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

Expert Opinion
during the Workshop of
Prevention and Public Awareness Issues of the
National Anti-corruption Strategy for Serbia

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The views expressed in this technical report are solely those of the expert and do not necessarily reflect official positions of the Council of Europe

1 INTRODUCTION AND BACKGROUND

For the purpose of this two-day workshop the consultant was required to carry out the following tasks:

- review of the current draft outline of the Anti-corruption measures that have been drawn so far and provide comments;
- work along with the core working group and other representatives from different government institutions, tasked on drafting the new anti-corruption strategy and action plan on anti corruption measures;
- identify necessary areas where guidelines need to be drawn in order to better design the preventive measures;
- advise and provide in writing the standardised guidelines of preventive measures and public awareness measures that ought to be taken into consideration during the drafting of the Anti-corruption strategy and action plan; and
- with the assistance of the Council of Europe Secretariat, finalise any written material that should be prepared during and after this activity.

Prior to the workshop the consultant considered the following documents and background information:

- a draft document from the Serbian Ministry of Justice entitled “National Strategy Against Corruption of Republic of Serbia”, consisting of a number of chapter and section headings;
- a list of items for discussion provided by the Working Group of the Anti-Corruption Council of Serbia on the subjects of Prevention and Raising Public Awareness;
- the programme of the workshop;
- a survey by the Center for Policy Studies entitled “Public Perception of Corruption”;
- a study by the Center for Liberal-Democratic Studies entitled “Corruption in Serbia”;
- the SPAI General Assessment Report for FRY/Serbia;
- a document of the Serbian Ministry of Finance and Economy entitled “Anti-Corruption Initiatives – Project Proposals”;
- a Transparency International Serbia paper by Professor Aleksandar Fatic entitled “A GRECO Paper – Corruption and Anti-Corruption Policy in Serbia”;
- the SPAI Final Report entitled “Self-Evaluation and Peer Review of Implementation of the SPAI Seven Immediate Actions - Republic of Serbia”.

1.1 THE WORKSHOP

Over two days participants discussed matters set out in the workshop programme. In particular members of the Working Group charged with drafting the national anti-corruption strategy raised with the consultant matters they would be addressing when drafting the strategy. The subjects of prevention and public education were the focus of particular attention. A note on these subjects is a part of this Technical Paper.

During the workshop it became clear that, since being established in December 2001 by the previous Government under the auspices of the Ministry of Finance, the Anti-Corruption Council, for reasons beyond its control, had not been able to make much progress in preparing a national strategy.

The lead is currently being given by the Ministry of Justice, whose forward planning requires the strategy to be finalised in November and presented for Parliamentary endorsement in December 2004.

During the Workshop, the Working Group members were provided two papers (“The Essentials of Fighting Corruption” and “Suggested Performance Indicators”) and a copy of the

consultant's report of his previous visit in 2002 in which he suggests a way forward and recommends a sequence of steps to be taken.

1.2 CURRENT AND OVERALL ASSESSMENT

In two and a half years it is evident that only a little progress has been made in preparing and adopting a national anti-corruption strategy, let alone an action plan for its implementation. It is to be hoped that the assistance offered now within the framework and the workplan of the PACO Impact project offered by the Council of Europe will help drive the Government's new initiative to fruition. During this workshop, the working group members as previously suggested, have been advised to consider seeking a policy steer from this Government along the lines of the draft paper at **Annex 5** to this Technical Paper in order to finalise the strategy document.

2 DEVELOPING AN ANTI-CORRUPTION STRATEGY FOR SERBIA

2.1 POLITICAL WILL

Serbia's Government has made clear its determination to deal with corruption, which is said to have become deep rooted and to be getting more serious and widespread. It has taken a number of measures that demonstrate that determination, including the addition of specific anti-corruption offences to the Criminal Code and, under a "budget inspection control", action against senior former officials for the restitution of illegally spent resources and for the institution of criminal proceedings against them. It has also formed an Anti-Corruption Council to serve as an advisory body in its efforts to fight corruption.

