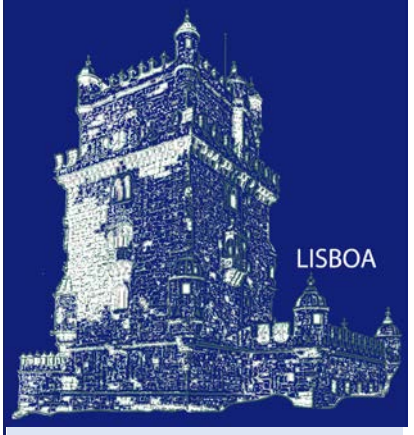
17

ANNUAL CONFERENCE

CONFERÊNCIA PROFISSIONAL ANUAL DA EPAC/EACN

COLLECTANEA

Texts of the presentations, debates and deliberations of the General Assembly



Edition:
Inspectorate General of Home Affairs (IGAI)

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INTRODUCTION

The Ministry of Home Affairs (MAI) established, as one of its strategic objectives, the organization by the Inspectorate General of Home Affairs (IGAI) of the 17th Annual Professional Conference and General Assembly of the European Contact-point Network against Corruption (www.epac-eacn.org), which took place in Lisbon on 15-17 November 2017.

In December 2017 a collection of relevant documents was published in the official site of IGAI regarding the Recommendations and the Conclusions of the Conference, approved during the General Assembly and included in the LISBON DECLARATION.

It was determined, for this year, the online publication in the same site of all the presentations, the debates that took place during the Conference and the deliberations of the General Assembly, both in Portuguese and English. This document will be published in a book at the beginning of 2019.

The translations were made by the translator of IGAI, Senior Technician Maria da Conceição Santos, who ensured the compilation of all the texts sent by the speakers in English.

Regarding the speakers who did not send the text of their presentation, a summary of it was made and later translated into English.

IGAI's Board of Directors wishes to make here a **public praise** to the high quality of the task carried out by its Senior Technician Maria da Conceição Santos who, together with the IT Technician Maria da Graça Pereira, made possible for IGAI to achieve this goal in the established time-limit.

Lisbon, 28 December 2018.
The Inspector General of Home Affairs
Margarida Blasco

OPENING SESSION

15 Nov. 2017

EDUARDO ARMÉNIO DO NASCIMENTO CABRITA

Minister of Home Affairs (MAI)

15 Nov. 2017

Mister President of the Court of Auditors,

Mister Deputy Director of Public Prosecutions,

Inspectors General,

Heads of the Security Forces and Services,

Representatives of other bodies of the Public Administration,

Ladies and Gentlemen,

It is with great pleasure that I take part in this Opening Session of the 17th Annual Professional Conference and General Assembly of the European Partners against Corruption (EPAC), welcoming all representatives of anticorruption authorities and oversight police bodies who honoured us with their presence here.

This year, the Conference is attended by a significant number of representatives, which reflects the importance that the subjects that will be discussed here have to the countries you represent, either from the European Union or the OECD.

Also, I would like to highlight the work that has been developed by EPAC and the solid contribution it has been giving, since 2001, by means of the:

- Promotion of independence, impartiality and integrity regarding the independent control and supervision of policing and fight against corruption;
- Establishment and development of contacts between the competent specialised authorities;
- Promotion of international conventions and mechanisms, at an operational level,

which contributed to the mission of the 60 anti-corruption authorities and oversight police bodies that are present here.

I would like to stress the topicality of the issue of prevention and fight against corruption.

Although not a new subject, it remains topical.

The challenge before the new realities and dynamics inherent to a society that is more and more open, in which information and knowledge are shared, may, at the same time, give way to new forms of corruption which require a greater transparency of decision.

This transparency is required at all levels, from the executive to the legislative powers, and yet to the specific decision-maker, from the Central Administration service or body to the nearest local authority unit.

The position that Portugal has been taking regarding this subject is very clear. It acceded to the most relevant Agreements and Conventions, such as the:

- UN Convention against Corruption, adopted by the General Assembly;
- Convention drawn up on the basis of the Treaty on European Union on the Fight against Corruption;
- Council of Europe Criminal Law Convention on Corruption;
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

And participates in this organisation since the beginning, represented by the:

- Public Prosecutor's Office;
- Inspectorate General of Home Affairs;
- Criminal Police;

- Council for the Prevention of Corruption, an independent administrative body, created in 2008, which operates at the Court of Auditors and is designed to develop an activity of national remit in the field of prevention of corruption and related offences.

The Government elected transparency and fight against corruption as one of its priorities, referring in its program:

Improvement of the quality of democracy, with the prevention and fight against corruption through greater transparency, democratic scrutiny and control of legality;

Promotion of pro-active policies of prevention and oversight of corruption, namely based on inquiries near the users of public services;

Development of the capacity of intervention of the competent authorities in the swift clarification of serious and organised criminality, namely corruption;

Increase of the patterns of requirements and enhancement of political activity and the exercise of public duties, with the adoption of measures that contribute to the independence and impartiality, and also initiatives that lead to the enhancement of political activity and the exercise of public duties;

Regulation of the activity of private organisations that intend to take part in the definition and execution of public policies, known as lobbying;

Creation of a public registry of interests in local authority units;

Reinforcement of the independence of regulators and supervisors towards the regulated sectors.

Finally, I emphasise the adoption of a Code of Public Transparency to which are subjected politicians, public managers, directors of public departments, civil servants and public employees.

By its own initiative, in 2016 the Government submitted itself to a Code of Conduct, as an instrument of self-regulation, which constitutes a guidance commitment undertaken by the members of the Government in the exercise of their duties.

That Code is also relevant to all high public officials under the supervision of the Government, as well as the directors and managers of public institutes and companies, through given directions.

It is based, among others, on general principles of conduct regarding the:

a) Continuous commitment to protect the public interest and good administration;
b) Transparency;
c) Impartiality;
d) Rectitude;
e) Integrity and honesty;
f) Guarantee of confidentiality.

It encompasses issues such as conflicts of interests, gifts, duty of delivery and registration, invitations or similar benefits, among others.

It was the first time in Portugal that a Government submitted itself, by its own initiative, to a code of conduct.

