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Implementation of Anti-corruption Plans in South-east Europe (Impact)

Policy paper: Implementing and Monitoring Future Anti-corruption Efforts

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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

This first PACO Impact¹ activity in Bosnia and Herzegovina, a one-day discussion meeting, took place in Sarajevo on 7 December 2004 in the Council of Europe office. The purpose of the discussion meeting was to identify the needs and areas of possible assistance to BiH institutions in two subjects: a) improvement of BiH's anti-corruption strategy and the action plan; and b) provision of guidance and assistance on EU standards and international best practices in preventing and controlling corruption in devising institutional mechanisms for monitoring and evaluating the implementation of anti-corruption reforms.

The discussion meeting was facilitated by Council of Europe's experts, Ms. Vera Devine and Ms. Kristina Hemon. The BiH institutions represented at the meeting were: Ministry of Security, State Investigation and Protection Agency (SIPA), Council of Ministers, BiH Prosecutors' Office, Ministry of Justice of FBiH and Republika Srpska (RS), Ministry of Interior of FBiH and Republika Srpska. BiH GRECO Delegation members, RS Prosecutor' Office, Prosecutor's Office of Brčko District, RS Tax Administration, Transparency International, and the Canadian International Development Agency (CIDA) and OSCE as observers (see full list of participants in Appendix 1).

2 CURRENT STATE OF AFFAIRS

2.1 ANTI-CORRUPTION STRATEGY AND ACTION PLAN

The 'Strategy for Combating Crime and Corruption' has been adopted in March 2004 by the Council of Ministers as an integral part of the BiH Medium Term Development Strategy (Poverty Reduction Strategy Paper-PRSP) which outlines medium-term economic development goals and relevant institutional and legal reforms to achieve the set economic and governance goal in the framework of future EU integration². The Anti-Corruption strategy is largely a descriptive document which outlines the broader concerns about good governance and repression of corruption through investigation and prosecution, while strengthening the judiciary and law enforcement agencies. The other two important parts of the fight against corruption – prevention and public education – are not adequately elaborated and envisioned in the action plan. Only a fully integrated approach to these three aspects of anti-corruption efforts can bring positive and sustainable changes, as demonstrated by international best practices. The document also closely links corruption with growing poverty in BiH and briefly sets out objectives of reforming the public administration and improving the fiscal system, and improving transparency in the privatization process.

The action plan that complements the strategy broadly outlines legislative reforms in the relevant sectors, clearly identifies the institutions in charge of devising the reforms, and provides timelines for their implementation. The action plan, however, does not identify risks and indicators of success that would serve to monitor the implementation of the anti-corruption reforms and evaluate their impact.

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.

² It was preceded by the Interim Poverty Reduction Strategy paper (I-PRSP), adopted in 2002, also containing a chapter on corruption (<http://www.eppu.ba/>)

2.2 MONITORING

The PRSP Unit, an integral part of the state government's Economic Planning and Policy Unit (EPPU), has coordinated the creation of the strategy and the subsequent action plan in close collaboration with the relevant stakeholders (both governmental and non-governmental agencies), and is currently in charge of monitoring the implementation of the overall PRSP strategy. The EPPU currently employs nine people who, amongst their other tasks, monitors all the sectors outlined in the PRSP strategy, and submits interim reports on the implementation progress to the government.

This complex task is accomplished in close collaboration with over twenty working groups covering different reform sectors, such as justice sector and public administration. The working groups actively participate in defining the action plan and assessing the implementation of the set reforms. Their membership is composed of civil servants from the relevant ministries and NGO representatives where relevant.

The most recent interim report was presented to the government in December 2004, assessing the progress made between August 2003 and November 2004 – the first year of the PRSP strategy.³ The interim reports will serve as basis for a discussion of the revision of the PSRS Strategy and its action plans in March 2005, a process which aims at setting new priorities and further reforms and measures to be taken.

The monitoring process in its current form is focused on tracking the passing of legislative reforms outlined in the action plan. The risks involved in passing the reforms are not identified and a deeper evaluation of the quality of the implementation and the impact that the reforms may have made is presently not done. Such a limited approach to monitoring and evaluating the anti-corruption strategy implementation may have been appropriate for the first phase focusing largely on legislative reforms. In terms of ability to present relevant statistical, BiH statistical agencies have a low institutional capacity necessary to collect and process governance related data, which will in the future place greater demands and challenges to successful monitoring and evaluation.

2.3 THE NEXT PHASE

The first year of the PRSP strategy implementation has been driven by BiH's desire to fulfil EU Commission's sixteen recommendations as a requirement for negotiating the Stabilization and Association Agreement. The recommendations concerning Justice and Home Affairs sector have thus produced significant improvements of BiH criminal justice sector in the past year, namely the criminal legislation adhering to EU and international standards and new law enforcement institutions at the state level charged with fighting serious and organized crime.

The new Ministry of Security and the State Investigation and Protection Agency (SIPA) have been recently created aiming at strengthening and consolidating institutional efforts against organized crime and corruption. Given their importance, these newly established institutions are a subject to much of international donors focus and assistance. Given the Ministry of Security's authority to lead anti-corruption efforts, efforts to strengthen its capacity in this regard are currently being explored. Talks between German donor and the Ministry of Security on technical assistance project to establish a specialized anti-corruption body on the state level are currently underway.

³ The interim report is available in local language at <http://www.eppu.ba>.