2.2 INITIAL EFFORTS

There is general recognition among policy makers that the fight against corruption in Serbia requires a national strategy. However, there is also a tendency to equate good governance and anti-corruption. These notions are not co-extensive; the terms are not synonymous. While anti-corruption is an integral and essential part of good governance and there can be no good governance without anti-corruption, good governance is a wider concept, much of which has nothing to do with anti-corruption. It is necessary to say this because there is a risk that the narrower and sharper focus required for effectively combating corruption will be lost in the wider strategy needed to achieve the better governance of Serbia.

Furthermore, it is important to bear in mind that the notions of transparency, deregulation, accountability, staff rotation, transaction recording, reduction of discretion, etc, which are being applied in several areas of governance reform, are not themselves strategies for fighting corruption. They are but techniques to be applied in implementing the anti-corruption strategy.

Although there is no doubting the current political will to tackle corruption, the Government has not yet formally adopted a specific national anti-corruption strategy.

Serbian policymakers may need to consider that the national anti-corruption strategy must comprise three elements: enforcement of the laws against corruption, prevention of corruption by eliminating opportunities for corruption offered by systems and procedures, and public education and support. There is a need also to appreciate that these elements of the strategy must be applied together in a coordinated way so that they reinforce each other. In addition there needs to be an appreciation of the amount of national resources that must be invested over time if the fight is to be won.

Coordination and the implementation of the strategy must be done by someone or some body. States that subscribe to the SPAI Compact commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence

and protection in the exercise of their functions. Recognising its responsibility to create a specialised body to coordinate and lead the implementation of the national strategy against corruption, the Government of Serbia had intended in the past to create within the Ministry of Finance and Economy an Anti-Corruption Headquarters, comprising a Central Office and three operational offices. The head of the Headquarters was intended to be accountable to the Minister of Finance and Economy. At that time the holder of that office, having been given policy responsibility for taking forward Serbia's attack on corruption, managed to initiate the establishment of 27 "anti-corruption fighting units" (acfus) that covered the whole country but were in operation for only some months since 2000. That initiative is no longer operational.

Presently, the Ministry of Justice coordinates the drafting of a new Anti-corruption Strategy while the Anti-corruption Council (a partner in this process) plays an advisory role *inter alia* in the process of drafting that strategy. The initial intention of creating the Anti-corruption Council in early 2002 was to assist the government in developing a national anti-corruption strategy and advise on its implementation. Instances of cooperation with civil society organizations have occurred in several areas, including the preparation of laws on particular subjects and the conduct of public opinion surveys.

2.3 CURRENT CHALLENGES AND RISKS

Serbia's current effort to tackle corruption faces a number of problems and risks:

- *Political will* The determination of any Administration to fight corruption can be short-lived, especially in the volatile political atmosphere of a coalition Government consisting of numerous political parties. It follows that whatever can be done to reinforce that determination should be done as soon as possible.
- *Strategy* The Government has not yet formulated and agreed upon a national strategy specifically targeted at corruption, as opposed to good governance. This matter has been widely discussed in Serbia and it is time for the strategy to be agreed and promulgated.
- *Implementation* The absence of a national anti-corruption strategy and the lack of the mechanism for leading and coordinating its implementation naturally results in a confused and un-targeted fight against corruption in daily life.
- Action against corruption has so far concentrated on enforcement of the laws against corruption (investigation and prosecution of corruption allegations). While it is essential that the laws against corruption should be effectively enforced, repression alone is insufficient and, as demonstrated time and again elsewhere, is bound to fail to defeat corruption. Prevention and public education and support are equally essential.
- *Enforcement* The criminal justice system is overloaded; cases take a long time to reach the top of the court list and be tried. There is still a strong public expectation that the Government will act quickly and decisively against corruption. Naturally, the public expects those accused of corruption to be tried by the courts. The Judiciary is independent of and separate from the Executive and there is little the latter can do to speed things up in that regard. If corruption cases are not disposed of quickly by the courts, public disappointment will follow. If corruption cases continue to be allowed simply to wait their turn in an overcrowded court list, that system will damage the credibility of the Government's fight against corruption.
- *Prevention* There seems to be no methodical and continuous review of the systems and procedures of the Administration with a view to preventing corruption by minimising the opportunities for corrupt conduct that exist in these systems. While the broad

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administrative reforms being undertaken by the Government are resulting in better administration, the assumption widely made is that those reforms will necessarily and effectively remove the opportunities for corruption. In themselves they will not.