The executive branch was not the only one to elect the prevention and fight against corruption as a priority.

Our Parliament has also been giving relevance to this issue, creating in 2016 the Temporary Commission for the Reinforcement of Transparency in the Performance of Public Duties (*Comissão Eventual para o Reforço da Transparência no Exercício de Funções Públicas*), with the purpose of defining policies leading to the increase of the quality of democracy, especially regarding holders of public duties.

The Parliament is presently dealing with a set of initiatives concerning:

- The transparency, control of the wealth of politicians and high public managers; and
- The activity of professional representation of interests (lobbying).

In the several parallel plenary sessions and workshops that will take place today and the following days, all participants will have the opportunity to debate the developments that happened at international and European level, the evolution of corruption, the integrity and the anti-corruption efforts, the audit proceedings of polices, among other relevant subjects.

I am certain that from the discussion and exchange of experiences, strategic guidelines of domestic security will come out as an answer to the main domestic and foreign risks and threats.

This is a goal of a united Europe, whose mission is to support collective efforts to meet those purposes through reinforced cooperation and coordination.

The fight against corruption is, in a context of a modern and comprehensive concept of security, an essential challenge to all democratic States, especially those in transition situations.

Accountability, integrity and strict conformity to the law, by all responsible authorities in charge of its implementation, represent the essential foundations for the stability of states and a society that wants to live in peace.

I wish you all a productive work in this Conference!

ANDREAS WIESELTHALER

President of EPAC/EACN (Austria)

15 Nov. 2017

Dear Minister

Dear Delegates

Dear Secretaries of State

Dear President of the Court of Audits

Dear General Directors

Please let me send a warm welcome to the yearly Conference and General Assembly of the European Partners against Corruption, as well as the European contact-point network against corruption.

When I look at you I see about 160 representatives from 60 different organisations from 38 countries and when I think about the knowledge you bring in and your experience… it is vast.

So, the only challenge for us is to bring it down and to learn as much as we can during these days, having these platforms in order to connect people and get to know each other better.

First of all let me express my sincere gratitude to you, Inspector General Margarida Blasco, and your team in organising and hosting this extraordinary Conference, giving the circumstances of the wildfires your nation had to suffer. Many people lost everything: their home, their lives, and bring a light on you, how committed you were in order to host us here and to organise it.

So, we all know that corruption is a problem that is with mankind since the beginning and will be with humans as long as they exist.

The point is: how well can we control it?

And when I look at what has been achieved within the last year, I like to highlight some initiatives which are extraordinary and are huge steps forward.

First of all, the UN Convention against Corruption and the 7th Conference of the States Parties, which took place last week in Vienna, where several resolutions were adopted. And it is a great honour to have Mr Dimitri Vlassis to join us and to have him as a delegate and as a distinguished speaker on board. Dimitri, thank you for that.

GRECO, Council of Europe, the state of the 5th Evaluation Round concerning the prevention of corruption, the promotion of integrity. There are some countries who have been evaluated and some that are right in the process of the evaluation, which also could share the experience with countries that, like Austria, have a long way to wait until they are evaluated. I think it is about in 5 years Austria is evaluated.

The OECD has a very effective body with 2 strands: the Working Group on Bribery, on the one hand, and, on the other hand, the Working Party of the Senior Public Integrity Officials.

I am happy having both strands here represented by Mr Lorenzo Salazar, as well as Frédéric Boehm, who hold speeches today.

And, with regards to the European level, we are looking forward to listen to Mr Onidi on the efforts of countering and preventing corruption from the EU perspective and from the EU level.

And, last but not least, the experts and Working Groups that got together in working groups and try to bring sustainable outcomes, as a side-job besides their usual profession, with a strong dedication and working and trying to share experiences and to build up a sustainable thing.

As President of the EPAC/EACN, I appreciate very much all regional and national initiatives in order to fight and combat corruption, be it going after criminals, speed prevention, education and international cooperation.

So, I would like to express my gratitude to the Working Groups, as well as the members, and to thank them for the efforts as well as thank the EPAC/EACN Secretariat.

And, last but not least, another thank you to you, Margarida, for what you did for the network and hosting this Conference.

So, finally, I hope the discussion will be fruitful. Each of you will take away what he needs.

So, take this as an opportunity to talk to each other and make the best of it.

Thank you very much.

MARIA MARGARIDA BLASCO MARTINS AUGUSTO

Inspector General of Home Affairs (IGAI)

15 Nov. 2017

Dear Minister,

Mister President of the Court of Auditors,

Dear Secretaries of State,

Distinguished General Directors of the Ministry

First of all I want to say that it is an honour to have with us the Minister of Home Affairs who kindly took his time to be present here and open this 17th Annual Professional Conference of EPAC/EACN.

I also want to express my appreciation to all of you, dear colleagues and friends, for being present at this 17th Annual Professional Conference of EPAC/EACN.

I must say that it is a great pleasure for IGAI to have been chosen by you, last year in Riga, to host and organise this year's event in Lisbon.

Your immediate commitment to participate in this Conference is a proof of the quality of the work developed by the EPAC/EACN Network.

Thank you very much Andreas, Dominique, Anca, Monique and Ruta.

Particularly, allow me to express a special word of public gratitude for the many messages of solidarity that you sent when Portugal was recently caught in a tragedy of enormous dimension caused by wildfires, with many victims.

Thank you very much to all who, in each country, were willing to take part in the plenary sessions and workshops of this Conference.

Thank you also to the Portuguese chairpersons and speakers, whose presence here honours and confers status to this Conference.

Finally, and from the bottom of my heart, thank you very much to all collaborators and staff members of IGAI who, since the beginning, embraced this project and contributed to make it happen.

And here, as many of you know, it is just fair to address a special word of gratitude to Ms Maria Antónia Barros and Mr Eurico Silva who last month were deprived of their family life so that everything would be ready to receive you.

As you all know, EPAC/EACN meets in independent forums for police oversight and control bodies and organisations that seek the prevention and fight against corruption, at the European Union level.

The subjects chosen for discussion in this Conference mirror the concerns of all here present.

During this journey together, in which IGAI participated from the beginning and increased its presence in the last six years, your presence here is the proof that the goals initially established have been achieved.

