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STRENGTHENING ANTI-CORRUPTION POLICIES AND PRACTICES IN TURKEY (TYSAP)

TECHNICAL PAPER

Corruption Investigations by Inspection Bodies: International Standards on Investigations, Including Coordination and Information Sharing

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A. Summary

Purpose of the Paper

This Technical Paper serves the purpose of identifying **international standards** that are relevant to internal corruption investigations carried out by inspection boards (Project Activity 2).

The rather general international standards do not provide by itself enough detail for extrapolating an investigation guide from them (top-down approach). On the other hand, there are several manuals for prosecutors and general auditors from which the relevant topics of an investigation guide can be derived. However, such an investigation guide also depends on how inspection boards see their role and function in the future. Thus, it is suggested that the beneficiaries of the TYSAP Project decide for each topic of the investigation guide which direction it should take according to their needs and visions (bottom-up approach). Once this direction is taken, the **investigation guide** could be drafted (Project Activity 5).

In other words: a decision on the structure and direction of the future investigation guide is a prerequisite and starting point for Project Activity 5.

Terminology

Compared to **criminal** investigations, (administrative) investigations by **inspection** boards have a narrower range of evidence and compulsory measures, but, as internal procedures, have a more direct access to the evidence at hands and pursue a broader aim than sanctions.

International Standards

Inspection boards are yet rather a blind spot on the map of international anti-corruption **standards**, as far as corruption investigations are concerned. More international standards can be found on (criminal) investigations that are rather common place. On a more technical and practical level, though, there are several international handbooks and manuals for prosecutors and investigators on corruption and economic crime; they can be a source for drafting an investigation guide, but need to be adapted to the particularities of inspection boards.

Investigation Guide

For developing the "**Investigation Guide** for Inspection Boards", a wide range of issues needs to be considered. This Technical Paper contains a list of such issues and questions drawn from above mentioned sources. It can be used as a starting point for the working group(s) that will support the drafting process of the Investigation Guide.

B. Terminology: investigations

Investigations are a careful search or examination in order to discover and establish the facts and evidence regarding a specific incident.¹ They may be administrative, disciplinary, or criminal. They are technically a procedure or measure aiming to ensure the collection of information/evidence in relation to the materiality of (alleged or intended) facts.

Investigations...

- ...rather focus on establishing what happened than on compliance with regulations

- ...follow up on concrete incidents

Administrative investigations...

- ...follow up only on concrete suspicions

- ...have a broader aim than only sanctions

- ...focus not only on personal responsibility, but also on organisational shortcomings

- ...use mostly internal evidence

- ...are informal and formal

Disciplinary investigations...

- ...follow up only on a concrete suspicion

- ...aim at sanctions

- ...focus on personal (disciplinary) responsibility

- ...use internal and external evidence

- ...are rather formal

Criminal investigations...

- ...follow up on a concrete suspicion

- ...aim at sanctions

- ...focus on personal (criminal) responsibility

- ...use all evidence but need to establish access to admin-internal evidence

- ...are formal

Inspection Boards in Turkey are involved in all three above kinds of investigations.

¹ <http://www.collinsdictionary.com/dictionary/english/investigation>.

C. International standards, organisations and resources on investigations

1. Conventions

Probably because investigation of corruption offences is ultimately of law enforcement and judicial nature, the UNCAC articles on investigations do not specifically mention internal inspection boards, but nonetheless concern also administrative and other investigations of inspection boards in the following instances:

- The balance between discretionary powers and effectiveness of law enforcement measures as well as the need for deterrence (Art. 30);
- Protection of persons (whistleblowers) who report corruption offences (Art. 33);
- Existence of specialised authorities, their independence and protection from undue influence, resources and training (Art. 36 UNCAC and Art. 20 CETS No 173);
- Cooperation with law enforcement authorities and special defences/effective regret (Art. 37).

Article 13. Participation of society

[...]2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 36. Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Article 37. Cooperation with law enforcement authorities

- 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*
- 2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*
- 3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

4. *Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*
5. *Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

In addition, Article 13 para. 1 is also relevant for inspection boards:

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;*
- (b) Ensuring that the public has effective access to information; [...]*
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - (i) For respect of the rights or reputations of others;*
 - (ii) For the protection of national security or ordre public or of public health or morals.**

The Council of Europe Criminal Law Convention on Corruption² (CETS No 173) also makes a brief reference:

Article 20 – Specialised authorities

Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

a. Information sharing and coordination

The Conventions make general reference to the necessity of information sharing without giving concrete recommendations on how to achieve this aim:

CoE Criminal Law Convention – Article 21 – Co-operation with and between national authorities
Each Party shall adopt such measures as may be necessary to ensure that public authorities, as well as any public official, co-operate, in accordance with national law, with those of its authorities responsible for investigating and prosecuting criminal offences:

² <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>.

a by informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the criminal offences established in accordance with Articles 2 to 14 has been committed, or

b by providing, upon request, to the latter authorities all necessary information.

