particularly on "situational" conflicts of interest remains a challenge everywhere.

Beyond the difficulties in enforcement, a more fundamental challenge to effectively managing conflicts of interest in the CEE but also in many other countries is the broad social acceptance of certain practices that constitute conflicts of interest. Reliable data does not exist, but it is a common practice indeed that officials would extend "favours" to friends, family, or friends of friends such as preferential access to public services for which they are responsible. While a majority of citizens would distinguish between small-value and large-value "favours" and condemn the former, they tend to be unaware of the potentially serious consequences of the latter. Even small-value favours can be costly: preferential access scarce medical treatment for a friend may actually mean the difference between life and death for someone without a "connection". This complex topic deserves to be introduced into and sustained in the public debate.

Corruption Risk Assessments and Response Measures

With the 2012 anti-corruption law, Italy introduced mandatory corruption risk assessments throughout the public sector, and the development of response measures in the form of anti-corruption plans. Corruption prevention plans based on risk assessments is an anti-corruption approach that has been gaining in popularity throughout Central and Eastern Europe, and a number of countries now mandate them of public sector institutions, as Italy has begun to do. The trend reflects a growing recognition that corruption prevention needs to be mainstreamed throughout the public administration and that the fight against corruption is everyone's responsibility, not only the responsibility of dedicated agencies.

Two elements are necessary for corruption risk such approaches to be effective. One, sufficient technical capacity is necessary to carry out the assessments and in particular to define appropriate response measures. Two, the efforts need to have the support of the highest officials in the institutions in order to both to obtain a quality risk analysis and to then implement responses to the identified risks.

Insufficient engagement of institutional leadership with these initiatives has been a challenge for a number of CEE countries, and there have been various attempts to address this shortcoming, including by fining the heads of institutions for delays in the development of corruption risk response plans. The 2012 Italian law extends the approach further by mandating the designation of an institutional Anti-Corruption Manager among its top executives who would then be responsible not only for the elaboration of the anti-corruption plans but also their effectiveness. While this model may not be directly transferable to the Tunisian context, but there should be serious consideration of promoting a sense of ownership of the process from the institutional leadership, as well as the full range of its officials.

1. The Italian law in context

The recent Italian "Anti-Corruption Law", as it is commonly known, is formally entitled Law No. 190 of 6 November 2012 on Measures to Prevent and Suppress Corruption and Illegality in Public Administration. It addresses several key corruption prevention functions, as follows:

- roles of main anti-corruption institutions;
- incompatibilities and conflict of interest regime;
- transparency in public service; and,
- development of anti-corruption policies, particularly through corruption risk management approaches;

The law also addresses some identified deficiencies in criminal legislation, including, importantly, whistleblower protection.

To begin, some general observations about the law should be made.

1.1 Comprehensiveness of issues covered

The first issue to note with regard to the new Italian law does not provide for a comprehensive anti-corruption system that countries must strive to build. Comparing the issues covered by the law with the range of topics included in the prevention-related chapter of the United Nations Convention against Corruption (UNCAC) summarized in the introduction, we see that issues such as merit-based human resource management (Article 7), public procurement and public finances (Article 9), integrity of the judiciary and prosecution services (Article 11), or prevention of money laundering (Article 14) are not addressed at all.

These omissions should not be understood as a shortcoming of the Italian law, however. They are rather a confirmation that the complex character of the fight against corruption, which cannot be framed by a single law. Anti-corruption is a system of laws, practices, and institutions involving a number of sectors and sub-sectors, which needs to be defined through a number of different and complementary policies and formalized through different legal instruments and institutions.

1.2 Comprehensiveness with regard to regulating particular issue areas

In addition, the Italian law does not provide a comprehensive legislative framework for any one of the issues addressed. Instead, it contains amendments for existing legal instruments in order to address gaps or vulnerabilities that have been identified in the existing anti-corruption system. The law, therefore, cannot in itself serve as model legislation to regulate any single issue area. In order to understand and possibly adapt to another country the Italian model of regulating any of the issue areas concerned, one would have to examine the original laws and related sub-legal acts together with the amendments introduced by the 2012 law, along with the complementary institutional architecture that gives full meaning to the policy choices made. This paper aims to provide such a context.

1.3 Response to international evaluation

While the promulgation of the law in question first and foremost seeks to address a growing public concern with corruption,[1] Italian authorities also benefited in their efforts from findings of evaluations carried out by international organizations, particularly the Council of Europe/GRECO.

The initial Joint First and Second Evaluation Round report issued in 2008[2] highlighted a number of important gaps in the Italian anti-corruption system, allowing the authorities to concentrate their efforts on those issues. This is another reason for the partial character of the recent Italian law, which aims to close the identified gaps with sensible modifications of a system already in place, rather than introducing a sweeping and unnecessary restructuring.

1.4 Building on investments to date

As this paper, in the next sections, considers in more detail solutions for gaps within some of the specific issue areas covered by the new law, it will become clear that Italy had already had in place some significant investments in modernizing and promoting efficiency in its public administration, and the proposed solutions seek to take full advantage of those achievements. It is in this context that the law explicitly stipulates that the legislated measures be budget neutral, i.e. that there be no additional costs involved in their implementation.

This ambition must be viewed in context of Italy's investments in its public administration for a number of decades. As already noted, Italy has enjoyed a long period of peace and prosperity, and over the years it has been working on modernising its public administration in line with EU, OECD, and other international standards. In other words, the situation of the Italian public administration is quite advanced despite the identified corruption challenges, hence the anti-corruption reforms framed by the law under consideration are relatively limited. In this respect, the Italian experience stands in stark contrast to Central and East European countries that will also be considered in this paper, which have had to build their anti-corruption system and a number of other modern administrative practices from the foundations.

[1] The OECD report on Italy notes low trust in the ability of the government to curb corruption effectively, with figures of two corruption polls conducted in 2011 showing 64% and 75% of the Italian public considering government action ineffective (Transparency International's Global Corruption Barometer and Eurobarometer, respectively).
OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth, OECD Public Governance Reviews, OECD Publishing, p. 25.

[2] GRECO, Joint First and Second Evaluation Round Evaluation Report on Italy. Greco Eval I/II Rep (2008) 2E, Strasbourg, July 2009.

2. Main corruption-prevention issue areas covered

This section will consider the three main preventive issue areas addressed by the 2012 Italian Anti-Corruption Law in comparison with solutions adopted by select Central and East European countries. It will highlight the contextual issues informing the choices made, as well as the lessons learned in their implementation.

