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Programme against Corruption and Organised Crime in South-eastern Europe (PACO)
Implementation of Anti-corruption Plans in South-east Europe (Impact)

Policy paper: Advice on the Relevant Anti-corruption Bodies

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Table of Content

1	INTRODUCTION.....	3
2	RECOMMENDATIONS AND CONCLUSIONS	3
2.1	ANTI – CORRUPTION AGENCY.....	3
2.2	REVISING ANTI – CORRUPTION STRATEGY AND ACTION PLAN	4
3	THE WAY FORWARD	5
4	ANNEX I: LIST OF PARTICIPANTS	6

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The views expressed in this technical paper are solely those of the experts' one and do not necessarily reflect official positions of the Council of Europe

1 INTRODUCTION

The second PACO Impact¹ activity in Bosnia and Herzegovina, a one-day discussion meeting on best practices and models of anti-corruption services, took place in Sarajevo on 23 February 2005 in the Council of Europe office. The purpose of the workshop was as follows:

- a) Present different models and international best practices of anti-corruption agencies to help BiH's policy-makers make an informed decision on the model suitable for their needs;
- b) Present lessons learned from different anti-corruption agencies from the SEE countries, namely Slovenia and Croatia;
- c) Get an update and discuss issues surrounding creation of BiH's future anti-corruption agency (roles and tasks, financial and political independence, etc.);
- d) Get an update and discuss the coming revision of the anti-corruption strategy and the action plan (integral part of the PRSP document).

The outcome of the workshop, which involved a wide variety of BiH agencies and the Council of Europe experts (see list of participants), is presented below.

2 RECOMMENDATIONS AND CONCLUSIONS

2.1 ANTI – CORRUPTION AGENCY

Policy-makers should take into account the following issues and lessons learned when considering establishment of an anti – corruption body in BiH:

- The needs and capacity of Bosnia and Herzegovina in fighting corruption

In this respect, it is important to take into account BiH's commitments to international treaties, conventions, and political agreements (Council of Europe and Greco, UN, and EU) and balance it with domestic financial and institutional constraints. An appropriate balance between repressive and preventive aspects of fighting corruption; financial security and sustainability on an anti-corruption agency; and financial and political independence should be carefully thought through as they are key to any future success of the anti-corruption body.

- The difference between preventive and repressive anti-corruption agencies

The lessons from the region and elsewhere suggest that specialized repressive anti-corruption bodies are appropriate only when the public trust in police and prosecutors has severely deteriorated because of institutional corruption and the inability to deal with serious crime. Only such a context could justify the difficulties repressive anti –corruption

¹ The PACO Impact Project is funded by the Swedish International Development Agency (Sida) and is implemented by the Council of Europe. It targets the countries of the South east Europe - Albania, Bosnia & Herzegovina, Croatia, "the Former Yugoslav Republic of Macedonia" Serbia and Montenegro (including Kosovo). The project, which is running from March 2004 until February 2006, aims at assisting countries design and/or improve anti-corruption strategies/plans and implement aspects of it as identified by the countries in agreement with Council of Europe.

agencies experience in their work, such as is isolation from the regular police and prosecutors offices and a high cost of oversight mechanisms necessary to control special authority vested in such an agency (e.g., use of special investigative means, privileged financial and institutional position). BiH has only recently reformed its judicial and prosecutorial system and is currently embarking on reforming the police system. Public and other support is required if the reforms are to show positive results. Creating a specialized repressive agency in these circumstances would work to undermine such support.

- Role of Preventive Anti-Corruption Agency

Preventive anti – corruption agencies are characteristic for countries in transition. The anti-corruption policy-making and advisory service to the government is their primary role, which often includes tasks of devising and monitoring anti – corruption strategy while relying on a wider consultative involvement of other governmental and non - governmental agencies, including the public.

To successfully perform this role, the preventive anti-corruption agency would need to comply with the following criteria:

1. Financial independency (adequate budgetary financing)
2. Political independency (accountability to the parliament, appointment of leadership and choice of personnel based on merit and/or nominated by a special commission)
3. Provide a regulation by law so to prevent arbitrary decisions and/or abolishment by the government

- Role of the other agencies in the process of establishing anti-corruption body

An establishment of BiH's anti-corruption body would benefit from a wider consultative process on securing the independence by drawing on experience of other independent agencies, namely the Ombudsman and the state's and entity's audit office.

The Council of Europe would provide expert guidance and expert opinion on any anti-corruption draft laws, including a draft law on anti-corruption body.

- Collaboration between Ministry of Security and Economic Policy Planning Unit regarding new anti-corruption body

The Ministry of Security, which has a lead on establishing future anti – corruption body, and the Economic Policy Planning Unit, which is currently in charge of monitoring and revising BiH's anti-corruption strategy, should be closely collaborating and building on previous anti-corruption efforts, while preserving institutional memory in order to secure success of a possible new agency.

2.2 REVISING ANTI – CORRUPTION STRATEGY AND ACTION PLAN

- Broadening the input into revised anti - corruption strategy and action plan

The anti–corruption policy in BiH has so far been focusing on establishing legislative framework and repressive measures. The EPPU and the Participants have recognized that this initial approach needs to be broadened and deepened in order to balance out repressive aspects with preventive and educational aspects of fighting corruption, as well

as to facilitate a more effective implementation process. A wider contribution to revising the current anti-corruption strategy and action – plan of other agencies is thus necessary and welcome by the EPPU. Law enforcement and other agencies such as tax and customs administration, supreme audit offices (entity and state), Ombudsman offices (entity and state), Election Commission, and the civil society (Transparency International and others), would help achieve these objectives and make anti – corruption measure more specific and custom-tailored for BiH's context. In this respect the following next steps have been agreed by the Participants:

3 THE WAY FORWARD

- Council of Europe to deliver the list of the participants of the Workshop with contact details to the EPPU by 26 February 2005.
- EPPU will send a letter to all institutions that have been represented at the workshop, including the Election Commission, Ombudsman offices (both state and entity level), and audit offices (both state and entity level), inviting their written suggestions for a draft revised strategy and action plan by 4 March 2005.
- The written feedback should be submitted to EPPU (contact person Mr. Elmedin Topcagic) by 31 March 2005.
- Upon revising the strategy and action plan as per suggestions, the EPPU will provide the relevant institutions with a draft document that will serve as basis for a public discussion to finalize it.
- Council of Europe will also provide a written feedback and assist BiH partners in facilitating and organizing a public discussion meeting to discuss a draft revised anti-corruption strategy and an action plan. The meeting, tentatively planned for May 2005, will involve the relevant stakeholders and Council of Europe experts.

4 ANNEX I: LIST OF PARTICIPANTS

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SARAJEVO, 23 FEBRUARY 2005
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