UNCAC – Article 38. Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

There is also a brief reference in the Study “Institutions against Corruption: A Comparative Study of the National Anti-Corruption Strategies Reflected by GRECO’s First Evaluation Round”³ in the Chapter on “Intra-administrative co-operation” to the need for “a quick and precise flow of information”, the risk from “a lack of coordination and an insufficient flow of information between tax and finance bodies on the one side and criminal prosecution authorities on the other” and the need of a proportionate “duty to report one’s suspicion of corruption”.

2. Professional organisations

Leaving aside international organisations that cover audit and inspection functions of inspection boards (such as INTOSAI), in particular the following organisations cover the law enforcement side of investigations. They do not provide specific information or standards on corruption investigations, though:

- The Consultative Council of European Prosecutors (CCPE) was established within the Council of Europe in 2005. This consultative body to the Committee of Ministers composed of high level prosecutors of all member States has in particular the task to prepare opinions for the Committee of Ministers on issues related to the prosecution service, to promote the implementation of Recommendation Rec(2000)19, and to collect information about the functioning of prosecution services in Europe.⁴
- The EUROJUST⁵ is a European Union body established in 2002 to stimulate and improve the co-ordination of investigations and prosecutions among the competent judicial authorities of the European Union Member States when they deal with serious cross-border and organised crime.
- The International Association of Prosecutors (IAP)⁶ is the worldwide organization of prosecutors and acts as an International Community of Prosecutors committed to setting and raising standards of professional conduct and ethics for Prosecutors worldwide; promoting the rule of law, fairness, impartiality and respect for human rights and improving international co-operation to combat crime.

³ By Albin Eser and Michael Kubiciel, 2005, page 81.

⁴ http://www.coe.int/t/DGHL/cooperation/ccpe/default_en.asp. European conferences for public prosecutors or prosecutors general have been periodically organised since 2000 by the Council of Europe.

⁵ <http://eurojust.europa.eu/Pages/home.aspx>

⁶ www.iap-association.org/

- The Southeast European Prosecutors Advisory Group (SEEPAG)⁷ is an international mechanism of judicial cooperation, formed by the countries of the SEE region (including Turkey) with an express intention of facilitating judicial cooperation in significant trans-border crime investigations and cases.
- The International Police Association is an independent body made up of members of the police service, whether on active duty or retired, and without distinction as to rank, sex, race, colour, language or religion. Its purpose is to create bonds of friendship and to promote international co-operation.⁸

3. Handbooks

The thematically closest and most concrete guidance is provided in handbooks on corruption investigations which are drafted for law enforcement agencies but still contain valid substance for inspection boards as well. The handbooks provide an overview of international standards in the field of criminal liability for corruption and good practice regarding the role of investigators and prosecutors in pursuing corruption offences. They also present methods that can be used for corruption-related investigations. These methods are provided for each stage of the investigation (and prosecution), from initiating the proceedings and qualification of offences to gathering evidence, laying charges and presenting the case. Special attention is given to the use of special investigative techniques and financial investigations. The handbooks describe in detail how to achieve best results during corruption investigations in particular in the following situations:

- What are the elements of the offences I need to investigate?
- What trails of evidence does a corruption offence possibly leave?
- What trails does money leave while being moved around in a corrupt way?
- How can I obtain information on the financial status of a suspect beyond the traditional means, such as account statements?
- How do I elicit best information out of witnesses?
- How to get information from confidential sources, such as informants?

Council of Europe:

- CARPO-Project, Training Manual *on* Financial Investigations (2006), 39 pages, www.coe.int/t/dghl/cooperation/economiccrime/specialfiles/CARPO-ManualFinInv_eng.pdf

Without including the basic topics of civil law, company law, tax law, etc., which are necessary for conducting the investigation of economic crime, this manual consists of two parts (a general and a specific one). The general part contains a comprehensive description, the elements of integrated financial investigations and the international standards applicable in the field of confiscation of proceeds from crime, financial investigations and international cooperation. In addition, there is a part dedicated to the question of the reversal of burden of proof. The specific part of the training manual contains relevant legal provisions and practical specifics to each project area, in view of properly guiding financial investigations.