I recall that over the last years have been intensified:

- The contacts between the specialised member authorities of EPAC/EACN;
- The promotion of independence, impartiality and integrity, as well as accountability, transparency and accessibility in all systems created and

maintained in the scope of the independent control and supervision of policing and the fight against corruption;

- The promotion of international conventions and mechanisms, at an operational level;
- The support to the development and promotion of working patterns and best practices for bodies of police control and authorities with responsibilities in the fight against corruption;
- The establishment of a platform for the exchange of information and knowledge on the evolution of the external oversight of policing and fight against corruption;
- The support to other countries and organisations that seek to create or develop mechanisms of control and fight against corruption;
- The cooperation with other organisations, entities, networks and concerned parties, in accordance with the above-mentioned goals.

In the context of working groups, I must emphasize some of the projects that have been developed, namely:

- In the scope of the 11th Conference held in November 2011, in Laxenburg, Austria, the General Assembly approved the handbook "Setting Standards for Europe", which includes the "guiding principles" of the activity of law enforcement authorities with a mandate to combat corruption (ACA) and the "Police Oversight Principles" for police oversight bodies (POB);
- In the scope of the meeting held in April 2017, in Luxembourg, the handbook for the evaluation of the efficiency and effectiveness of police oversight bodies was approved;
- The use of the Europol Platform for Experts (EPE), where previously registered members by invitation of Europol may access information lodged in specific databases for that purpose, allowing also online discussion and debate in real time.

Right now, there are two working groups with work concluded or in progress and whose conclusions will be presented at the end of this Conference; they are:

- "Analysis of Big Data, Related Legal Aspects, Use of Databases" and
- "Risk Management and Risk Analysis"

I dare say that one of the EPAC/EACN mottos is:

"**We network**" or, in other words, "We create contact-point networks".

So much so that, perhaps in a less visible manner, direct contacts ("one on one") between elements of the Network (because there is personal knowledge, because we know exactly which partner to contact) make possible for a Network member to question, without further delay or obstruction, another Network member on how a given subject is treated in its legal framework and which approach and intervention are adopted in another country regarding a given case, in such dissimilar subjects as, for instance, whistleblowing or "Integrity Tests".

The Network has an undeniable importance since it has a huge potential, within itself and near the member organisations, to spread new strategies of work and new technics and innovating instruments that comprise more quality and bring more efficiency and effectiveness to the work of anti-corruption agencies (ACA) and police oversight bodies (POB).

In this sense, the Network may be (I would rather say, has been) a source of inspiration for all, both regarding the search for a continuous improvement and the quality of the work produced by each one.

I wish you all a good Conference!

PLENARY SESSION 1

Developments at international and European level

15 Nov. 2017

Anti-corruption policies at EU level

Summary of the presentation

Olivier Onidi (EU)

Deputy Director General for Security, European Commission

The speaker began his presentation with a compliment to the organization of the Conference and highlighted the importance of networks such as EPAC/EACN, not only as structures that congregate experts in issues of fight against corruption, but also as forums that provide professional working spaces and specialized debate, and are a source of studies, reports, guidelines and proposals that, during the present year, made way to this 17th Annual Professional Conference and General Assembly.

The speaker commented the fact that the fall of the current year had been very intense and fruitful in issues relating to matters of fight against corruption. In that sense, he reminded that the previous week, on 6-10 November 2017, was held in Vienna, Austria, the Conference of the States Parties to the United Nations Convention Against Corruption, during which eight (8) Resolutions were adopted, some concerning very specific issues and others focused on new subjects, such as, for example, the case of a Resolution proposed by Italy regarding sport issues, besides others very detailed and encompassing as was the case of a Resolution proposed by Norway in matter of widespread corruption. That Resolution recognized the importance of assets recovery in the fight against corruption.

A reference was also made to GRECO (Group of States against Corruption, of the Council of Europe) and to the Conference held in Prague, on 9-10 November 2017, during which the document “Lessons learned from GRECO’s Fourth Evaluation Round (under the motto Go for Zero Corruption)” was presented and a special focus was given to corruption prevention of Members of Parliament, Judges and Prosecutors.

He also made a reference to the OECD Convention on Combating Bribery and to the 20th Anniversary of that Convention, a celebration that is being prepared and will take place on 12 December 2017, in Paris.

After that introduction, the speaker approached the subject of his presentation, referring what has been done in the EU in the area the fight against corruption.

So, and in what concerns the first pillar and the activities developed at European level, it stands out the activity of monitoring some aspects related to the fight against corruption in the several Member States. The speaker mentioned, in this respect, a first detailed report that was produced in 2014, from which further steps were taken. Because the document contained plenty and relevant information, and also because of its pertinence, the European organisations deemed important to fully incorporate the fight against corruption in what is commonly called the European Semester and which is basically the general economic administration of the EU; there we can find the most important macro-economic recommendations addressed to all Member States. This means that the issue of the public deficit is not the only one that is present in those recommendations; there are also guidelines on the economic development of Member States and now the fight against corruption is also an important theme of those recommendations.

Following that 2014 report and having in mind the preparation of the next Semester, some priority areas that involve a greater risk were signalled, such as public procurement, public administrations, company environment and health services.

In what concerns the second pillar, the speaker mentioned the following subjects and legal texts:

The Fourth Money Laundering Directive that entered into force on 26 June 2017 and gave a new strength to the rules already in place, making more efficient the fight against money laundering and terrorism financing, besides

enhancing transparency to prevent tax evasion, without ruling out additional measures that may be adopted until the end of 2017 and may further reinforce the Directive;

In the matter of assets recovery, it was noted that in December 2016, the Commission adopted a proposal to regulate the mutual recognition of decisions regarding assets freezing;

Together with Europol, efforts are being made to make progresses in the debate and consideration of all legal implications related to the confiscation of assets while proceedings are pending and that, according to the speaker's words, will be a central subject in the scope of the work to be developed by the Commission in 2018;

A subject that was also mentioned was that of the creation of the European Prosecution Office (EPO), after an agreement that brought together 20 Members States was reached; the speaker mentioned that EPO will have as prime mission the fight against activities that involve corruption; it is expected that EPO may coordinate and bring additional fighting capacity in this area;

Still regarding EPO, it was also noted that there is a real interest from some Member States that have not joined EPO, to join it in the future; furthermore, some Member States that have joined it, wish to widespread the attributions and competencies of EPO;

Still in the legislative area, a reference was made to the Money Laundering Directive;

Subject of the Whistle-blowers – the extension of a system that includes several areas where the protection of whistle-blowers may be enhanced and also the review and improvement of the patterns of protection of whistle-blowers are under assessment;

The Commission plans to establish a central registry of bank accounts, not only at national level but also at EU level, together with the implementation of the Fourth Money Laundering Directive, allowing its direct access by national authorities and extend the number of users with access profile;

A mention was also made to the intention of including strategies of fight against corruption in Commercial Agreements which, although difficult, is an effort that will continue to be pursued by the EU.