- *Public education and support* Educating the public about the dangers of corruption and enlisting their support to fight corruption are not being done in any methodical, coordinated, long term way. There seems to be little attempt to educate the public service about corruption, except in spasmodic and disparate efforts by various actors in civil society.
- *Private sector corruption* Anti-corruption policy must be aimed not only at the public sector. Corruption in the rest of the community needs to be addressed. Anti-corruption initiatives must be directed both at the public sector and at the non-public sector.
- *Level of resources* It is necessary to realize that fighting corruption effectively cannot depend on plans and laws alone. A substantial and prolonged investment of public resources, human and financial, is essential. That realization must extend to wider circles than the Ministry of Justice, other line institutions and the Anti-corruption Council.
- *Personnel policies and practices* Opinion surveys indicate a wide public perception of corruption in the Police. There is a considerable risk that public trust in the integrity of existing law enforcement agencies will diminish government efforts in fighting corruption.
- *Community outreach capacity* There is need to engage local communities in resisting corruption and advising when anti-corruption policies are under consideration. Telephone access for making complaints has been apparently provided for 24 hours a day and the telephone numbers are publicized, but little else has been done to encourage the public to come forward.

2.4 THE WAY FORWARD

1. A strategy is needed that is simple, clear, coherent and complete. It must consist of three elements: enforcement of the laws against corruption; prevention by the elimination of opportunities for corruption from the systems and procedures by which the community arranges its affairs; education of the whole community about the dangers of corruption and development of public support for resisting corruption. The strategy must apply to the whole community, not only the public sector. A sample diagrammatic representation of the strategy is at **Annex 1**.
2. In implementation, the strategy must be led and coordinated. A person or body must ensure that the three elements act in concert and reinforce each other.
3. Each of the elements could perhaps be implemented by an existing institution of government. Investigation can continue to be done by the police. Prevention could be done by a public institution exercising the functions of financial control and auditing for example. Public education and support could be done by the Ministry of Education or the Ministry of Information. The difficulties with these options are firstly, that fighting corruption is not the main responsibility of the departments mentioned and is unlikely to come high in the order of priorities of their large portfolios; and secondly, the coordination of these disparate agencies would create dual lines of command and the risk of divided loyalty. These factors indicate that both the coordination and the responsibility for leading the implementation of all three elements of the strategy should rest with one body.

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4. The new body should be established by law, its mandate should be to lead the coordinated implementation of the three elements of the strategy, and its independence and autonomy of operation should be clearly stated. It should be accountable to the legislature and the executive. Its financial resources should come from public funds voted annually by the legislature. It should be permitted to accept supplementary funds from donors, provided prior approval has been obtained from an appropriate authority.
5. The new body should be a disciplined service, meaning that its personnel should be rigorously selected, employed on terms that require adherence to a strict code of conduct and subject to summary dismissal in the interest of the service if their integrity becomes suspect.
6. The new body should be structured to reflect all three arms of the strategy. Its head should be at a rank no lower than that of the Chief of Police.
7. In anticipation of the enactment of the law, the selection process for the senior management of the new body should be started and the senior officers should be designated
8. As soon as they can be appointed, the senior management officers should prepare, with the advice of expert assistance, operating and management systems, manuals of operations, personnel policies, training syllabuses, information systems, administration procedures and budget estimates for the new body.
9. Selection and induction of personnel would be done as soon as arrangements for post redeployment and budget provision are in place.
10. When it is operational, the new body should liaise closely with the units and task forces that are taking forward the Government's public sector reform programmes.
11. The Anti-Corruption Council should provide policy advice to the head of the new body. Three further committees of citizens should be formed to provide advice in respect of the three elements of the strategy. A link should be established between the Council and these committees, by making the chairs of those committees ex officio members of the Council. A note on the functions and terms of appointment of the advisory committees is at [Annex ?].
12. The new body should produce an annual report of its activities. The Council and committees should also prepare annual reports on their activities. The Government should present the reports to the National Assembly.
13. Budget estimates may have to be prepared for interim funding of the new body before estimates can be included as part of the annual government estimates.