2.1 Preventive anti-corruption institutions

United Nations Convention against Corruption Article 6 calls on countries to

> *ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:*
> *(a) Implementing the policies referred to in article 5 of this Convention [preventive anti-corruption policies] and, where appropriate, overseeing and coordinating the implementation of those policies;*
> *(b) Increasing and disseminating knowledge about the prevention of corruption….*
>
> *3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.*

2.1.1 The Italian institutional model

One of the most important contributions of the new anti-corruption law is the re-definition of a key preventive anti-corruption body: the Commission for Evaluation, Transparency and Integrity of Public Administration (CIVIT), and its designation as the National Anti-Corruption Authority.

The intervention consists not of creating a new agency, but rather of expanding CIVIT's function. It also consists of realigning some of the responsibilities between it and other preventive bodies, in particular the Department of Public Administration within the Ministry of Public Administration.

CIVIT was established in 2009 with a remit focused on performance evaluation, as well as implementation of new transparency standards in the public administration through triennial programmes for transparency and integrity that each state institution was obligated to formulate and implement. It was supported in its mandate by special units (Independent Performance Evaluation Units, OIVs; formerly Internal Control Units[3]) also established within each public institution roughly at the same time.[4]

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[3] OIVs also report to the Supreme Audit Institution, the Court of Auditors. OECD pp. 117-119.

[4] CIVIT's initial functions are defined as follows:

a. to define and disseminate performance-based quantitative and qualitative methodologies, as well as monitoring their implementation;
b. to help administrations in defining outcome-based and customer-focused performance planning;
c. to help to define an effective performance based management cycle;
d. to define the criteria for appointing an Independent Evaluation Body (OIV) within each administration and to oversee their implementation;

With the 2012 law, CIVIT's mandate was expanded to include the following functions:

a. *to cooperate with corresponding international bodies;*
b. *to approve the national Anti-Corruption plan, prepared by the Department for Public Administration, including the guidelines for the public administrations anti-corruption three-year plans;*
c. *to analyse causes and factors of corruption and point out actions to prevent and fight corruption;*
d. *to monitor compliance and effectiveness of public administrations anti-corruption plans and transparency rules….* [by empowering it with] *inspection powers, the power to command the exhibition of documents and the adoption of acts as well as to remove acts and behaviours contrasting with law and with transparency rules;*
e. *to give optional advice to the "State Bodies" and all the public administrations on the compliance of public employees with the code of conduct, contracts and the law;*
f. *to give optional advice to the "State Bodies" and national public bodies on the authorizations for executives to hold external assignments;*
g. *to define code of conduct criteria, guidelines and standard models for specific administrative areas;*
h. *to verify that the removal of the Secretary of a local authority, communicated to CIVIT by* [a] *Prefect* [representatives of the government at a local level], *is not connected to the activities done by the same Secretary with reference to the function of preventing corruption.*[5]

In sum, the new anti-corruption law expanded CIVIT's role to include additional explicit anti-corruption functions to a core of performance monitoring mandate. Its role with regard to corruption prevention is three-fold: analytic (point "c"), advisory (points "e", "f", and "g") and supervisory (points "b", "d", and "h"). CIVIT also serves as the primary contact point for international counterparts in anti-corruption, hence the label "National Anti-Corruption Authority".

There are several issues to note in this context.

- Despite its designation as "the National Anti-Corruption Authority", CIVIT does ***not*** carry ***all*** preventive anti-corruption functions. The designation refers to its role as the contact point for international communication on anti-corruption matters, for instance with GRECO or the Secretary General of the United Nations.

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e. to issue guidelines for the definition of quality standards of public services
f. to issue guidelines for the elaboration of the "triennial programme for transparency and integrity" by public administrations and to monitor their implementation;
g. to issue guidelines for the OIV statement regarding transparency and to monitor their implementation;
h. to orient, coordinate, and supervise the independent exercise of OIVs evaluation functions;
i. to ensure transparency of the results achieved in the performance management system;
j. to monitor the compliance of transparency obligations and the implementation of "total disclosure" principle;
k. to ensure comparability and visibility of performance indicators;
l. to reply to citizens' reports and requests about the compliance of administrations with transparency and integrity obligations

Source: CIVIT web site: http://www.anticorruzione.it

[5] Ibid.

- Indeed, CIVIT is not the only anti-corruption institution in the country, even if considering only preventive functions[6]. In terms of explicit anti-corruption policy development alone, it shares the function with another body – the Department of Public Administration (DPA) – which is responsible for preparing the national anti-corruption plan. CIVIT's role, by contrast, is to approve the plan and monitor its implementation.[7] Taken together, these two institutions would fulfil the requirements specified by UNCAC Articles 5 and 6 on preventive anti-corruption policies and institutions.

- A number of new powers assigned to CIVIT reflect other obligations under UNCAC, including Article 5 (3) on periodically evaluating relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption or Article 6 (1)a on overseeing the implementation of anti-corruption measures.

- Expanding CIVIT's role to include explicit corruption prevention functions builds on existing expertise and experience rather than imposing unrelated new obligations. Monitoring institutions' compliance with transparency rules, which CIVIT has been doing since 2009, is not fundamentally different from monitoring the implementation of anti-corruption plans. With new responsibilities, CIVIT will surely need to develop additional internal technical capacities on anti-corruption issues to fulfil its advisory roles. Even so, the new issues are not so dissimilar from its previous areas of expertise and existing approaches so as to represent a major thematic shift.

- Overall, the interaction of the two preventive anti-corruption bodies (CIVIT and DPA) demonstrates an aim to capitalize on the existing competencies of both bodies, particularly CIVIT's existing supervisory role with regard to the implementation of performance management and transparency requirements.

- The approach of incrementally increasing an institution's mandate is noteworthy, as it may help avoid one of the common challenges observed in a number of anti-corruption institutions. Such agencies are often overwhelmed with new functions that require significantly different capacities than previously. Although at the time of writing of the present paper it is too early to assess how successfully CIVIT has managed to integrate its new responsibilities into the existing work load, the incremental character of the increased mandate does appear like a promising tactic.

- Keeping in mind the last point, reformers considering this – however promising – arrangement as a new model for institutionalizing preventive anti-corruption policy functions, should take heed not to embrace it too soon, before the results are established. Both the "new" CIVIT and the "new" DPA have yet to demonstrate how

[7]In the sense of UNCAC Article 6, other bodies include the Department of Public Administration, Public Service Departments and their Anticorruption Managers, Authority for the Supervision of Public Contracts , among others.

[7] The complementary role of the Department of Public Administration (DPA) was defined as follows:

- Co-ordinates the implementation of anticorruption strategies (national or international)
- Defines (and promotes) rules and methodologies for implementing anticorruption strategies
- Prepares the national anti-corruption plan
- Defines standard models for the collection of data and information
- Defines the rules for job rotation in senior managerial positions exposed to high risks of corruption.

Source: OECD, pp. 55.

effectively they will perform. Even if their previous operations were superb, time will be needed to assess whether this continues to be the case, and whether the institutional arrangements and available resources yield satisfactory results. In other words, it is too early to decide whether this is an institutional model to be emulated, as its good practice is not yet established.