- PACA-Project, Guidebook to Corruption and Financial Crimes Investigation (2010), 327 pages, http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/Albania/guidebook_en.asp

⁷ <http://www.seepag.info/>

⁸ <http://www.ipa-iac.org/newsDetails.php?newsId=87>.

Drafted by the Office of Overseas Prosecutorial Development and Training (OPDAT) in collaboration with the European Union and Council of Europe Joint Project against Corruption in Albania (PACA), this manual provides a detailed elaboration of the following issues: role of the prosecutor, registration of a criminal case, witnesses, informants and witness protection, special investigative techniques, financial investigation, money laundering and asset forfeiture, banks and banking transactions, criminal liability of legal persons and trial steps. It also includes a list of 16 relevant annexes.

- Eastern Partnership-Project, Investigating and Prosecuting International Corruption and Money Laundering Cases (2013), 185 pages, not yet published
This handbook's structure and topics are similar to that of the PACA-Project. It focuses mostly on rather international issues but contains a few chapters relevant for national investigations (elements of crime of corruption offences, financial investigations, case exercise).

UNODC:

- "The United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators" (2004), 219 pages,
<http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>

This handbook includes an introduction concerning the United Convention against Corruption, 15 chapters and a case study in the annex. Respective chapters refer to the following issues: the Role of the Prosecutor and the Investigator, definitions of corruption, preconditions for successful investigations, detecting corruption, gathering and use of evidence, informants, witnesses and their protection, whistleblower protection, financial investigations, electronic surveillance, undercover operations, integrity testing, international judicial cooperation, extradition, mutual legal assistance and recovery of assets.

OECD:

- Investigation and Prosecution of Corruption Offences: Materials for the Training Course (2012), 118 pages,
www.oecd.org/corruption/acn/mainactivities/TrainingManualcorruptionoffences2012EN.pdf

The manual consists of the following main parts and topics: International standards and Ukrainian laws on investigation and prosecution of corruption (corruption offences, principles of prosecution and investigation of corruption cases); Practical guidelines for investigation and prosecution of corruption in Ukraine (instituting criminal proceedings, qualification of criminal offences, gathering and use of evidence, laying charges, presenting and supporting the case in court, international cooperation); Methodology and description of the training course for teachers (training methodology, evaluation, lectures, practical exercises); and CD Rom with training materials for students and for teachers.

- Seminar Proceeds, Effective Means of Investigation and Prosecution of Corruption (2010), 132 pages
www.oecd.org/corruption/acn/47588859.pdf

This manual includes under 5 main topics the proceedings of an expert seminar held on this issue in 2010 in Romania: effective means to detect and investigate corruption crimes, prosecution of corruption, selected key corruption offences, independence and specialisation of police and prosecutors, effective asset forfeiture – from tracing to effective confiscation. It also includes the results of two working groups on effective means to gather evidence in corruption cases and laying charges and defending corruption cases in court.

USA:

- Department of Justice, Financial Investigations Guide (1998), 72 pages, www.justice.gov/criminal/afmls/pubs/pdf/fininvguide.pdf

This guide serves as a Financial Investigation Checklist covering the following main topics and types of information tools: databases – Government law enforcement, databases – commercial, public records, other records, banks and financial institutions, securities and commodities brokerage firms, net worth, model subpoena language, debriefing informants.

4. Projects

Turkey is probably one of the first countries to focus an anti-corruption project mainly on inspection boards in public administration with the potential of setting an example in this area. Thus, little experience can be drawn from the experience of other projects. However, in the private business area, internal audit units are the main drivers for fighting corruption. Several auditing firms offer advice on how to investigate and detect corruption through internal audits.⁹

⁹ See for example Ernst&Young: <http://www.ey.com/US/en/Services/Assurance/Fraud-Investigation---Dispute-Services/Bribery-and-Corruption--Monitoring>;

Deloitte: http://www.deloitte.com/view/en_GB/uk/services/audit/enterprise-risk-services/services/financial-crime/anti-bribery-and-corruption/index.htm;

KPMG: <http://www.kpmg.com/AU/en/topics/Anti-Bribery-Corruption/Pages/Default.aspx>;

PwC: <http://www.pwc.com/gx/en/forensic-accounting-dispute-consulting-services/pdf/pwc-confronting-corruption.pdf>.