2.5 PREVENTION - PUBLIC EDUCATION AND SUPPORT

In relation to public education and support, the anticorruption body's duty is to educate the community about the dangers of corruption and to develop and retain the support of the public for the fight against corruption.

The goal of this element of the strategy is that the people of Serbia become aware of the dangers of corruption, are not prepared to tolerate it and are willing actively to fight against it.

The purpose of the anticorruption body's work in this field is to raise public awareness of corruption issues, to increase public intolerance of corruption and to persuade the public to report corruption and actively to support the fight against it.

These are the messages that, by every means of communication and by using the community's own teachers, the anticorruption body carries to every sector of the population.

The measure of its success is the extent to which the anticorruption body brings about a change of personal attitude to corruption in every member of the community of Serbia.

A logical framework describing the goals, methods, performance indicators and assumptions of implementing the public education and support element of the national strategy is at **Annex 2**.

2.6 PREVENTION – SYSTEMS ENHANCEMENT

In relation to prevention, the anticorruption body's duty is to advise on eliminating corruption opportunities in the systems and procedures of the administration and of public bodies, to advise government departments and agencies and public institutions on how to reduce corrupt practices. In relation to the non-public sectors of the community the anticorruption body's duty is to undertake research into the causes and consequences of corruption and advise thereon. In relation to the public sector its duty is also to follow up its recommendations to ensure that they have been put into practice and are working as they should.

The goal of this element of the strategy is the prevention of corruption in Serbia by the elimination of corruption opportunities.

The three ways of achieving this goal are:

1. by methodically examining particular systems and recommending changes in the system so as to make it more efficient and less prone to corruption
2. by advising on corruption prevention at the design stage of a proposed system
3. by providing general advice on common systems and procedures such as purchasing or procurement.

A flow chart showing the process of examining a system is at **Annex 3**.

A logical framework describing the goals, methods, performance indicators and assumptions of implementing the prevention element of the national strategy is at **Annex 4**.