The Italian model stands quite distinct from the institutional arrangements for corruption prevention typically seen in Central and Eastern Europe, which will be considered next. By contrast to the Italian example considered above, the CEE transition context and its inherent challenges may hold some useful lessons from implementation for Tunisian authorities.

2.1.2 CEE institutional models

Perhaps the principal reason for the divergence of institutional arrangements in Italy (and other West European states) and CEE countries stems from the fact that CEE countries embarked on anti-corruption efforts not long after beginning a process of transition to democracy on many levels, including comprehensive administrative overhaul. There was not much in the way of existing institutions that addressed corruption-prevention, nor were existing institutions' capacities sufficient for the new tasks at hand. Hence there was little choice but to create new bodies to fulfil new tasks. Their situation stood in stark contrast to the Italian public administration, which, as noted above, has been in place, stable, and well-resourced for decades, continuously refining its practices in line with European Union, OECD, and other modern standards in public administration. It is certainly far more sensible (and easier) to integrate targeted anti-corruption interventions with existing high capacities and good practices as the Italian authorities have done with the recent anti-corruption law, than to create new agencies.

As for the constellation of preventive anti-corruption bodies, two major trends in CEE countries can be observed: one was to establish specialized independent agencies where most anti-corruption functions would be concentrated[8]; the other was to elaborate distinct bodies for distinct anti-corruption issue areas. Because public administrations were relatively weak and not performing in line modern administrative practices, entrusting the supervision of implementation of various anti-corruption regimes to the existing bodies was impractical. Unlike in Italy, CEE internal audit departments, where they existed at all, were in no way independent nor experienced to do anything other than very basic compliance and financial audits. Evaluation and performance auditing approaches were essentially unknown. In that situation, external oversight provided the only hope that new corruption-prevention standards would be implemented.

The principal preventive issue areas addressed in the early years of reforms tended to be government transparency (access to information) and conflict of interest regimes. There was also a fairly uniform push for the development of anti-corruption policies in the form of national anti-corruption strategies and programs, with implementation plans, in part due to the encouragement and support they received in doing so from the Council of Europe and many

[8] Even within this trend toward a single institution, there were different sub-trends; early efforts in the field such as in Latvia and Lithuania opted for independent agencies (established in 2002 and 2000, respectively), with a mixed prevention and law-enforcement mandate; later, there emerged a seeming preference for bodies focused on prevention, such as in Serbia and Slovenia.

other development partners. This policy development process also required an institutional home, and a number of different approaches were used throughout the region.

Anti-corruption policy development bodies

Unlike in Italy, where anti-corruption policy development is the responsibility of the DPA and the supervision of implementation is entrusted to CIVIT, the CEE countries have pursued different models.

In countries where specialized anti-corruption agencies had been established (e.g. Latvia, Macedonia, Slovenia) those institutions were typically also made responsible for the development of a national strategy or programme for the fight against corruption. (In countries, where the anti-corruption agency had a primarily law-enforcement, rather than preventive, mandate – for instance, Croatia and Lithuania – additional prevention policy departments were established at to undertake that particular task.)[9] As these institutions enjoyed a high degree of independence, they were also typically responsible for monitoring the implementation of the anti-corruption strategies and programs, and issuing periodic public reports on progress.

Other countries without dedicated anti-corruption policy-making institutions (such as Georgia, Montenegro, and Serbia) opted for establishing inter-sectoral working groups to elaborate national strategies. There, management-level representatives of key institutions such as, on the law-enforcement side, police, prosecution and the judiciary, and on the prevention side, Ministries of Finance, Justice, Public Administration, representatives of Tax and Customs authorities, etc., as well as representatives of civil society and media, met regularly, sometimes supported by external experts, to elaborate national programs.

In the two of the instances noted here, Georgia and Serbia, monitoring of implementation of the strategy was not fully resolved, in part due to ongoing discussions about establishing an anti-corruption agency that would assume that function.[10] In the interim, the same or similarly-structured *ad hoc* working groups also continued to monitor implementation.

This approach proved problematic, from two aspects: one, *ad hoc* groups had no permanent Secretariat to ensure proper reporting on progress from institutions with specific obligations arising form the anti-corruption programmes, without which monitoring was compromised; and two, there was concern that managers or even heads of institutions that have obligations arising from the anti-corruption programmes cannot effectively monitor themselves and that therefore, the monitoring had no "teeth".

A contrasting example comes from Montenegro, however. There, despite the existence of a preventive anti-corruption body, the model of an inter-sectoral Commission was nevertheless used for the purposes of drafting and monitoring the implementation of the national anti-corruption programme. It met with the same two concerns noted above, although in response to the second point of the critique, the Commission expanded its composition to include rather outspoken civil society representatives who were quite active in voicing critiques. As a result,

[9] It might be noted that in some cases, for instance Croatia, such an arrangement had ultimately proven inefficient and a different solution was found: a unit was formed under the Ministry of Justice to concern itself with anti-corruption policy formulation (including the national strategy) and other functions such as maintaining contacts with international organization.
[10] In Serbia, an independent Anti-Corruption Agency was ultimately founded in 2010.

the Commission's reporting on the implementation of the anti-corruption programme has included some pointed criticisms of poor performance.

Supervisory bodies

In the absence of independent anti-corruption agencies (and in addition to them), CEE countries' corruption prevention institutional architecture typically includes issue-specific independent supervisory bodies – most commonly commissions – that aim to ensure that state institutions are properly implementing new anti-corruption policies. Two main issue areas that have been addressed in this manner are conflicts of interest and access to information.

The issue of conflict of interest management, including the oversight, will be addressed in detail in section 2.2 below, as it is one of the central concerns of the new Italian anti-corruption law.

Here, the paper will consider two contrasting approaches in establishing supervision for access to information regimes (in Montenegro and Serbia) as an illustration of the challenges to designing effective oversight. The issue of freedom of information/transparency is highlighted only due to its intrinsic importance as a preventive anti-corruption measure, but also because it is one of the core functions of the Italian CIVIT since its establishment in 2009. Overseeing the implementation of public institutions' transparency requirements remains an essential part of CIVIT's mandate even if the issue is not explicitly addressed by the 2012 Anti-Corruption Law.[11]

In contrast to the Italian approach where supervision of the access to information/transparency regime is part of an expanded internal audit function, two main alternative models emerge from practice in the CEE. One approach is exemplified by Montenegro, whereby a Law on Free Access to Information was passed in 2005 designating no supervisory body. Any complaints about an institution's refusal to give access to information could only be filed before a court through standard administrative procedure.

Citizen groups in Montenegro spent many years working against the constraints of this law to obtain information of public importance, particularly on transactions for which there was considerable suspicion of corruption. There were many questions about certain controversial privatization decisions, for instance, as the process had not been transparent. The responsible body refused to make public the contracts and annexes to contracts in question in contravention of the Free Access to Information law. This and many other cases were challenged before the administrative court in processes that sometimes lasted years.