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D. Possible issues of an investigation guide

The following is a suggested structure of a future investigation guide to be drafted under Project Activity 5. For each topic, it is suggested, that the beneficiaries of TYSAP Project should decide which direction the investigation guide should take according to their needs and visions on inspection boards. Once this direction is taken, the investigation guide could be drafted step by step (Project Activity 5). In addition, the drafting of the investigation guide will probably give cause to reflect the legislative framework (see Annex E; see also Project Activity 1).

In other words: a decision on the structure and direction of the future investigation guide is a prerequisite and starting point for the drafting process. The structure is of course only a first starting point and can or should be modified following further review.

The future investigation guide will

- enhance capacities of inspection boards to detect and investigate corruption,
- serve as a practical guideline,
- serve as a training manual,
 - o may use simulated inspection scenarios for training purposes,
 - o may contain a short summary or quick guide,
 - o may make use of international case studies for comparison,
- may translate theory into practice by illustrating abstract guidelines with practical real life examples of inspection boards.

The following is a suggested structure. Questions under the headlines illustrate the points that need to be clarified in particular; once a direction is taken on those questions, an investigation guide could be drafted step by step.

1. Scope

On what concrete regulations/violations should the guide focus?

1.1. Corruption

Criminal offences:

- What criminal offences should the investigation guide include (bribery, abuse of office, etc.)?
- Or should the focus be broader and include offences such as forgery and falsification of documents?

Non-criminal violations:

- Conflicts of interests,
- Incompatibility,
- Nepotism and favouritism,
- Irregular political finance,
- Other (for example asset declaration obligations, procurement law, abusive use of computer data, etc.)

1.2. Economic crime

What economic crime (embezzlement, fraud, offences related to customs, taxes, etc.) should be included?

1.3. Corruption relevant regulations and standards

Possible issues could be:

- Documentation
- Discretion
- Segregation of job duties
- Signature policies
- Supervision
- Transparency
- Asset declarations
- Ethical codes

2. Aim

What is the aim of the guide?

2.1. Detection

Detecting individual violations of the regulations defined under chapter 1 "Scope". Enquiries into individual violations seek to compare a particular instance (e.g. a licence awarded or not awarded) with the legal and procedural requirements relating to that instance.

2.2. Prevention

Inspections will have a preventive effect in particular if they are carried out on a random basis. In this regard, their objective would rather be to identify vulnerabilities of the organisation and relevant causes. An important consequence of this is that organisational inspections may yield not only findings on violations and recommendations for sanctions against violators, but also recommendations for changes in procedures, rules and laws.

2.3. Other

2.3.1. Preparing reform measures

Inspections could identify reform needs – organisational or regulatory issues for example.

2.3.2. Identifying training needs

Inspections could identify training needs of certain staff or units.

2.3.3. Supporting human resource management

Inspections could identify staff who are honest and trustworthy, which can be credited for promotions or who are prone to corrupt practices.

3. Principles and standards

Legality; ethics and independence; competence and expertise; professional judgment; fairness, objectivity and evidence-based findings; confidentiality; transparency; etc.

4. Trigger

What types of events and people could trigger an inspection?

Concerning people and entities, the inspection or audit may be undertaken following:

- The specific periodic Work Plan as already approved by the inspection board;
- A specific order of the senior management or supervision authority in the hierarchy;
- A request received from another public authority.

In addition, at least inspections may be also triggered by complaints, reports or information that is received by third parties (citizens, business, media sources, etc.)

4.1. Random inspections

4.1.1. Objective

Random inspections would be important to expose the whole public administration to an inspection and not only those that “call” for it through a concrete suspicion.

4.1.2. Selection criteria

How are the objects of random inspections chosen? Some indicative criteria may be as following:

- Definition of strategy/tasks;
- Accountability environment (existence and clarity of procedures, definition of duties and responsibilities, allocation of responsibilities, discretion, accountability mechanisms, disciplinary procedures and sanctions);
- Frequent changes in the structure (staff turnover);
- Transparency environment;
- Financial importance (size of budget, type and breakdown of budget expenditure);
- Size and complexity;
- Ethics infrastructure (Ethics and Integrity Framework);
- Public perceptions/legitimacy;
- Information from other institutions; etc.

4.1.2.1. Typical risk areas (procurement, human resources, etc.)

How are risk areas identified?

4.1.2.2. Divisions with high spending

How are those areas identified?

4.1.2.3. New management

New management could be a risk of non-compliance with regulations.

4.1.2.4. Frequency of public contacts

Public contacts are a corruption risk, and a risk of external ethical misconduct.