The speaker declared that the EU ensures the support to the fight against corruption in several areas and subjects.

Finally, the speaker emphasised that the EU counts on EPAC/EACN to increase the awareness and broadcast of the best practices to fight corruption.

The Implementation Review Mechanism of the United Nations Convention against Corruption: process, progress, impact and prospects

Summary of the presentation

Dimitri Vlassis (UNODC)

Head of Division

Division for Treaty Affairs – Corruption and Economic Crime Branch

United Nations Office on Drugs and Crime - UNODC

The key ideas of this intervention are the following:

The United Nations Convention against Corruption (UNCAC) is the only legally binding international instrument for the prevention and combat of corruption.

With 183 States parties, the Convention is rapidly approaching universal accession. Its geographic range is joined by its substantive scope, with a wide range of provisions assembled in four major thematic chapters: preventive measures, criminalization and law enforcement measures, international cooperation and asset recovery.

An important aspect is the fact that UNCAC foresees a mandatory peer review process with two evaluation cycles, the **Implementation Review Mechanism (IRM) of the Convention** (Chapter VII of UNCAC).

According to the speaker, the Convention had its binding force strengthened and received additional power with the creation in 2009 of the IRM, the first and sole process in which there is equality among peers for a legally binding instrument of the United Nations.

The first cycle (2010-2015) of the Mechanism covered the chapters on criminalization and law enforcement (Chapter III) and international cooperation (Chapter IV), whereas its second cycle (2015-2020) covers the chapters on preventive measures (Chapter II) and asset recovery (Chapter V).

The purpose of the IRM is to assist States parties in their implementation of the Convention. The Mechanism promotes the purposes of UNCAC, provides the Conference of States parties with information on measures taken by some States parties in implementing the Convention and the difficulties encountered by them in doing so, and helps States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of such assistance. In addition, the Mechanism promotes and facilitates international cooperation, provides the Conference with information on successes, good practices and challenges of States parties in implementing and using the Convention, and promotes and facilitates the exchange of information, practices and experiences gained in the implementation of the Convention.

The final declaration of the Conference of States parties to UNCAC, held in Vienna, on 6-10 November 2017, refers to the review process of the Mechanism and its main characteristics, describes the progress achieve through the IRM and explains the impact that the Mechanism had, and still has, in promoting reforms and enhancing the capacity of States parties in order to fully implement the Convention and explore their perspectives for the future.

From the four (4) essential pillars that are covered by UNCAC there is one that is unique when compared to other international legal instruments, and that is Chapter V on Asset Recovery.

According to the speaker, the IRM has had a catalytic effect in the development of anti-corruption reforms, being a significant advantage to UNCAC.

Fighting International Bribery. The OECD Working Group on Bribery

Summary of the presentation

Lorenzo Salazar (OECD)

Judge

Vice Chair of the OECD Working Group on Bribery

In brief, the intervention of this speaker focused on the following key ideas:

The 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (for short, OECD Anti-Bribery Convention) is the first and only international anti-bribery instrument focused on the "supply side" of the bribery transaction.

The OECD Working Group on Bribery in International Business Transactions is responsible for monitoring the implementation and enforcement of the Anti-Bribery Convention and the 2009 Recommendation on Further Combating Bribery of Foreign Bribery in International Business Transactions (the 2009 Anti-Bribery Recommendation).

This peer-review monitoring system among the 43 States parties to the Convention (all the 35 OECD countries and 8 non-OECD countries) is considered to be the "gold standard" of monitoring and, for the last 18 years, has established the Convention as an international instrument to fight corruption, whose enforcement was achieved in a more thorough manner, a result that is not surprising since the Convention is a legally binding instrument specialized in a very precise form of corruption.

The peer evaluation is made in successive phases and the Working Group has recently launched Phase 4, focused on coercive and encompassing subjects, comprising the

specific needs of the countries and non-resolved issues of previous reports, as well as the further exploration of transversal questions, such as detection (of bribery), responsibility and cooperation of the company, and mutual legal assistance among the law enforcement authorities of the States parties to the Convention.

Together with the peer evaluation, the Working Group also carries out studies on several kinds of external policy and of cooperation and exchange of good practices trough regular meetings, twice a year, of officials and law enforcement authorities in a confidential environment.

On the 20th anniversary of the Convention, which will be celebrated on 12 December 2017, and, in the scope of a ceremony that will take place in Paris, the Working Group will be hosting a roundtable to discuss the impact of the Convention on combating bribery. During the event, the New Study on Detection of Foreign Bribery will also be presented.

Among the future challenges that the Working Group faces, there is a crucial question to be kept in mind: the need to maintain high standards of anti-corruption and, at the same time, ensure a balanced space of interaction that must include all the new and biggest rising economies.

Europol initiatives to better support anti-corruption bodies in their operational activities

Summary of the presentation

Frederic Pierson (EUROPOL)

Head of the Europol Criminal Assets Bureau - ECAB

The speaker began mentioning that the Europol Criminal Assets Bureau - ECAB, of which he is the Director, deals essentially with assets recovery; however ECAB has also been directly linked to several projects and initiatives that involve the combat of corruption.

He also mentioned that his intervention would focus on some of those projects and initiatives, some of them already known to EPAC/EACN and launched by his predecessor, Burkard Muhl.