Serbia defined an alternative approach. There, the 2004 Serbian Law on Free Access to Information of Public Importance foresaw the establishment of an independent oversight institution, the Commissioner for Information of Public Importance. While this office itself was very active in issuing decisions on behalf of citizen complaints, a problem remained with the non-enforcement of the Commissioner's decisions by state institutions. Due to the Commissioner's activism, particularly through public reports on institutions' compliance and non-compliance with the institution's rulings and other forms of media outreach, the rate of

[11] In fact, the fact that the transparency/access to information regime is not addressed by the 2012 law suggests that the existing arrangements are functioning well. This is, in part, the reason why CIVIT's role has been further expanded and that the oversight framework on anti-corruption measures follows the model of the transparency framework.

compliance over the years nevertheless rose to satisfactory levels[1] even without formal sanctioning powers.

After year of public frustration and international criticism on this issue, Montenegro amended its Freedom of Information Law in 2012 to introduce an oversight body similar to the Serbian model, which is seen as one of the most successful accountability institutions in the region overall.

These supervisory bodies' placement within the overall preventive anti-corruption institutional framework also deserves a brief reflection.

As mentioned in the previous section, Montenegro has a preventive anti-corruption policy body as well as an inter-sectoral commission to define and supervise the implementation of the national anti-corruption program. There also exists a supervisory commission for overseeing the implementation of conflict of interest rules, and as of 2012, a commission for overseeing access to information regulation. Montenegro does not have a multi-functional anti-corruption agency and that is in part the reason for the existence of the multiple policy-development and oversight bodes. It should be made clear that this situation reflects a deliberate policy choice, rather than a design flaw. For a number of reasons reflecting the national context including administrative capacities and other factors, Montenegro has, for the time being, opted for an institutional structure with multiple bodies performing unique tasks rather than a larger agency with multiple preventive functions.

It should also be made clear that the establishment of larger multi-functional anti-corruption agencies does not necessarily imply that *all* the corruption prevention functions will be centralized. In Serbia, despite the establishment of an independent Anti-Corruption Agency in 2010, the Commissioner for Information continues to carry out its functions. The policy choice here, too, reflects a review of resources and capacities, and a calculation of how to achieve the most positive outcomes.

The sum of the contrasting experiences illustrates one principal lesson with regard to preventive institutional architecture: *there is no single ideal institutional setup to elaborate or supervise the implementation of anti-corruption policies*. Each country responded in the manner considered most efficient considering the existing capacities, resources, and reflecting the level of national priority in connection with the fight against corruption.

2.2 Conflict of interest

2.2.1 The Italian approach

That the new Italian law provides for limited treatment of the issue of conflict of interest. As noted earlier, the law does not aspire to define a comprehensive anti-corruption system, but rather to strengthen existing provisions and close identified gaps.

In fact, until this limited legislative intervention, Italy already had in place a reasonably well developed regime to prevent and manage conflicts of interest, articulated through a number of laws since 1982 as well as codes of conduct for various parts and levels of government.

Collectively, these rules defined two main categories of measures: on one side, asset declarations and incompatibilities, regulated through a number of laws, and on the other side, and a Code of Conduct passed in 2000.

Asset declarations

Elected officials in Italy – MPs and members of Government – have been subject to an asset and income declaration regime elaborated in 1982 (Law 441/1982), which also included immediate family members. A similar set of rules was adopted in 1997 extended to magistrates and managers in public administration. The assets declaration regime required disclosure of assets, sources and level of income at the time of taking up or leaving public office as well as annually, along with information on assets of immediate family members. These declarations were published in official bulletins, which are available to registered voters upon request.[12]

While the 2012 Anti-Corruption Law did not address this regime, a subsequent, 2013 Legislative Decree (No. 33 of 14 March 2013 on Disclosure, Transparency and Dissemination of Administrative Information) consolidated the previous rules into a single disclosure system, which is applicable to members of "political bodies" (Members of Parliament, Ministers at central, regional and local level), as well as holders of executive positions (including consultants).[13] As previously, however, no body was made responsible for routinely verifying these declarations – the possibility of public scrutiny of publicly-available declarations was seen as a sufficient oversight mechanism.[14]

The second set of measures comprising the conflict of interest regime consists of an incompatibilities framework, which address potential "structural" conflicts of interest inherent in public office: interactions with the private sector. Most of the provision in place were defined in a 2004 law, which prohibits government officials from "holding specific types of office or occupying specific kinds of posts, including in profit-making companies or other business undertakings; performing a professional activity of any kind or any work in a self-employed capacity, in an area connected with the government office in question; occupying posts, holding office or performing managerial tasks or other duties in professional societies or associations; and performing any type of public or private sector job." Officials are prohibited from holding management or operational roles in private companies, but there are restrictions on ownership.[15]

The Italian Competition Authority is the institution responsible for verifying the existence of incompatibilities and conflicts of interest and reports to parliament semi-annually.[16] In cases of non-compliance, it has the authority to request the following actions:

- *removal or disqualification from the office or position by the competent body;*
- *suspension of the public or private employment relationship;*
- *suspension or registration in professional roles and registers; and/or,*

[12] GRECO Eval I/II Rep (2008), p. 44.

[13] GRECO, Joint First and Second Evaluation Rounds Addendum to the Compliance Report on Italy, Greco RC-I/II (2011) 1E Addendum, Strasbourg, July 2013, p. 9

[14] GRECO Eval I/II Rep (2008), p. 44.

[15] Ibid., p. 35.

[16] And the Communications Authority is responsible is in cases of official's holdings in or a relationship with the communications sector.

- *imposition of a fine on the private company (proportionate to the pecuniary advantage actually obtained by the company and the seriousness of the violation). If the conflict of interest involves a communication company.*[17]

Further on the structural incompatibilities, the Code of Conduct also prohibits additional employment, though some exceptions can be made on a case by case basis. Civil servants qualifying for early retirement may not be engaged on consultancy contracts with the administration in which they worked a period of 5 years after their departure.[18] A similar prohibition is in place for officials taking sabbaticals.[19] In addition, members of Government are banned from working either in other state institutions of in private sector in fields related to their role in the Government for 12 months after leaving office. This rule does not apply to Members of Parliament, however.