4.1.2.5. Number of internal or external complaints

Are statistics on those complaints properly collected and reported so they can be used as a basis? (This is also relevant for Project Activity 6)

4.1.2.6. Lottery

Some inspections could/should be based on pure lottery in order to avoid blind spots on the map and in order to achieve full deterrence.

4.1.3. Inspection plan

Random inspections should follow an annual/biannual/semi-annual plan.

4.1.4. Documentation

How is the inspection plan documented? What does it contain?

4.1.5. Transparency

Is the inspection plan public to all officials, to the management, to the public?
What policy has to be maintained with media interest and requests for information?

4.2. Targeted investigations

Inspections cannot only be random but need to follow concrete leads.

4.2.1. Notification by other authorities and units

Which are the authorities and units (in the same ministry or in other levels of public authorities) which would typically make a notification? Are they obliged to make a notification?

4.2.2. Assignment by other authorities

The public prosecutor is one relevant authority – are there others? What are the conditions of the assignment?

4.2.3. Red flags

Red flags would be a key component of the investigation guide – they would sensitize inspectors on corruption risks and on typical “symptoms” of a corruption violation.

4.2.4. Internal complaints

Are they sufficiently regulated? Are there statistics on them? Are there (counter-) incentives for internal complaints? Do employees know about this option?

4.2.5. External complaints

Are they sufficiently regulated? Are there statistics on them? Are there (counter-) incentives for internal complaints? Does the public know about this option?

4.2.6. Media reports

Who follows up on them? Is the decision to not follow-up sufficiently substantiated and documented?

4.2.7. Confidential tips

Is there an opportunity for such tips? How does it look technically? Can/must inspectors and prosecutors assure confidentiality of the source of information, of the subject matter of the case and documents/pieces of evidence already collected? Can they follow-up on such tips?

4.2.8. Anonymous tips

Is there an opportunity for such tips? How does it look technically? Can/must inspectors and prosecutors follow-up on such tips or are they a forbidden trigger for investigations (as is the case in some countries)?

4.2.9. Whistle-blowers

Are they sufficiently protected? Are there (counter-) incentives for whistle-blowers?

4.3. Obligation to start inspections

Is there an obligation to start inspection? How can discretion be reasonably limited?

5. Opening procedure

5.1. Decision process

Who decides on random and targeted inspections? Who can take initiative?

5.2. Delegation of authority

In what situations cases are forwarded to other relevant authorities for further proceedings?

5.3. Work in teams

Practice to act in teams of not less than 2 inspectors.

5.4. Joint inspections

What modalities can be used or are already in place to carry out joint investigations (composed of a mixed team of inspectors coming from different inspection bodies or by assigning external experts who may join the team)?

5.5. Open procedures

How and when is the inspection communicated to the targeted unit?

5.6. Covert procedures

Should this option exist (the targeted unit or some of its employees are not informed about the inspection)?

6. Random inspections

What guidelines do random inspections need to follow?

6.1. Checklists

6.1.1. General

What corruption risks exist for all sectors in public administration (e.g. conflict of interest, procurement, etc.)? Collecting money, writing tender specifications and spending public funds, issuing licenses and authorisations.

6.1.2. Sector specific

What corruption risks exist only in specific sectors in public administration? (e.g. medical staff charging night shifts that did actually not take place (health sector); embassies issuing visas for bribes (ministry of foreign affairs), etc.)

6.2. Red flags

Here, the investigation guide should provide a list of all red flags that exist in general to raise a first suspicion and that should require a deeper look into the matter.

6.3. Automated detection programs

Some auditing firms have developed IT that automatically detects fraud patterns in electronic data. Such patterns could be inconclusive numbers in (fake) invoices etc.:

"Suspicious transaction analysis – Automated detection programs

It is possible to discover indicators of fraud within an organisation's financial records, even where there is no prior suspicion. Usually, such indicators are obscured within the millions of items of valid data held in those records. Manual testing is rarely an effective or efficient solution, and hardly the job of time-pressed management or external auditors.

Some of the more useful tests are as follows:

Employee and payroll tests

- payroll payments with no tax deducted*
- employees receiving excessive overtime as a proportion of total salary*
- payroll payments to employees prior to hire date or after termination date*
- unusual dates of birth. [...]"¹⁰*

7. Targeted investigations

7.1. Investigative strategy

The investigation guide would need to lay out some strategic aspects for any investigation. What methodology for optimising the fact-finding and fact-searching processes and tools? Process mapping of procedures or acts under focus and determination of documents, items and sources of information to be obtained. Content of an inspection plan and methodology to be used.