In year 2005, the process of EU integration is likely to intensify introducing new demands of a Stabilization and Association Agreement on domestic institutions in terms of the implementation of EU standards and practices. In addition to this, BiH's membership in the Council of Europe and its bodies will bring about the second GRECO assessment in 2005, which will be assessing the implementation of anti-corruption legislation. In the second year, BiH's anti-corruption reforms in are thus likely to move beyond legislative reforms and encompass deeper measures that tackle daily implementation of the new laws and fine-tuning institutions and their operations. To continue as successfully, BiH will need to adjust accordingly its tools for monitoring and evaluating its anti-corruption measures.

3 ISSUES AND RECOMMENDATIONS

3.1 ISSUES TO BE ADDRESSED

It is to be expected that in the second year, the anti-corruption strategy would focus on the implementation of laws and on improving the institutions so they are able to effectively implement the new legislation. Such different goals need to be reflected in both the strategy and in an action plan. The evaluation of the efforts taken in the second year would also need to be adjusted accordingly so to ensure an adequate policy-making process that goes beyond merely noting the accomplishments on paper.

The upcoming review of the anti-corruption strategy and the anti-corruption action plan set for March 2005 offers a unique opportunity for improving the anti-corruption policy to further boost EU integration efforts and the upcoming second evaluation by GRECO by:

Balancing between prevention, repression, and public education for sustainable results against corruption.

The adequate balancing of the three aspects of fighting corruption has been proven effective in the international practice and able to produce lasting positive impact against corruption. The Repressions call for adequate criminal legislation and law enforcement system able to investigate and prosecute corruption; the Prevention calls for tailor made regulations and institutional checks and balances so to prevent corrupt acts from occurring (codes of ethics, transparent and efficient administrative procedures, etc.); while the Public Education calls for close collaboration between the government and the public and civil society in order to build credibility of government's anti-corruption reforms as well as earn in trust and support in their implementation.

Delineating between measures focusing on good governance and specific anti-corruption measures.

Measures of good governance are broader and may involve reform of many sectors in a transition country like BiH. On the other hand, design of specific preventive anti-corruption measures requires looking deeply into a system (health, education, procurement, privatization, etc.) to uncover opportunities for corruption that is offered in the system and remove them by reforming procedures and introducing controlling mechanisms able to uncover and penalize those who breach the rules.

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Defining indicators of success and risks involved in the implementation.

Indicators of success are tools used to measure whether the progress is made. Risk indicators serve to identify anticipated impediments to a successful implementation of reforms. They thus contribute to a greater transparency and accountability in strategy implementation. Both constitute crucial tools in planning and monitoring of reforms.

Improving the monitoring and evaluation of the anti-corruption strategy and action plan while actively involving major anti-corruption stakeholders in the process

Effective monitoring and evaluation is key to anti-corruption policy making as it allows for learning and adjustment to achieve set objectives; and offers opportunity for involvement of major stakeholders, civil society and the public in supporting anti-corruption reforms.

3.2 RECOMMENDATIONS

In view of this, it is suggested that the basis for action for Council of Europe (PACO Impact) could be to directly assist the review process by organizing a two day discussion meeting in February 2005 and offer assistance in the following manner:

Provide advice on particular issues with the strategy, such as balancing between prevention, repression, and public education for sustainable results against corruption, by reviewing best international practices.

Provide advice on particular issues with the action plan, such as a clear identification of risk factors in order to be able to anticipate eventual impediments and challenges and thus adequately contribute to their resolution in an accountable and transparent manner; and indicators of success that facilitate a clear display of elements constituting a successfully implemented reform.

Provide advice on delineating between reforms focusing on good governance and specific anti-corruption reforms in order to make anti-corruption measures more effective and custom designed for specific needs of BiH's institutions.

Provide advice on monitoring and evaluation of the strategy and action plan while sharing international best practices and the way ahead with particular view to:

Existing plans for the establishment of an anti-corruption agency

Evaluating existing monitoring structures and processes currently relying on working groups that both devise the action plan and later evaluate its implementation

Active involvement of major stakeholders, who implement and practice the reformed legislation and other measures on daily basis, in the monitoring and evaluation process (such as Ombudsman, Auditor's Offices, Election Commission etc.), as they will be able to testify to successes and challenges in the practical implementation and point to bottlenecks that need to be addressed if the reforms are to take any deeper roots in BiH society.

Improving transparency of the process, and expanding the engagement and the consultation with the public.

Provide examples of different models of anti-corruption agencies operating in the EU and elsewhere and facilitate discussion on pros and cons of each model.

4 CONCLUSION

Participants agreed that the Council of Europe should inform anti – corruption policy-makers and stakeholders about best international and EU practices and lessons learned in designing and later monitoring and evaluating anti-corruption efforts. The Council of Europe's assistance to BiH should contain models of existing anti-corruption agencies in the EU and examples of their legislative and organizational set up and practice, in order to help BiH policy-makers and institutions make an informed decision about a way ahead.

In addition, Council of Europe shall also prepare an expert opinion on the current anti-corruption strategy and an action plan as basis for the discussion meeting, if requested by BiH authorities.

The proposed assistance would be best provided in the form of a two day discussion meeting to be held in February 2005 in order to help the March 2005 revision process in a timely manner. The workshop would thus serve to aid and facilitate an accountable, transparent, and open discussion on improving future anti-corruption reforms in BiH. The meeting would involve all the major stakeholders involved in the fight against corruption.

5 ANNEX I: LIST OF PARTICIPANTS

LIST OF PARTICIPANTS
 WORKSHOP ON POLICY DISCUSSION REGARDING THE ANTI-CORRUPTION
 EFFORTS: COORDINATION AND MONITORING

SARAJEVO, 7 DECEMBER 2004

NAME AND POSITION	INSTITUTION
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Implementation of National Anti-corruption Plans in SEE (PACO Impact)

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