He started by underlining the development of the platform S4ACA (*Secure Information Exchange Network Application* - SIENA - *for Anticorruption Authorities* - ACA), a partnership with BAK, from Austria, and CBA, from Poland.

S4ACA allows organisations and professionals in the area of the fight against corruption (ACA) of EPAC/EACN that are registered there, to communicate directly among them, making thus possible the exchange of sensitive procedural information.

Another initiative that was mentioned and which allowed the association of organizations and professionals that are members of the EPAC/EACN networks, both ACAs and Police Oversight Bodies (POBs), regards the Europol Platform for Experts (EPE), about which another speaker, René Stach, from BAK, made a presentation on the third day and gave practical information about the process to sign in to the EPE,

the security rules and procedures to be respected by the users, usage of the password, contents of the EPE and map of the site.

The speaker mentioned that the EPE is a platform with several thematic communities registered, among which the community of organizations that are members of EPAC/EACN, such as ACAs and POBs, adding also that the EPE has very active communities with profuse exchange of information and several discussion groups, and that the subject of corruption is one of the engines of most of that activity.

He mentioned that Europol has occasionally provided support in what concerns some proceedings. He said that during the Arab Spring, and also during the events that took place in Ukraine, the Europol coordinated the organisation of some meetings and reunions that allowed the investigators involved in the proceedings started in those areas not only to meet in person and get to know each other but also to sit around a table and discuss common issues and pending problems, promoting a coordinated approach to their respective investigations, preventing thus repetitions and pointless actions.

The speaker also referred that Europol felt that it should reinforce its support and offer to member states the full analytic capacity and resources at its disposal. As that support offer was accepted by member states, Europol received some proceedings and started coordinating some operations. The reference to a certain process, although without details or particulars that make possible to identify it, signalled the coordination carried out by Europol of the investigation directed by the member states that have the process.

According to the speaker, the work of Europol in this process was to analyse an enormous amount of data (more than five thousand documents) in which large financial means are involved.

Besides, the coordination of means and resources and the analytic capacity of huge amounts of data are one of the biggest and more efficient capabilities that Europol has and may make available to member states.

In what concerns the analytic capacity of large amounts of data, it presumes a close cooperation among the staff members of Europol involved in that analysis and the investigators that, in the member state, are in charge of the process. That cooperation implies a close and continuous relationship between the Europol analysts and the investigators of the member state, with a continuous exchange of intermediate reports that make possible to establish if the path of the analysis that Europol is following is the one that the investigator of the member state wants or considers appropriate for the on-going investigation. At the end of the data analysis by Europol, a final report is drawn and the structured information may be used for the on-going process in the member state.

Besides the more operational activities and aspects, the speaker announced that, among other events, Europol will host in The Hague, on December 6-7, 2017, the 1st Conference on corruption.

The speaker invited the audience to take part in this 1st Conference and said that with it Europol intends to create a forum for discussion of processes, already closed or on-going, available to all experts in the area of the fight against corruption. He also said that, among the planned discussions, there will be one regarding the subject of the Big Data. For that reason, the speaker added, he hopes that the conclusions of this 17th. Conference of EPAC/EACN may be further pursued in The Hague during the 1st. Europol Conference on corruption.

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How regional cooperation contributes to national anti-corruption efforts

Vladan Joksimovic (RAI)

Head of Secretariat, Regional Anti-corruption Initiative - RAI

1. RAI - Who we are?

Regional Anti-Corruption Initiative - RAI **-** is an intergovernmental regional organization, which deals solely with anti-corruption issues and is comprised of nine member states. It has been institutionalized by signing the Memorandum of Understanding concerning cooperation in fighting corruption through Regional Anti-Corruption Initiative, signed in 2007 and the Protocol amending the MoU, signed in 2013 in Zagreb, Croatia. The organization was initially established in Sarajevo in February 2000, as Stability Pact Anti-corruption Initiative (SPAI), but in 2007, the SPAI was renamed to Regional Anti-corruption Initiative (RAI), in line with the transformation of the Stability Pact for South Eastern Europe into Regional Cooperation Council (RCC). RAI is funded through Member States' annual contributions to the budget and through projects. RAI is responsible for the South Eastern Europe 2020 Strategy Dimension on "Anti-Corruption" under the Pillar Governance for Growth.

The Steering Group chaired by RAI Chairperson is the decision-making body of the Regional Anti-corruption Initiative. It is composed of high level representatives of South Eastern European member countries. Head of the Secretariat participates, as well as other staff members when it is appropriate, at the Steering Group meeting. Head of the Secretariat identifies, develops and implements new and improved

policies and ways of working to support achievements of the strategic objectives of RAI, coordinates in cooperation with Anti-Corruption Expert in order to ensure the achievement of the Work Plan objectives as proposed to and approved by the Steering Group.

The Secretariat is based in Sarajevo, Bosnia and Herzegovina.

Members are Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Republic of Macedonia, Moldova, Montenegro, Romania and Serbia. Observer status is given to Poland, Georgia and Slovenia. RAI has a good and fruitful cooperation with a number of other international partners: United Nations Office on Drugs and Crime (UNODC), United Nations Development Programme (UNDP), European Commission, Regional Cooperation Council (RCC); Regional School for Public Administration (ReSPA), Organization for Economic Co-operation and Development (OECD), RACVIAC – Centre for Security Cooperation, World Bank, SELDI Network and ANAC.

The forms of possible cooperation with or within the RAI are determined by the organizations' internal rules, mainly contained in the Memorandum of Understanding concerning Cooperation in Fighting Corruption through the Regional Anti-corruption Initiative (MoU) and Annex I "Institutional Mechanism" of the Strategic Document (Annex I). According to these rules, there are three shapes of cooperation within RAI: Core Member, Associate Member and Observer.

Core Member can only be a country which is party to the MoU or acceded to the MoU upon the invitation of the RAI Steering Group. The acceding countries have to deposit an instrument of accession at the Depositary Country.

Associate Member can be considered all countries, organizations or international financial institutions which are actively and substantially engaged in support of preventing and fighting corruption in South East Europe and contributing to the programmatic activities of the RAI with at least the yearly minimum amount determined in the MoU. The RAI Steering Group can decide on this as it is the decision-making body of the Initiative.