7.2. Collecting evidence

What evidence can inspectors use? Can they check the lifestyle of a public official? Can they ask private (third) parties for voluntary evidence? Do they have access to state databases (asset declarations, tax declarations, public registers, etc.)?

7.2.1. Documents and other evidential items

7.2.2. Interviews

How are they to be conducted? What location and time for interviews? Traps to avoid: indirect evidence, collection of opinions, interviewing people together. Taking and recording statements. Checklist for assessing the credibility and accuracy of statements. Checklist for the structure/outline of an interview.

Modalities and needed checklist for interviewing anonymous sources.

¹⁰ www.pwc.com.au/consulting/assets/risk-controls/Fraud-Control-Jul08.pdf.

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7.2.3. State databases

7.2.4. Private databases

7.2.5. Internet search

7.2.6. Observations

7.3. Status of staff under suspicion or affected by the inspection

Does any employee under suspicion has the right to remain silent? Is there a need to inform the employee about his/her rights? At what time? Can he/she request a counsel to be present? Fairness, objectivity and tools when interviewing persons under suspicion.

7.4. Assessing the collected information

Management and assessment of the obtained information (not necessarily the source). Checklist for assessment purposes. Tools for the relevance and reliability of facts.

7.5. Writing reports

Inspection protocol (preliminary inspection report), submission, collection of comments and eventual objections, processing responses and drafting the final inspection report. Reference to reporting standards (TYSAP-Activity 6)

8. Integrity testing

Integrity tests are realistic scenarios such as the offering of cash from a citizen, but played by undercover officers.¹¹ There are two types of tests:

- **targeted** tests aim at specific officials, whenever intelligence exists providing indications that the official or his/her unit is corrupt or has committed other ethical violations. Such intelligence could be previous allegations by citizens, criminals or colleagues, or inexplicable wealth of the official.
- **random** tests aim at a random sample of officers. All officials are aware that such a program exists, but are not told about the frequency or occurrence of such tests. No official knows whether or not a bribe offer made to him/her is an integrity test.

Integrity testing can also focus merely on ethical issues, such as service mentality of officials or on compliance with internal regulations. It is both a tool for law enforcement, but also used by internal inspections/supervision units. It has proved to be successful in some environments with weak integrity and would be recommended for sectors with a reported systemic occurrence of bribery and other ethical violations.¹²

Since 1994, the New York City Police Department has conducted integrity tests within the following framework¹³:

¹¹ The following text is largely based on the Council of Europe Technical Paper ECCU-BO-MD-2/2012, http://www.coe.md/index.php?option=com_content&view=article&id=342%3Aanti-corr-law-coe-opinion&catid=40%3Apress-releases-&Itemid=55&lang=en.

¹² See: OSCE, Best practices in combating corruption, 2004 (English, Russian and Azerbaijani), p. 141 (English version), www.osce.org/eea/13738.

¹³ The following text is based on the OSCE, Best practices in combating corruption, 2004 (English and Russian), Chapter 12, page 142-144 ("Integrity testing"); Chapter 6 ("Building an ethical administration"), www.osce.org/eea/13738.

- Any ethical violation can be an objective of the testing: bribery, service mentality, police brutality, discrimination, etc.;
- Realistic scenarios such as the offering of cash from an arrested drug dealer, but played by officers of the integrity unit;
- Integrity tests are recorded using audio and video electronic surveillance as well as the placement of witnesses at the scene;
- Targeted tests: these aim at specific officers who are suspected of corruption, based upon previous allegations by citizens, criminals or colleagues;
- Random tests: aimed at a random selection of officers;
- All officers are aware that such a program exists, but are not told about the frequency or occurrence of such tests;
- No police officer can know whether or not a corrupt offer is an integrity test.

The integrity tests have had the following impact so far:

- Officers believe that it is better to be safe and to report the incident, instead of overlooking it or accepting the bribe offer;
- About 20% of the officers who were tested based on previous suspicions failed the test, and were prosecuted and removed from the force;
- Only 1% of the officers who are subjected to random tests fail.

The objectives of integrity testing are:¹⁴

- Identifying public officials, agencies and citizens prone to corrupt practices;
- Collecting evidence for prosecution;
- Increasing the perceived risk of detection and thus deter corruption among officials and citizens;
- Encouraging officials to follow on their obligation of reporting bribe offerings (as any offer could be an integrity test);
- Identifying public officials who are honest and trustworthy, which can be credited for promotions;
- Identifying the training needs of public officials, i.e. patterns of misconduct which could go back on a lack of awareness for ethical challenges;
- Showing to the public that government is serious about prosecuting corruption.