3 THE NEXT STEPS

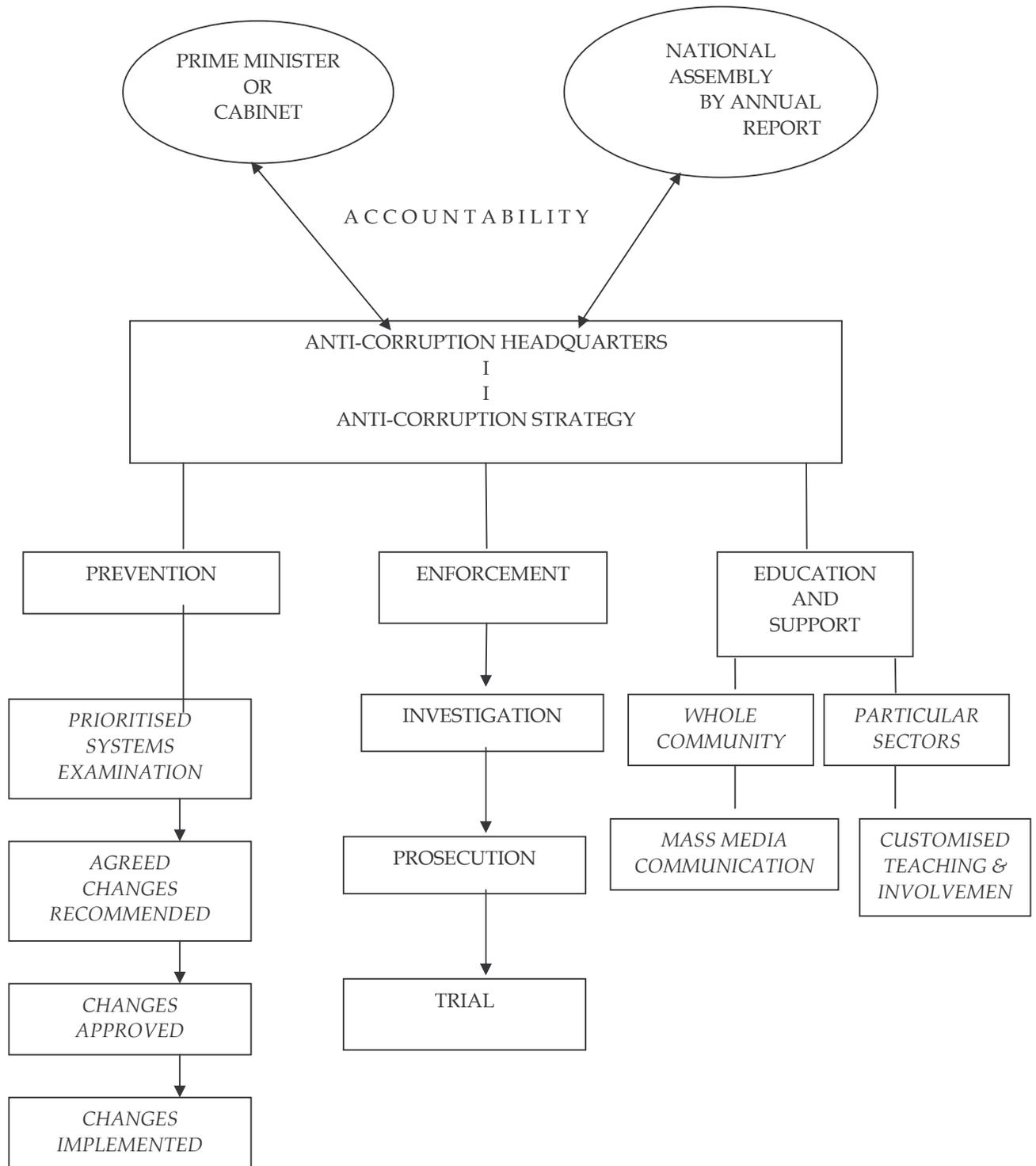
1. The Cabinet of the Serbian Government should be asked to approve a brief policy paper outlining the national anti-corruption strategy, the mechanism for leading its coordinated implementation, the willingness in principle to commit sufficient public funds, and the recognition of the need actively to involve the public. A suggested draft policy paper indicating the matters to be considered by the Cabinet is at **Annex 5**.
2. By means of an issues consultation paper the public should be informed of the Government's thinking and invited to answer specific questions on a number of general policy issues concerning the fight against corruption. One of the purposes of this consultation exercises would be to reinforce the current political will.
3. The functions of the proposed new body should be determined in accordance with the elements of the strategy. The organisational structure and the personnel requirements should then be decided. Thus such functions need to be kept in mind when drafting and finalising the National Strategy and its Action Plan.

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4. In the light of the responses to the consultation exercise, a strategy implementation paper should be prepared by the same Working Group and put before the Cabinet of the Government. The paper would set out in some detail how the national strategy would be implemented and seek approval for those proposals, their resource implications and the necessary funding arrangements.
5. The strategy implementation paper should also address:
 - the role of the Anti-corruption Council;
 - the operational autonomy and accountability of the new anticorruption body;
 - the method by which the prevention element of the strategy will be carried out;
 - the method by which the public education and support element of the strategy will be carried out;
 - those implementation policy issues that have resource implications.
6. Upon approval of the strategy implementation paper, the appointment of personnel should be made. Their induction and training should follow immediately thereafter.
7. The trial of corruption cases currently in the court lists should be undertaken as soon as possible. The head of the judiciary should direct that corruption cases shall automatically go to the top of the list of cases awaiting trial.
8. While implementation of the prevention element of the strategy can remain a centralized function, the community relations element (education and public support) will, like the enforcement function, have to be done in all parts of the country. The community relations officers of the new body who are deployed in outlying parts of Serbia should also be capable of receiving corruption reports from the public and forwarding them to the investigators.
9. Performance indicators on all aspects of the new body's work should be put in place. The most important performance indicator should be an annual, independently conducted, perception and attitude survey. In addition to being a management tool and an indicator of the public's perception of the new body itself, the survey would measure the extent of change in personal attitude to corruption – the only true mark of success in the fight against corruption. The first such survey would serve as the benchmark against which to measure progress and should be undertaken as soon as the new body is operational.