There are two main differences between a Core Member and an Associate Member:

- An Associate Member is not party to the MoU;
- An Associate Member has the right to vote in the Steering Group on programmatic issues only.

The status of Observer in RAI can be granted to partners, countries and organizations. The prerogative to invite them to participate in RAI as Observers is given to the Steering Group. As a rule, this status can be provided to other interested partners, countries or organizations which are involved in fighting corruption in SEE, but not being able to contribute financially to RAI with a yearly minimum amount determined in the MoU, or to those organizations that are only implementers of projects to the RAI activities.

RAI has become an observer to EPAC in November 2017.

2. International Treaty on Exchange of Data for the Verification of Asset Declarations

This international treaty developed by RAI, which is a result of cooperation of national preventive anti-corruption-integrity bodies in the region. RAI was and still is facilitating

the process, firstly of drafting the document and these days of its adoption. The document is the result of a series of three workshops held in 2015 and 2016 with representatives of integrity bodies in South-Eastern Europe and of international stakeholders (Basel Institute of Governance, UNODC, UNDP and World Bank). The European Commission also provided written input to this document.

2.1. Why the treaty is important / necessary?

It not unusual that public officials spend their wealth out of the country of origin/abroad – buying real states, deposit money and own businesses. The public officials simply abstain from disclosing these foreign assets, even though declaration of wealth held abroad is mandatory under most, if not all, declaration systems. Similar is true for private interests. Thus, integrity bodies in charge for verifying the veracity of asset declarations need access to information held by foreign authorities. This Treaty shall facilitate such international exchange of data. So far, no mechanism exists for integrity bodies to exchange data internationally for their administrative checks.

2.2. How does the treaty work?

The purpose of the present Treaty is to prevent and to combat corruption by providing for a direct administrative exchange of information concerning asset declarations between the Parties to the Treaty.

The Treaty shall apply to an exchange of information irrespective of whether the declaration system of the requested Party includes identical aspects of finances or

personal interests, covers the same categories of declarants, uses the same categories of information for verifying the veracity of a declaration, or foresees the same consequences as does the declaration system of the requesting Party. Information which Parties may exchange, includes, but is not limited to information taken from databases maintained by State authorities or private entities on taxes, bank accounts, financial securities, businesses companies, trust and foundations and similar legal arrangements and entities, real estate, vehicles and other movable equipment, intellectual property rights, and gifts.

As a basic rule, integrity bodies of two State parties may exchange data if both integrity bodies use this category of data for their verification purposes. Integrity bodies can also provide additional data which only the requesting State party uses for the verification of declarations.

There are two types of verification envisaged by the Treaty: targeted and random.

The wording of the Treaty is based on the Convention on Mutual Administrative Assistance in Tax Matters, developed jointly by the Council of Europe and OECD.

2.3. Exchange of data and compliance with international standards

Resolution 6/4 of the sixth Conference of the States Parties to the UNCAC (November 2015) is highly relevant in this context. Among other issues, it invites State Parties "to consider the possibility of concluding multilateral, regional or bilateral treaties, agreements or arrangements on civil and administrative matters relating to corruption, including international cooperation, in order to promote the legal basis for granting mutual legal assistance requests concerning natural or legal persons in a timely and

effective manner"; "to inform the Secretariat about designated officials or institutions appointed, where appropriate, as focal points in the matter of the use of civil and administrative proceedings against corruption, including for international cooperation"; "to work with the Secretariat and other international anti-corruption organizations, donors, assistance providers and relevant civil society organizations, as appropriate, to promote bilateral, regional and international activities to strengthen the use of civil and administrative proceedings against corruption, including workshops for the exchange and dissemination of relevant experiences and good practices".

The draft treaty has a much narrower scope of data than exchange of data in tax matters and only concerns public officials and their families. The ECtHR has decided that the online publication of asset declarations of public officials is justified[1]. The Draft Treaty thus concerns data which the Court considers to be public information. Furthermore, the Court approved in 2015 an international administrative exchange even of banking data for tax verification purposes[2].

The text of the Treaty has been drafted and political negotiations for signing and ratifying are about to commence. Political support was received, among others, at the WB6 Triste Summit which was held in July 2017[3].

[1] Wypych v. Poland, October 2005.
[2] *G.S.B. v. Switzerland*, December 2015.
[3] https://www.esteri.it/mae/it/sala_stampa/archivionotizie/approfondimenti/2017/07/trieste-western-balkan-summit-joint.html

3. Anti-Corruption Assessment of Laws as a Preventive Measure (Corruption Proofing)

Anti-corruption assessment of laws, or corruption proofing of legislation, is a review of form and substance of drafted or enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate. Corruption proofing is aimed primarily at closing entry points for corruption contained in draft or enacted legislation. Its main potential is to prevent future corruption facilitated through poorly drafted legislation. Once corruption proofing becomes an established practice, it will make legal drafters think ahead on what corruption risks the assessment process may uncover and how these risks can be avoided from the very beginning of the drafting process. Corruption proofing is targeted at regulatory corruption risks, which constitute existing or missing features in a law that can contribute to corruption, regardless of whether the risk was intended or not.

Corruption proofing has the potential to improve the quality of the legislative drafting. Many of the tools used to minimize corruption risks will lead to clearer, simpler and more consistent wording in legal drafts and to more well-reasoned and documented, coherent and thought-through regulations. Practical experience from training even shows that rather “dry” rules of good legal drafting can come to life once public officials understand how even a small grammatical error in a for example health law can facilitate bribes and extortion from patients.

Corruption proofing further enriches public debate surrounding legal drafts. It makes corruption a standard feature of awareness in public debates.

RAI has produced the Regional Methodology on Corruption Proofing, together with the Regional Cooperation Council – RCC, which was further tailor made and adopted or reviewed in all RAI member countries.[4] In addition, RAI has trained national anti-corruption authorities in using the measure. RAI is developing IT solutions which will further strengthen national capacities to use this preventive tool.

[4] http://rai-see.org/wp-content/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf

PLENARY SESSION 2

Measurement of corruption, integrity and anti-corruption efforts

15 Nov. 2017

CHAIR

Vítor CALDEIRA (Portugal)

President of the Court of Auditors (*Tribunal de Contas*)

Ladies and Gentlemen,

I would like to start expressing my personal gratitude for the kind invitation from the Inspector General of Home Affairs, Ms Margarida Blasco, to chair this honourable panel.