The integrity tests were run under the monitoring of the Commission to Combat Police Corruption (CCPC). The CCPC was created based upon the 1994 recommendations of the "Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department" (the "Mollen Commission"). The study of the "Mollen Commission" found that the New

¹⁴ The following text is based on "The United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators" (2004), pages 91-97, www.unodc.org/pdf/corruption/publications_handbook_prosecutors.pdf.

York City Police Department (NYPD) has undergone alternating cycles of corruption and reform. The CCPC evaluated the program of random integrity testing in December 1996 and came to the following conclusion:

"The Commission conducted an earlier study and issued this report with respect to random integrity tests. In that report, the Commission reviewed the random integrity testing program and found it to be a positive attempt to enhance integrity within the Department. While the Commission found it difficult to determine the deterrent effects of the program, it believes that simply having such a policy creates a sense of IAB (Internal Affairs Bureau) omnipotence that is likely to have some deterrent effect. The Commission recommended that the Department continue to conduct significant numbers of integrity tests but that it should focus on the targeted tests rather than random tests. Further, the Commission advised the Department to aim for more realistic scenarios in its targeted testing, increase the complexity in its random tests and utilize such tests whenever there is some level of suspicion of improper conduct."¹⁵

Random integrity tests are still run as of today.¹⁶ Whereas information on targeted and random tests is not fully public, the Commission has published an instructive summary.¹⁷

There is no scientific evidence yet, whether integrity testing will lead to a change in ethical attitudes. It seems however that it certainly changes ethical behaviour:

"In the 1970's, ABC News conducted an integrity test in Miami, where 31 wallets containing money and identification were turned over by role players to 31 police officers. Nine of the officers kept the money and were subsequently fired and/or prosecuted. Thirty years later, ABC News replicated the integrity test in Los Angeles and in New York. Twenty wallets containing money and identification were turned in to officers of the LAPD [Los Angeles Police Department] and another twenty were turned in to officers of the NYPD. All forty wallets were recovered by the officers without a single penny missing. It is unclear if the officers have become more ethical over the past three decades, or if they suspected the wallets was simply bait being offered in some type of sting operation."

Overall, integrity testing is an extremely effective and cost-efficient deterrent to corruption. However, any real crackdown on bribery as well as on other ethical violations would dry out sources of income that normally run from ordinary policemen up to the highest officials. Application of integrity testing is in this regard a litmus test for the willingness to seriously change the course. In order to avoid abuse for personal gain or against political opponents, the unit carrying out the tests must be of the highest integrity itself.

In this context, it might be worth reflecting, to what extent inspection boards in Turkey might want and could make use of this tool taking into consideration necessary adaptations and the possible law enforcement nature of integrity tests.

9. Documentation and case management

Unified guidelines for the documentation of the findings by the inspection board are important (relevant also for Project Activity 6).

9.1. Scope

9.2. Means

¹⁵ New York City Commission to Combat Police Corruption, The New York City Police Department Random Integrity Testing Program (December 1996), <http://www.nyc.gov/html/ccpc/html/reports/reports.shtml#study9>; see also: The Performance Study: the Internal Affairs Bureau's Integrity Testing Program (March 2000), www.nyc.gov/html/ccpc/downloads/pdf/iab_integrity_testing_program_march2000.pdf.

¹⁶ Fighting Police Corruption: An Interview with Charles Campisi, 13 April 2011,

<http://iipdigital.usembassy.gov/st/english/publication/2011/04/20110413141428atina0.4637676.html#axzz2FJtJBkFP>.

¹⁷ The Performance Study: the Internal Affairs Bureau's Integrity Testing Program (March 2000), www.nyc.gov/html/ccpc/downloads/pdf/iab_integrity_testing_program_march2000.pdf.

9.2.1. Paper

9.2.2. Electronic/databases

9.2.3. Security and integrity of collected and exchanged information

10. Confidentiality

How is confidentiality of the procedure and of its findings ensured? Are there any sanctions? Should there be other sanctions?

11. Results of investigation

11.1. Reporting

What should a standard checklist for reporting look like? Should there be one or more templates for reporting? Would there be specific electronic means for reporting (such as a protected intra- or internet website)?

11.1.1. Internally

Which entities need to be informed?