The timing of these steps is for the Government to decide. Several of them would overlap, but adherence to the sequence is important.

4 ANNEX I: SAMPLE OF STRATEGY IMPLEMENTATION DIAGRAM



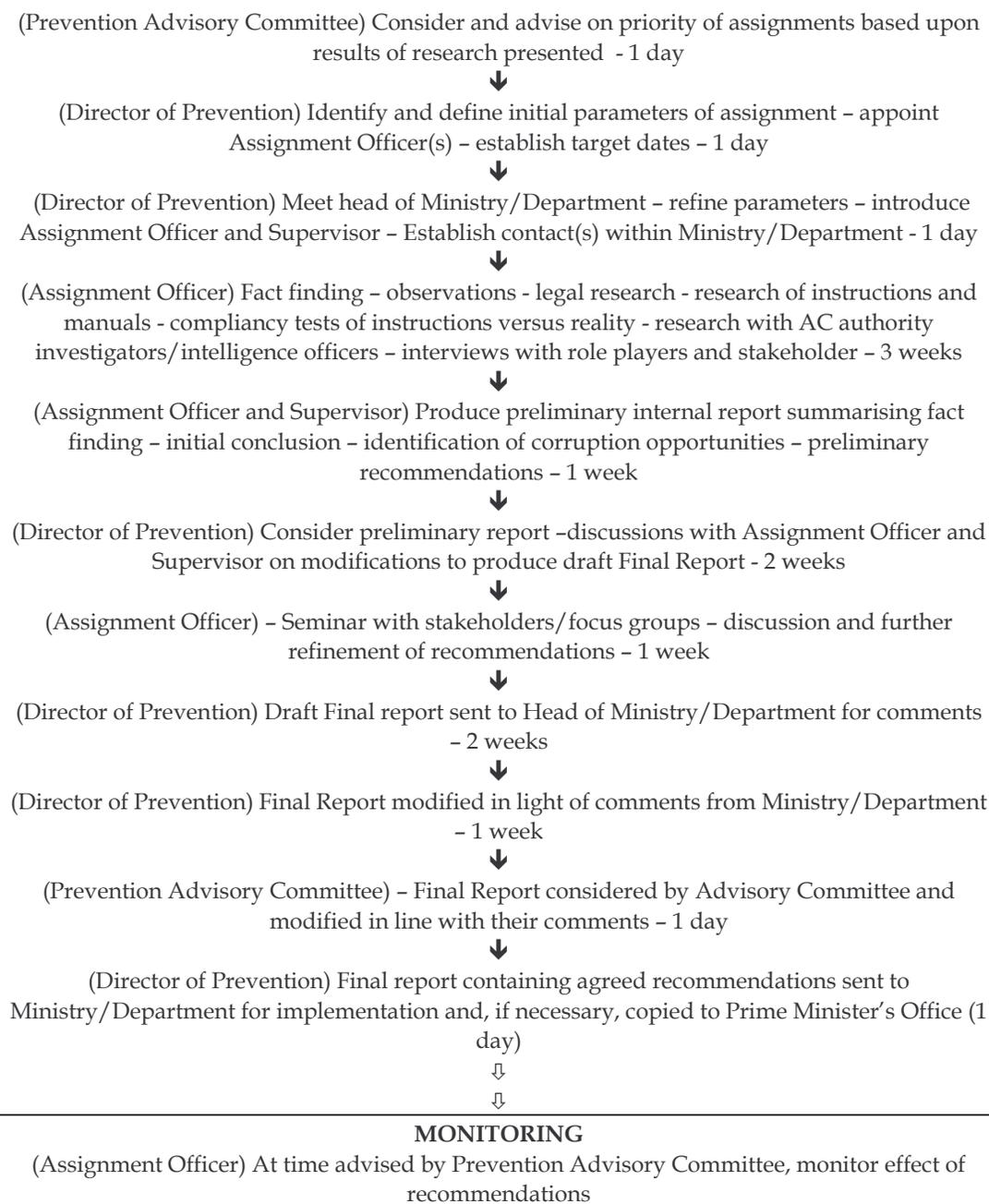
5 ANNEX 2: LOGICAL FRAMEWORK-EDUCATION AND PUBLIC SUPPORT

	Narrative Summary	Achievement Indicators	Measuring Indicators	Assumptions Risks & Conditions
Goal	The people of Serbia are aware of the dangers of corruption, are not prepared to tolerate it and are willing actively to fight against it	Public education and support programmes in place	Public perception and attitude survey	
Purpose	<p>To raise public awareness of corruption issues</p> <p>To increase public intolerance of corruption</p> <p>To persuade the public to report corruption and actively to support the fight against it</p>	<p>Public being educated about corruption issues</p> <p>Public being taught how to resist corruption</p> <p>Public being encouraged to report corruption</p> <p>Anti-corruption activities being organised</p>	<p>Survey shows level of public awareness</p> <p>Survey quantifies public intolerance of corruption</p> <p>Corruption reports received from public</p> <p>Public participating in activities</p>	
Outputs	Preventive education programmes	<p>Use of radio, television and newspapers</p> <p>Meetings with individuals and groups</p> <p>Participation at public meetings</p> <p>Production of information and publicity materials</p> <p>Public service and private sector leaders and employees (including disciplined services), community leaders, religious and civil society organisations, pupils and students being taught about corruption and how to guard</p>	<p>News items, advertisements, corruption prevention information carried in mass media</p> <p>Meetings held</p> <p>Public meetings attended</p> <p>Press releases, articles and briefings given</p> <p>Advertisements, leaflets and posters published and placed</p> <p>Educational and teaching materials, codes of conduct and management guidance manuals produced</p>	

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	<p>Enlisting support programmes</p> <p>Community participation programmes</p>	<p>against it</p> <p>Corruption reporting methods being publicised</p> <p>Understanding of corruption prevention work being conveyed</p> <p>Community groups being encouraged to include corruption prevention message in their activities</p>	<p>Number and range of educational sessions held</p> <p>Number and quality of corruption reports</p> <p>Number of people communicated with</p> <p>Corruption comprehension in survey results</p> <p>Number of social occasions and activities held where corruption prevention message conveyed</p>	