A warm welcome to all to the second afternoon plenary session, during which we will discuss ***the measurement of corruption, integrity and anti-corruption efforts*** with a full range of experts, encompassing different dimensions, perspectives and experiences.

This is a topical issue.

Indeed, consideration of timely and accurate data and independent assessments are key to identify the actual risk areas, the reasons why corruption occurs, which measures need to be taken and which have proved to be effective.

Portugal has in place, for almost a decade, the CPC - Council for Prevention of Corruption, an independent body that operates in direct articulation with the system

of internal control of the Public Administration. It works within the Portuguese Court of Auditors, the *Tribunal de Contas*.

Having the responsibility for heading both Institutions, allow me to briefly summarize what we do at the CPC. Our core business is corruption prevention. A global scourge that undermines the public finances and democracy.

Within the Portuguese landscape, driven by the principle of transparency and aiming to contribute for a good administration, we translate this broad concept into a pragmatic policy that prioritizes the risk analysis and risk management of all kinds of abuse and inappropriate behaviour, of whatsoever authorities, when dealing with public money, public values or public contracts.

In 2009 a recommendation was adopted compelling the national institutions to operate with plans, programmes and concrete measures identifying the areas, risks, threats and opportunities of mismanagement of their resources, as well to put proper fences to eliminate or mitigate them.

They shall also prepare their officials for ethical standards of service and report annually on the results achieved.

The so-called Plans of Risk Management of Corruption and Similar Infractions are subject to a monthly scrutiny by the Council. Every month a delegation of the Council visits one institution or body to monitor how it is acting.

Anchored by the risk management framework, the CPC issued several recommendations to prevent high hazards in critical sectors of the Public Administration. In particular, I wish to mention those foreseeing: taxes and social benefits; privatizations and public procurement; and conflict of interests.

In 2017, widening its action, the Council looked closely on the legal risks — from the preparatory works to the making and execution of the Law, its eventual breaking moments and sequent enforcement.

Addressing specifically the Legislator, we issued a recommendation aiming to prevent the Permeability of the Law to risks of fraud and corruption, specifically by demonstrating how it may prevent, mitigate or avoid known risks.

Other great venture of the CPC is the work with and inside schools, universities and research centres. The aim is to act for and to promote a new cultural approach to corruption and its roots by the young generations.

In this framework, for the past five years, we launched a national competition for children and teenagers covering the phenomenon of corruption *vis-a-vis* the common good, channelling works of plastic arts, cartoons, photography or video.

Pointing to the same cross-fertilization values of integrity, we will launch in 2018 the first edition of a prize aimed at promoting academic research in this field.

So, how we assess corruption?

The Council has two main devices to evaluate the national scale of the problem:

- on one hand, the CPC examines the judiciary and public persecutors' decisions, looking in particular to the geography and sector, type of transgression, financial volume and *modus operandi* of the suspected or perpetrated crimes;
- on the other hand, the CPC annually maps the key areas for the most risky zones, operations and behaviours, also with the assessment of the reports of the internal control bodies and public auditors.

Both tools are present when the Council of Prevention of Corruption makes its deliberations, disseminates the good practises detected or gives its opinion to the political authorities about the corruption roots, effects and possible remedies.

Basing anti-corruption measures on perceptions instead of the actual occurrence of corruption may bring, with it, the risk that those measures might be unnecessarily burdensome and fail to address the deep causes of corruption. It might even entail the risk of making corruption more pervasive.

Enhancing good governance by improving transparency and accountability – in particular in the field of anti-corruption measures – is essential for gaining public trust in public institutions. A policy of transparency and accountability supports that these institutions carry out their duties properly, and ensures the integrity of their staff.

In this sense, I believe Supreme Audit Institutions have a strong role to play.

That is why the *Tribunal de Contas* of Portugal chairs, since 2011, the "Task Force on Audit & Ethics" at the European Organisation of Supreme Audit Institutions (EUROSAI) – aiming to promote ethical conduct and integrity, both in the supreme audit institutions and in the public organizations they audit.

Transparency and integrity are indeed key conditions for fighting fraud and corruption.

Preventing Corruption through Collective Action – Recent Developments and Future Trends

Summary of the presentation

Gemma Aiolfi (Switzerland)

Head of Compliance and Collective Action

Basel Institute on Governance

A risk-based approach to money laundering.

Examples of collective action, which are a gathering of businesses, civil society and public sector aiming to fight corruption:

(1) The Wolfsberg Group of Banks (1999) started to look at anti-money laundering principles: 6 years of discussion before the first conclusions, mainly over terrorism financing.

The goal was closing the gap between Europe and United States.

Collective Action changed the perception of intersections between private banking sector and regulating authorities;

(2) Maritime Anti–Corruption Network: collects information on the facilitation payments over the entrance of ships in ports of Argentina;

(3) Risk assessment simulator for SMEs: supply–chain companies that need a tool which is usually available to the biggest companies.

Success factors for Collective Action:

- Empathy, interest, commitment – TRUST
- Equality between participants
- Diverse and able to listen

The Portuguese assets recovery model*

João Conde (Portugal)

Public Prosecutor. PhD in criminal law

1. Introduction

Confiscation is the most important tool to fight against crime and should always be used: without confiscation no one can fight against crime, namely against corruption and other forms of acquisitive crime. In fact, the official powers have to use the same weapons as the criminals. Since they commit crimes to receive money or other advantages, only by taking these proceeds the authorities can really fight the crime. If the judge doesn't do it, there will be a big contradiction[5]: on the one hand, he/she punishes the offence; on the other hand, he/she allows the defendant to keep the proceeds of crime untouched, available for future use. Society will not understand this contradiction and, in the end, the decision will be seen as unfair.

To prove this well-known and spread theory, I'm going to tell you a story. It is indeed a simple story, but it is true and also has a very sad result. Some years ago there was a famous case in Portugal where, while serving a long term of imprisonment, the convicted person was able to boast in front of his prison mates and guards: «*Ok, the sentence his very hard, I'm suffering a lot but all my money is outside the jail, my family is very well-off and in the future, once in freedom again, I will have a wonderful life. It's worth it!*». To conclude, in this singular case the crime paid!