- Individuals that are mentioned in the findings
- Direct superior or human resources
- Head of agency
- Ethics commission and/or the internal audit body of the agency
- Press department
- etc.

11.1.2. To PMIB

11.1.3. To public

Will all inspection reports be public? Will there be an annual overall report?
To what extent should inspection reports and documents subject to freedom of information?

11.2. Communication with other agencies

When should suspicions and findings be reported to law enforcement agencies?
What other entities need to be informed (court of auditors, relevant ministries such as Ministry of Finance etc.)?

11.2.1. Obligation to report

When should inspections boards be obliged to report a suspicion or any finding?

- Disciplinary violations
- Ethical violations

- Criminal violations
- Tax offences
- Financial mismanagement
- etc.

11.2.2. Means of data exchange

How are suspicions and findings reported?

11.3. Who decides on end of investigations

How is the decision to terminate an investigation (successfully or without results) documented and by whom is it signed?

12. Corruption risks within inspection boards

12.1. Tipping off

How are tips from inside inspection boards to subjects of inspections avoided? What incentives and sanctions exist?

12.2. Conflicts of interest

As inspection boards are located within the public administration – should there be a wider or narrower regulation on conflicts of interest?

13. Role of PMIB

What is the role of the PMIB in this process? Is it informed on all inspections and on all suspicions? When and how? Can it take on any investigation? Can it inspect inspections (super-inspections)?

14. Inspection findings and recommendations

What is the weight of findings and recommendations issued by inspection boards?

15. Implementation monitoring and Follow-up

Determination of responsible authorities and individuals for the implementation. What happens in case of insufficient or lack of implementation?

Are there indicators that serve to assess quantitative and qualitative investigation capacities and outcome including but not limited to?

- Investigation-to-prosecution ratio,
- Investigation to conviction ratio,
- Cases dismissed or people acquitted due to: incompetent or poor investigation, procedural flaws, lack of evidence,
- Case processing trends and level of enforcement in relation to findings and recommendations.

16. General cooperation

Cross-sector, inter-agency, inter-disciplinary and transnational forms of cooperation, knowledge and data exchange, including exchange of good practices, standards, experiences and lessons learnt.

E. Legislative areas of concern

The following is a first list of legislative areas that would need review whether they provide a sufficient framework for the content of the investigation guide:

D.1	Do legislation and bylaws cover a broad scope of investigations by inspection boards?
D.3	Require general principles and standards regulation?
D.4.	Who regulates the triggers for inspections boards? The legislator or a directive by PMIB or directives in each ministry/agency?
D.4.2.1	Are other authorities and units (possibly in the same ministry) sufficiently obliged to notify inspection boards?
D.4.2.2	Is the assignment of investigations clearly regulated?
D.4.2.4	Internal complaints: Do we need improvement of the regulation?
D.4.2.7	Can inspection boards assure confidentiality to informants?
D.4.2.8	Can inspection boards follow up on anonymous tips?
D.4.2.9	Are whistleblowers sufficiently protected?
D.4.3.	Obligation to start inspections: Does this need a legislative basis or is an internal decree sufficient?
D.5.4.	What are legal or regulatory possibilities to carry out joint inspections or involve third experts?
D.5.6.	Are covert procedures covered by current law?
D.6.3.	Would automated detection programs be covered by labour law/data protection?
D.7.2. and 7.3	Is there a legal limit on the internal or external evidence inspection boards can use? May inspection boards receive requests/complaints from third parties (external to public sphere)?
D.7.4.	What does the legislation say on the rights and status of staff under suspicion or affected by the inspection?
D.8	Would integrity tests be covered by the current legal framework (data protection, privacy, labour law, fair trial, etc.)? Is there a difference between targeted and random tests?
D.10	Are legal provisions sufficient on confidentiality of inspections?
D.11.1.1	Can inspection boards report on concrete employees to HR, either with positive or negative feedback? What would be the rights of the employees in this case?
D.11.1.2.	Is a legal basis necessary for reporting to the public?
D.11.1.3	To what extent are inspection reports and documents subject to freedom of information?
D.11.2.	What are the obligations for communication with other agencies? Where is more clarity needed?
D.12.1. and 12.2	Are conflicts of interest of inspectors sufficiently regulated? Are there enough regulatory incentives for safeguarding confidentiality?
D.14	Do regulations need to support the weight of findings and recommendations issued by inspection boards?

D.15	Do regulations support monitoring of implementation? Do they need to foresee something in case of insufficient or lack of implementation?
D.16	Would regulations be necessary for general cooperation?