Inputs	<p>Community Relations Department of the anti-corruption authority</p>	<p>Educating the whole community about corruption and how to resist it</p> <p>Enlisting the active support of the public</p>	<p>Numbers for each activity programme</p> <p>Public opinion survey results</p>	<p>Suitable staff obtained in sufficient number</p> <p>Technical assistance obtained</p> <p>Appropriate training undertaken</p> <p>Equipment and accommodation needs met</p>

6 ANNEX 3: CORRUPTION PREVENTION ASSIGNMENT FLOW CHART



7 ANNEX 4: LOGICAL FRAMEWORK – PREVENTION BY SYSTEMS ENHANCEMENT

	Project Structure	Achievement Indicators	Measuring Indicators	Assumptions, Risks & Conditions
Goal	Corruption prevented in Serbia by elimination of corruption opportunities	Increased efficiency of public and private sectors	Improved service to public and private sector users	Willingness to make changes to systems
Purpose	To minimise corruption opportunities in the legislation, practices and procedures of government departments and public bodies		Public and private services delivered more efficiently	Prevention co-ordinated with enforcement and education
Outputs	<p>A methodical corruption prevention audit and recommendations programme</p> <p>An effective consultation programme either on request or on an intervention basis</p> <p>Managers in government departments and public bodies sensitised to need for corruption prevention measures in their own organisations</p> <p>All proposed government programmes reviewed to minimise corruption opportunities</p>	<p>Audit reports produced and recommendations accepted /implemented</p> <p>Records of consultation advice given and advice implemented</p> <p>Training packages produced and a programme of training established</p> <p>System in place to review proposed legislation and procedures</p>	<p>Number of reports produced</p> <p>Number of recommendations made and implemented</p> <p>Number of occasions when advice has been given and changes made</p> <p>Number of managers trained</p> <p>Number of occasions when intervention action has been taken</p>	<p>Instruction to public administration managers to be receptive to corruption prevention and advice</p>
Inputs		Audit reports, consultation activity, training for managers, and procedures for reviewing proposed legislation and programmes	Numbers for each activity	<p>Suitable staff obtained in sufficient numbers</p> <p>Technical assistance obtained</p> <p>Appropriate training undertaken</p> <p>Equipment and accommodation needs met</p>

8 ANNEX 5: SUGGESTED DRAFT POLICY PAPER FOR THE CABINET (SAMPLE)

8.1 INTRODUCTION

Combating corruption in Serbia is a declared top priority for this Government because corruption continues to hamper our development, undermine our reforms and foster organized crime.