Here too, while the new 2012 law itself did not address the gaps in the incompatibilities rules. A subsequent Legislative Decree (No. 39/2013 of 7 May 2013) introduced additional provisions, as follows:

- *additional non-assignability/incompatibility rules for managerial positions in the public sector (e.g. persons who have been convicted for an offence against public administration – even if the judgment is not final – cannot hold a managerial post in the public sector; incompatibilities between managerial posts in public administration and posts in private entities controlled, regulated or financed by public administration; incompatibilities between managerial public administration posts and political appointments);*
- *sanctions for failure to comply with the aforementioned rules; and*
- [as already noted in the section 2.1.1 above] *a monitoring and advisory role for the Commission for the Evaluation, Transparency and Integrity of Public Administration (CIVIT) concerning conflicts of interest. More particularly, CIVIT is assigned responsibility for ensuring publication requirements and for monitoring any irregularity that may occur in this area, with a view to undertaking any additional measure necessary (be it of a regulatory or any other nature, e.g. development of guidance and counselling).* [20]

Existing Italian regulations likewise provide rules on what could be thought of as "situational" rather than "structural" incompatibilities. This concerns conflicts of interest that arise in specific situations or specific transactions. The 2000 Code of Conduct, states that "public officials are expected to maintain their position of independence by avoiding making decisions or carrying out activities related to his/her duties in situations of real or apparent conflicts of interest (Article 2, Code of Conduct) The public official must refrain from entering into contracts, participating in decisions or activities that may affect his/her own interests or those of relatives or cohabitants, if his/her participation in the adoption of a decision or activity may generate a lack of faith in the independence and impartiality of public

[17] GRECO Eval I/II Rep (2008), p. 35.
[18] GRECO Eval I/II Rep (2008), p. 36.
[19] While managers are permitted maximum 5-year sabbaticals to work in the private sector (or other parts of the administration) in order to gain knowledge and experience, they are prohibited from moving to companies to which they had issued contracts of authorizations, or over which they exercised oversight or supervision, as well as in any cases where the move would compromise the appearance of impartiality of the public administration. GRECO Eval I/II Rep (2008), p. 37.
[20] GRECO Add 2013, p. 9.

administration (Articles 6 and 12, Code of Conduct)."[21] Consistent with this general policy, Italian legislation also prohibits public officials from accepting all but protocol gifts.

This last set of guidelines is extremely important, particularly in its emphasis on both real or *apparent* conflicts of interest, or anything that may "generate a lack of faith in the independence or impartiality of the public administration.".[22] That said, a major shortcoming was identified in a lack of penalties in the law for conflicts of interest. This suggest that, "[p]resumably real sanctions must come with some criminal prosecution for violation of another law". Another serious deficiency was that the "[c]ode of conduct does not apply to everyone who carries out a function within the executive authority"[23].

The 2012 Italian law failed to resolve these gaps. Instead, it specified an obligation of the government to elaborate a new code of conduct for public officials within six months of the law's passage. A new Code of Conduct for Public Officials was indeed adopted in March 2013, extending the scope of coverage to all managerial posts and consultants. It nevertheless still did not apply to elected officials like members of government and parliamentarians. In this respect, the Italian framework for managing conflicts of interest remains incomplete.

2.2.1 CEE approaches

The Italian framework regulating conflict of interest differs considerably from typical institutional solutions in Central and Eastern Europe. Below are some of the most important distinctions.

Throughout the CEE, asset declarations regimes were seen as one of the most important tools to curb prevent corruption as was the definition of incompatibilities, and most countries in the region defined the mechanism through thematic conflict of interest laws. Typically, these laws concentrated on defining the following issues:

- Asset Declarations
  - the scope of officials that would be obligated to declare income and assets;
  - the extent of information that they would be required to provide, including, for instance, on family members;
  - publicity availability of these declarations;
  - method of verification;
  - oversight mechanism; and,
  - penalties for non-compliance.

Asset declaration requirements in CEE typically focused on elected officials (MPs as and holders of executive positions, as well as top manager in the civil service). In some countries, such as Serbia, the distinction was made, on one side, between "appointed positions", which roughly correspond to management positions, and on the other, positions recruited through standard civil service procedures. As in Italy, gaps sometimes occurred with the scope of officials covered by a given law, for instance whether the rules applied both to

[21] GRECO Eval I/II Rep (2008), p. 45.
[22] Ibid., p. 36.
[23] Ibid., p. 45.

parliamentarians and officials of the executive branch, or both the central and local government levels, at least in the initial versions ("first generation") of the laws.[24]

The extent of information provided typically concerned income and assets, and typically also included immediate family members. The controversies that arose from defining asset declaration regimes most typically concerned the public availability the declarations.

At one end of the spectrum were countries that opted to keep the declarations confidential, available for review only to authorized oversight or investigative bodies (e.g. Macedonia). On the other end of the spectrum were countries with maximum transparency, including developing searchable web databases of officials' asset declarations (e.g. Croatia, Georgia, Montenegro, Serbia). There are also in-between solutions, with partial information being public. In exceptional cases, e.g. Slovak Republic, the data bases included the officials' unique personal identification numbers that allowed for cross-referencing with enterprise or land registries, allowing the interested public to check the veracity of the declarations. Such a level of transparency was viewed as a necessary to supplement institutional oversight of the declarations regime (or as a replacement for it altogether, as is the case in Italy) since the supervisory institutions lacked sufficient capacities to undertake actual verifications of the many thousands declarations submitted each year.

No oversight body – regardless of the level of staff and resources – is able to check the veracity of all the officials' asset declarations. As a result, different agencies have opted for different limited approaches ranging from simply verifying that the declarations have been submitted in compliance with the rules (rather than examining the content of the declarations) to verifications of the disclosed information for select groups of officials: for instance, highest level officials, officials in positions most exposed to corruption, and/or a random sample of officials at all levels of government and geographic distribution.

Beyond capacity constraints of the oversight bodies, however, the greatest challenge to asset declaration regimes in the CEE region has been a lack of meaningful sanctions. In most countries, including Macedonia, Montenegro, and Serbia, the most severe penalty that the oversight organ can impose is the public recommendation of dismissal of the official in question. Such a measure is of course meaningless in the case of members of parliament (who do not have superiors to dismiss them), beyond the negative publicity such recommendations can generate. A few countries have attempted to go somewhat further by also specifying financial penalties (e.g. Croatia and Georgia), sometimes in the form of a reduction of salary (Croatia).

Overall, it cannot be said that the asset declaration regimes in CEE countries have proven to be efficient tools in detecting unlawful enrichment of public officials. There is no data available on the extent to which public access to officials' asset declarations has generated verifiable and actionable reports of undeclared assets. In this respect, the regime has much more served the purpose of educating public officials about the responsibilities of public

[24] Nearly all corruption-related laws in CEE have undergone amendments since their initial passage, sometimes rather substantial amendments. One of the contributing factors for this situation was the fact that countries were too quick to adopt "best practices" from other countries without sufficiently considering their applicability in the domestic context. Review mechanisms such as GRECO were essential in identifying the existing shortcomings, and a great deal of technical assistance was provided to revise the regulatory frameworks. At present, most countries in the region are on their second or third "generation" of anti-corruption laws.

office necessity of transparency when assuming the authorities and powers of government functions.