It is time to devise a specific strategy against corruption and the means by which it is to be implemented.

It is now necessary to obtain policy guidance from the Cabinet. In the light of that policy guidance the proposed national strategy against corruption will be amplified and finalized following public consultation.

8.2 A STRATEGY AGAINST CORRUPTION

A nationwide strategy applying to all sectors of the community is required. The strategy should comprise the three elements now universally recognized as essential in fighting corruption effectively, namely:

- *enforcement of the laws against corruption;*
- *prevention of corruption by eliminating from systems and procedures the opportunities for corruption;*
- *development of public education and support.*

These three elements need to work together in a coordinated manner in order for the strategy to succeed. They should be interdependent so that any success in one of them enhances the other two

8.3 THE LAW

The corruption offences in the Criminal Code aim at corruption in the public sector. It is not clear that corruption in the private sector is adequately criminalized and a further offence may have to be added to the Code to ensure that our people's values regarding bribery apply to the whole community, not only to the public sector.

8.4 COORDINATING AND IMPLEMENTING THE STRATEGY

A body is needed that will be responsible and answerable for coordinating and leading the implementation of the new strategy. It should comprise personnel with expertise in each of the elements of the strategy. Its functions and powers, independence and accountability need to be set out in law. The Anti-Corruption Headquarters being formed administratively is responsible for coordinating the anti-corruption work currently being undertaken with the guidance of the Anti-Corruption Council. This is an interim arrangement pending the establishment by law of a new body that will replace it. The new body will be advised by the Anti-Corruption Council on general policy and staffing matters. Advisory committees of citizens will advise on operational matters.

8.5 INDEPENDENCE AND ACCOUNTABILITY OF THE NEW BODY

Public support for the fight against corruption is essential. An important ingredient of public confidence is the public's perception of the independence and operational autonomy of the proposed new body.

Equally the people will expect the new body to be properly accountable. It is to be accountable by law to the National Assembly and the Prime Minister/Cabinet for the implementation of the national strategy, the use of its powers and the expenditure of its allocated resources.

The law by which the body is established will also specify its functions, responsibilities, powers, independence, sources of funding, structure and management.

8.6 RESOURCES FOR IMPLEMENTING THE STRATEGY

The implementation of the anti-corruption strategy of Serbia will require substantial personnel and financial resources. Posts will be redeployed. The proposed body is to be funded from public revenues voted by the National Assembly and such non-public funds as may be approved.

Since overcoming corruption takes time and, when overcome, corruption must be kept under control, the expenditure of public funds for fighting corruption should be envisaged for the foreseeable future.

8.7 NEXT STEPS

Following this Cabinet policy guidance, a consultation paper will inform the public of the principal issues the Government is considering and seek responses to specific questions. The paper will briefly explain each element of the strategy, the mechanism and method proposed for its implementation and the involvement of the public in its implementation.

A strategy implementation paper will then be prepared, taking into account the community views expressed in the consultation exercise, and presented to Cabinet for its consideration and endorsement if thought fit. The paper will include a proposed implementation sequence and timetable indicating the steps to be taken to put the national strategy into practice.

Any necessary draft legislation will be introduced in the Legislative Assembly after Cabinet approval in the usual way.

8.8 ADVICE SOUGHT

Members are asked to advise in principle:

- *whether the proposed anti-corruption strategy outlined in this paper is approved;*
- *whether the proposed institutional mechanism for implementing the strategy is approved;*
- *whether the proposed funding arrangements are approved;*
- *whether the public should be consulted as proposed.*

* * *