Structural incompatibilities

The range of issues typically covered by related rules include the following:

- the scope of officials subject to incompatibility rules;
- definition of positions or activities that are incompatible with public office;
- oversight mechanisms; and,
- penalties for non-compliance.

In contrast to the assets declarations, definition of incompatibilities and related declarations have had a more robust application in the CEE, for two main reasons. First, functions are more practical to verify than assets, making enforcement more feasible. Second, the restrictions targeted a rather sensitive area and countered the problematic yet common practice of accumulation of functions (with the corresponding accumulation of salaries), with officials in question actually unable to contribute very much to any of the functions in question.

As the incompatibilities rules were typically defined in the same law as asset declarations requirements, and oversight of both regimes was typically assigned to the same institution, with similar powers and constraints. In pursuing cases of incompatibilities which were routinely detected and where, at the same time, there was considerable resistance to comply with the rules, supervisors were particularly hamstrung by the lack of meaningful sanctions (for instance, the futility of recommending dismissal of a member of parliament). Yet with all its difficulties, as with the asset declarations, the implementation of the incompatibilities regime has also had an important awareness-raising component, the value of which should not be underestimated.

"Situational" conflict of interest

Perhaps the biggest difference between the Italian and CEE conflict of interest regimes is the elaboration of the concept as it applies to particular situations. The new Italian law has emphasized the essential notion which has been further codified in the Code of Conduct:

> *public officials are expected to maintain their position of independence by avoiding making decisions or carrying out activities related to his/her duties in situations of real or apparent conflicts of interest (Article 2, Code of Conduct)... [as well as] to refrain from entering into contracts, participating in decisions or activities that may affect his/her own interests or those of relatives or cohabitants, if his/her participation in the adoption of a decision or activity may generate a lack of faith in the independence and impartiality of public administration (Articles 6 and 12, Code of Conduct).* [25]

The emphasis on both apparent or real conflicts of interest, and guidance to refrain from participating in decisions or activities in such situation is essential, and the CEE conflict of interest laws typically omit such definitions and guidance, concentrating instead on structural incompatibilities. Some countries do address situational dilemmas, but lack the emphasis on

[25] GRECO Eval I/II Rep (2008), p. 36.

both apparent and real conflicts of interest.[26] Others begin to address the challenge through codes of conduct for certain professions, or within laws on the civil service, but the standards are far form unified. This is an area that is generally lacking throughout the CEE region. In looking for models, Tunisian officials may be well advised to consider the Italian example as concerns the definitions.

However well defined, the challenge in enforcing "situational" conflict of interest provisions is considerable, however. An external oversight body is unlikely to be able to monitor the millions of interactions undertaken by public officials where conflicts of interests may arise. In Italy, the enforcement of provisions of the 2000 Code of Conduct was entrusted to heads of individual administrative units, but the application was deemed not effective.[27] The 2012 Anti-Corruption Law introduced additional measures to promote implementation: the DPA is now mandated to undertake an annual review of how the codes have been implemented, and CIVIT may issue recommendations on how to improve implementation. As noted elsewhere, with less than a year of implementation underway at the time of writing of this paper, it is too early to evaluate the effectiveness of the Italian approach, but it does at a minimum frame the conflict of interest dilemma appropriately and offers officials clear guidance in conflict of interest situations.

2.3 Corruption Risk Assessments and Response Measures

The final novelty of the Italian 2012 Anti-Corruption Law on corruption preventions that will be addressed by this paper is the introduction of mandatory corruption risk assessments throughout the public sector, and the development of anti-corruption plans.

2.3.1 Italian approach in mainstreaming corruption risk assessments

With the 2012 law, each state institution at both the central and local government level is obligated to review its activities' exposure or vulnerability to corruption, particularly in the following processes:

- licences or permissions,
- selection of contractors and selection method,
- grants, contributions, aid in general, and economic advantages of any kind, and,
- competitive and selective exams.[28]

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[26] The Law on Conflict of Interest of the Republic of Georgia, for instance, frames the rules thus:
1. An official whose obligation within the board agency is to make decisions regarding his/her property or private interests is obliged to inform other members of the board or his/her direct supervisor about it and has to refuse to participate in decision-making.
2. An official whose obligation is to make the sole decision regarding his/her property or other private interest has to declare self-recusal and to inform his/her supervisor (supervisory agency) about this in written form, who has to make an appropriate decision or entrust another official to make the decision.
3. In case of the paragraph 2 of the present Article, an official has a right to sign a decision on a basis of the written permission of his/her direct supervisor (supervising agency) and this has to be underscored in the decision.
Article 11. Available at https://declaration.gov.ge/res/docs/Law_on_Conflict_of_interest.pdf

[27] OECD p. 69.

[28] Ibid., p. 114.

On the basis of these assessments, state institutions must formulate a (rolling) three-year corruption prevention plan to address these risks, which is to be reviewed and updated annually. Anti-corruption plans must contain the following elements:

- *Training, implementation, and control mechanisms in relation to decisions which best avert risks of corruption;*
- *Monitoring procedures for compliance with their time limits, as specified by law or regulations;*
- *The monitoring of relations between the public service organisation and parties which conclude contracts with it or are involved in procedures relating to authorisations, concessions, or the provision of economic benefits of any kind. Such procedures may include verification of any relationships or friendships between the proprietors, shareholders, and employees of those parties and the administrators, directors and employees of the public service body; and,*
- *Specific duties of transparency in addition to those that the Law requires*.[29]

The new anti-corruption law also mandates the rotation of officials in high-risk positions; while the staff rotation provisions are not specified as part of the plan, logically they might well be included therein.

Interestingly, the law prohibits outsourcing of these efforts, placing the responsibility with managers and the institutions themselves.

The law further stipulates for the appointment of an Anti-Corruption Manager in each institution, who is responsible not only for drafting and monitoring the implementation of the corruption prevention plan, but also for the quality of implementation. The position is to be assumed by a senior executive within the organization, as the manager is defined as being "responsible in the event of wrongdoing that tarnishes the image of the public organisation to which he or she belongs, unless it can be established that: i) an anti-corruption plan covering all the requirements set out in the Law was prepared before the offence was committed; and/or that ii) the manager had adequately monitored the compliance and implementation of the plan".[30]

Institutions' three-year anti-corruption plans are forwarded to the Public Service Department (DPA), which monitors their implementation and presumably uses them as inputs into the national anti-corruption plan, which it is responsible for preparing.

Three aspects of this new measure are particularly noteworthy.

- One, the *implementation approach* seeks to maximize its integration into organizational routines by reproducing the same model as the existing transparency obligations. Namely since 2009 with the establishment of CIVIT, state institutions were mandated to develop comparable rolling three year Programmes on Transparency and Integrity, the implementation of which was overseen by CIVIT and Independent Performance Evaluation Units (OIVs) also established at that time.

- Two, while the content of the Anti-Corruption Plans will be novel, the risk assessment/risk management approach builds on existing capacities in performance

[29] Ibid.
[30] Ibid.

management, also implemented since 2009, with the OIVs being ideally competent to provide technical support in applying risk analysis and risk management approaches.

In other words, the Italian solution seeks to consolidate existing investments and capacities and apply them in a more focused way on specific corruption challenges. If successful, by building on existing capacities and processes, the Italian administration will integrate and in so doing *mainstream* anti-corruption efforts throughout the public sector with only a small additional investment in education about specific anti-corruption approaches. The prospect of success of such an approach is far greater than introducing entirely new information (content) and procedures for the first time. In considering adapting the Italian model, Tunisian counterparts would be strongly advised to consider the similarities and differences of the respective starting points, however.

- Three, the mandatory designation of a senior official as the Anti-Corruption Manager and the manager's responsibility for the implementation of the plan seeks to ensure a high-level commitment to the process. Too often, anti-corruption efforts are assigned to small understaffed units with little access to decision-makers. To try to hold such units accountable for implementation is impractical, as they simply lack the means to do so. By contrast, if a top executive is made responsible, performance related to corruption-prevention objectives will be evaluated along side all other institutional performance.

The Italian model in this respect stands quite in contrast to the majority of experiences of CEE, primarily as concerns the first two highlighted points.

2.3.2 CEE experiences

A number of CEE countries have introduced mandatory corruption risk assessments in state institutions, but in a very different context than the Italian one, which impacts the prospects for effectiveness.

The most important issue to consider is the contextual differences in the Italian and CEE administrations. Public administrations of CEE countries did not have modern internal audit capacities at the time of launching anti-corruption reforms: there was no existing experience with risk management methodologies as part of overall performance management practices. In fact, these approaches are still underdeveloped in the region at present, particularly in countries that have not yet joined the EU. In that respect, there was no existing body of knowledge and experience to build on incrementally. Both the concepts and approaches of corruption risk assessments and corresponding anti-corruption plans are new and require time to internalize.

Slovenia is one of the countries in the region at the forefront of promoting risk assessment approaches. The Slovenian anti-corruption agency (Commission for the Prevention of Corruption) was established in 2004 and the obligation for state institutions to develop integrity plans to guide their efforts at the organizational level was introduced at the same time. This amounts to nearly decade of experience with institutional corruption risk management plans (integrity plans). In fact, Slovenia is currently on its "second generation"

methodology for the development of integrity plans having observed a number of weaknesses in the initial approach.

Many other countries in the region have been slower to integrate risk assessment approaches into their anti-corruption efforts, in part due to the above-noted lack of familiarity of these methodologies (due to deficient internal audit systems, among other capacity challenges). This is one of the reasons why anti-corruption efforts have not been effectively "mainstreamed" into routine operations. However, the absence of making institutional leadership responsible for delivering on anti-corruption outcomes appears to be another important factor.

In contrast to Italy's the recently-defined approach of designating an Anti-Corruption Manager among an institution's senior executives, few CEE countries have required the designation of a responsible individual and even fewer had specified the profile of that official. As a result, officials made responsible for anti-corruption efforts within institutions were too often junior officials with no access to decision-makers and no means to compel other colleagues to fulfil their responsibilities. Anti-corruption efforts were "assigned" to marginal units, reflecting the mistaken notion that the fight against corruption is the duty of a few officials within an institution rather than everyone's responsibility, but particularly the responsibility of the leadership.

Not even in Slovenia – the regional leader in promoting risk assessments as a tool for corruption prevention within each state institution and the first to introduce the obligation of conducting corruption risk assessments and response plans for state institutions – is a senior official assigned the responsibility for developing an anti-corruption plan ("integrity plan"), although some executive responsibility is defined indirectly. Namely, heads of institutions ("responsible persons") are liable for financial penalties up to 4,000 EUR if an institutions fails to draft and adopt an integrity plan in the given time frame (Article 86 (5)).[31] Unlike in the new Italian law, no provisions exist in law for assigning an official responsible for the plan's quality implementation, however.

Still, even with the limited results of the corruption risk assessments in terms of reducing corrupt practices in institutions, the Slovenian Commission reminds of other positive consequences – the value added –resulting from applying these approaches: "[m]ost importantly, not only employees of public sector, but also general public are beginning to talk and think about what they – on individual level – can do to strengthen the integrity of individuals as well as institutions, they work in."[32]

The fight against corruption is a long-term process and changes in attitudes of both officials and citizenry are necessary in order to achieve the desired changes. The implementation of approaches such as the risk assessment methodologies – if done in a participatory manner – also raise awareness of the challenges and values that need to be promoted far more effectively than "traditional" public awareness campaigns.

Overall, the approach of integrating anti-corruption approaches into the operations of all state institutions (mainstreaming) is gradually becoming standard good practice even in CEE countries in transition. However, the existing capacity deficits in the public administration –

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[31] Slovenian Integrity and Prevention of Corruption Act 2011. Available at https://www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf

[32] Slovenia Commission for the Prevention of Corruption web site: https://www.kpk-rs.si/en.

coupled with insufficient definition of responsibilities, particularly at the leadership levels – make for very limited and slow progress.

3. Considerations for Tunisia

Tunisian authorities are currently working on all three issue areas covered by this paper, with technical support from international organizations including the Council of Europe. It is the hope of the authors that the comparative review of the Italian and Central and East European experiences noted in this paper will contribute to selecting the most appropriate regulatory solutions for the Tunisian national context. The most essential considerations emerging from the above analysis are summarized below.

3.1 Preventive anti-corruption bodies

As concerns the institutional structures, Tunisia at present divides preventive anti-corruption responsibilities between the Anti-Corruption Authority (Instance nationale de Lutte contre la Corruption, INLUCC) and the State Secretariat for Governance and Public Administration (Secrétariat d'Etat à la gouvernance et à la fonction publique). However, as there are a number of preventive anti-corruption regimes that are in process of development (including conflict of interest provisions, to be discussed in section 3.2 below), either the scope of the bodies' functions or the institutional architecture, or both, are likely to change.

A number of different approaches in institutionalizing preventive anti-corruption functions were presented in section 2.1 above. These were intended to illustrate that many different institutional structures are possible and that different countries' political and economic situations, constitutional frameworks, legal tradition, and administrative capacities (among others) all create diverse contexts that necessitate unique institutional solutions.

While it is beyond the scope of this paper to discuss in depth the full range of considerations in defining the appropriate institutional arrangements for preventive anti-corruption functions, some lessons from the overview should be considered, as follows:

- There is no international obligation to create a single specialized independent anti-corruption agency. UNCAC Article 6 speaks of the "existence of a body or bodies" to prevent corruption. While there exist among certain practitioners a preference for anti-corruption agencies that carry out a number of preventive functions, many such agencies perform disappointingly.[33] Many countries in Central and Eastern Europe, as well as in Western Europe, have opted against that model. There are also examples of existing corruption prevention bodies continuing to operate with marked success even when a specialized anti-corruption agency had been established, and many other preventive functions had been transferred to it (e.g. Serbia). The key is to ensure that there is no duplication of functions and effective coordination, no matter how many bodies perform anti-corruption functions.
- When new corruption-prevention functions need to be assigned an institutional home, it may be most efficient to integrate them within bodies already performing similar

[33] The reason for poor performance of such agencies are multiple and complex. For one relevant discussion on the matter, please see Doig, Alan and Williams, Robert, "Achieving Success and Avoiding Failure in Anti-Corruption Commissions: Developing the Role of Donors", Bergen: Chr. Michelsen Institute (U4 Brief 2007:1), available at http://www.u4.no/publications/achieving-success-and-avoiding-failure-in-anti-corruption-commissions-developing-the-role-of-donors/#sthash.j3LRDa3V.dpuf.

functions, rather than to create new ones, however. A case in point is the Italian CIVIT assuming a supervisory role on anti-corruption issues as an extension of its previous oversight of compliance with transparency obligations and performance monitoring efforts. This may not be always possible however, particularly as many corruption-prevention approaches are likely to be new to the public administration.

- For Central and East European countries, corruption prevention concepts and methodologies were new and considerable time and resources were needed to develop the necessary capacities to apply them throughout the public sector. Tunisian public administration may well experience a similar learning curve, and sufficient support should be provided for the new knowledge to be internalized.
- Transparency – permitting public scrutiny which can uncover wrongdoing – is a necessary form of oversight, but it is not a sufficient one, particularly in countries in transition. While public scrutiny may detect violations of the law, a supervisory authority is needed to act on that information and hold the perpetrators responsible. This is particularly important for violations that *do not* constitute a criminal offence, with most breaches of corruption-prevention regulations belonging in this category.
- There is a great deal of debate on what constitutes "necessary independence" for anti-corruption bodies. This is an important and complex issue that cannot be properly addressed within the scope of this paper save for the following observation from Central and East European experience: levels of independence are correlated with the type of function performed. Research, education and even policy-making functions do not particularly require high levels of independence. Oversight bodies do.

3.2 Conflict of interest

Tunisian authorities are currently drafting a code of ethics for civil servants and asset declaration provisions for higher officials. This paper has sought to demonstrate the several levels that a comprehensive conflict of interest management frameworks needs to address, both "structural" conflicts and "situational" ones. Incompatibilities regimes (most often managed through interests/assets declaration mechanism) have shown to be a useful approach for monitoring the former; standards of conduct have been the most common approach in addressing the latter. The following observations from the Italian and Central and East European experiences may prove useful for the Tunisian authorities as they progress with their work:

- In Central and Eastern Europe, efforts have been concentrated on "structural" conflicts of interest far more than "situational" ones. The latter is equally, if not more important as the former, as public officials with decision-making powers may routinely confront conflict of interest situations in carryout out their responsibilities.
- Creating an effective supervisory framework for codes of ethics, particularly as concerns managing conflicts of interests in concrete situations, is a challenge. International good practices should be carefully analyzed with a view toward the feasibility of implementing these approaches in the unique national context of Tunisia, including its administrative capacities.
- Addressing conflict of interest connects with entrenched social norms far more than many other corruption-prevention measures. Sustained efforts over a longer term may be needed to fully embed the concept of conflict of interest both in the public administration but also in society in general. If Central and Eastern Europe provides

any indication of the situation in Tunisia, the notion of the public interest is likely to be insufficiently understood, and there is likely to be broad cultural acceptance of doing a favour for a relative or a friend, even if it means giving them preferential access to public services. Most citizens would make distinctions between small-value and large-value "favours for friends", condemning the former, but even small value favours, for instance for scarce medical treatment, may mean the difference between life and death for someone without such connections. This is a complex topic that should be introduced in society as ethical codes are being defined for the public administration, and sustained for some considerable period to come.

3.3 Institutional Corruption Risk Assessments

Tunisian authorities are in the process of establishing Good Governance and Anti-Corruption (GGAC) units throughout public sector institutions, to be overseen by the State Secretary for Good Governance and Anti-Corruption. These units, among other tasks, will be responsible for defining measures that reduce vulnerabilities to corruption based on corruption risk assessments. Unlike in Italy, the GGAC units are not linked with the internal audit function. The Tunisian approach, therefore, resembles more the experiences of Central and East European countries, and the lessons emerging from the region are more relevant to the Tunisian national context.

The most important issues to be kept in mind as the development of institutional risk assessment approaches proceeds are as follows:

- The capacity needs of the GGAC units should not be underestimated. Unless the officials already possess high qualifications on modern internal audit techniques, they will need training and continued technical support in applying risk assessment approaches. Even more importantly, they will also need technical support in defining response measures based on the assessment results.
- Beyond technical capacities, the GGAC's executive capacities and authority level should also be considered. One of the greatest challenges in promoting anti-corruption efforts within institutions in the CEE has been the weak position of the units responsible for their implementation, which often lacked the means to compel other parts of the institution to fulfil their responsibilities.
- All countries that have noted some success with various corruption-prevention regimes attribute the positive results to effective oversight above all else. Oversight implies not only supervision of the process, but also accountability for the results. Section 2.1.1 above noted a number of different models for independent oversight bodies, as well as lessons on their most common shortcoming: lack of authority to sanction non-compliance. This common theme should be remembered in connection with creating accountability structures for the implementation of corruption risk assessments and response measures.
- Italy offers an interesting model of designating an Anti-Corruption Manager among the top management of each institution who is accountable for the definition, implementation and performance of anti-corruption measures at the highest institutional level. Instituting a similar level of executive accountability for results would certainly create an incentive to both develop the necessary capacities within the GGAC units, and also ensure that every level of the institution implements the anti-corruption response measures resulting from risk assessments.

- To be effective, risk assessments should be participatory exercises, involving a broad range of stakeholders within each institution. No one knows the potential risks within an institution than its own officials, and the practitioner's perspective on how rules work in practice are essential in complementing any analysis of the legislative framework. An institution's officials are also likely to have invaluable ideas about how to counter those risks, as well as how feasible for implementation proposed responses may be. A participatory approach also has two other significant benefits. One, involving officials in the process of identifying corruption risks (and of course, in identifying response measures) fosters a sense of ownership of the resulting reform measures, increasing the likelihood of their effective implementation in contrast to reforms that appear imposed from the outside. Two, the participatory exercise raises awareness within the institution far more effectively than any awareness campaign about the risks and damaging effects of corruption as well as the role of every member of the institution in the fight against corruption.

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