* This article reproduces what was orally said during the 17th EPAC/EACN Annual Conference and General Assembly. Thus, although it has been modified later it hasn't lost the oral marks.

[5] ALLDRIDGE, Peter, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime*, Oxford, Portland, Oregon, Hart Publishing (2003), p. 45.

The Portuguese civil society can't tolerate these decisions anymore. This can never happen because nobody should ever profit from the crime. Once again, society will not understand partial decisions like this one. Crime shouldn't pay. So, in this kind of cases prison is not enough because in the end, although convicted, the offender will profit from the proceeds of crime.

2. The Portuguese assets recovery model

Despite this unacceptable result, it is usually said that the Portuguese assets recovery model is indeed a very good one[6]. Theoretically, the judicial authorities have good legal mechanisms to execute the confiscation of all proceeds of corruption and other crimes. Their main problem, as we are going to see below, is not the written law but the usual *praxis*. The lack of freezing and confiscation is a cultural problem that only in a few years with a new judicial approach will be solved.

2.1. Proceeds of crime

Since 1982, the Portuguese Penal Code provides for the forfeiture of the direct proceeds of crime, including proceeds converted into other assets or intermingled with legitimate proceeds [Article 110-1, (b), of the Criminal Code]. The first situation happens, for example, when with the bribe the offender buys a new car and the second one when he/she buys the new car with the bribe and also with other legitimate money. In both cases, the thing is not the direct proceed of the offence but is next substitute. Instead of the bribe itself, something else *in totum* or *in patem* purchased with it.

The Portuguese law also provides for the forfeiture of indirect proceeds. If someone is bribed with fifty euros and then goes to the casino and wins one million, all this new money can be confiscated. It is indirect proceeds of crime and should be confiscated.

[6] About the Portuguese system, for all, Correia, João Conde, *Da Proibição do Confisco à Perda Alargada,* INCM, Lisboa (2012).

The offender wouldn't have had it if he/she hadn't committed the crime. So, according to the Portuguese law everything with economic value, whether corporeal or incorporeal, movable or immovable, that direct or indirectly comes from the crime can be confiscated.

These broad definitions should not be a surprise since they are similar to the concepts incorporate in several international treaties, especially those against corruption. The general principles of assets recovery are now codified in the international conventions and should be almost the same everywhere. Even outside the European Union, due to the international conventions, there has been a clear ongoing process of harmonization that is particularly evident on assets recovery laws[7]. These concepts are now more or less common.

2.2. Value-based confiscation

The Portuguese assets recovery model also sets forth value-based confiscation (Article 110-4 of the Criminal Code). It is the case where the proceeds of crime are a value and so it is impossible to confiscate a single thing. Imagine that someone pays my loans to the bank in order to obtain a better decision in a pending criminal case. In this hypothesis, it is impossible to confiscate the money, because the money belongs to the bank, and the bank doesn't know anything about it (it is a *bona fides* third party). But, if I have other assets available, it is possible to confiscate the value I received to deliver such an influenced decision. The value of the bribe is still with me. It is in my belongings and so it can be confiscated.

Value-based confiscation is also important where the thing is not available anymore. It was destroyed, consumed, hidden somewhere or is in the hands of a *bona fides* third party. Once again, it is impossible to forfeit the proceeds of the crime but (when there

[7] Ivory Radha, «Asset Recovery in Four Dimensions: Returning Wealth to Victim Countries as a Challenge for Global Governance», in Katalin Ligeti / Michele Simontato (eds), Chasing Criminal Money – Challenges and Perspectives On Asset Recovery in the EU, Hart, Oxford (2017), p. 179.

are more assets available) it is possible to confiscate its equivalent value on the legal property.

In all these cases, the Portuguese law allows the confiscation of the correspondent value (the substitute property) and thus proves that crime should not pay. In other words, the convicted person has to pay a sum equivalent to the proceeds of crime. Confiscation is concerned not with how much an individual has but with how much he/she received in connection with the commission of the offence, ensuring that, in the end, he/she does not profit from his/her criminal activity. As it is said in the United States «the amount of "proceeds" does not mean just the amount of money that the defendant has when he or she is apprehended. Congress sought to punish equally the thief who carefully saves his stolen loot and the thief who spends the loot on "wine, women, and song."»[8].

2.3. Third party confiscation

Third party confiscation is a good possibility too (Article 111 of the Criminal Code). When after the offence the proceeds are sold, donated or by other title transferred to other person, the competent authorities should confiscate them since nobody can profit from the crime. Only *bona fides* third parties rights are protected against confiscation. So, if the third party knows or should have known the assets' origin we can confiscate them.

The same happens when the defendant transfers all his/her assets to the third party only to avoid value-based confiscation. Once again, if the third party knows, or should have known, the intention of the defendant the judge can confiscate those assets too. It is the only way to prevent measures avoiding confiscation. Due to the valorization of value-based confiscation, all the assets can now be at risk.

[8] United States of America v. David Ray Newman, No. 10-10430 (9th Cir. 2011).

In all these cases the third party doesn't deserve any protection. Nobody should profit from the crime.

2.4. Extended confiscation

The confiscation of «unexplained wealth» is also an excellent mechanism on fighting against acquisitive crime. Sometimes the Public Prosecutor is only able to prove one little part of the criminal behavior of the convicted person. But the truth is that somewhere in the past he/she has committed several other similar crimes. Like in real life, one can only be looking at one single stone of the total Portuguese sidewalk.

In these cases it is possible to confiscate other assets that are not clearly linked with the offence. The Portuguese law assumes, since 2002, that the value of the defendant's disproportionate assets is proceeds of crime (Article 7 of Law No. 5/2002, of 11 January 2002) and has to be removed. Given this presumption, the Public Prosecutor doesn't have to prove the relationship between the assets and the previous crime. He/she only has to prove that the value of the assets is incongruent with the convict's legal income. The burden of proof is then reversed into the defendant. To avoid confiscation he/she has to prove the licit origin of all his/her assets.

Despite what is usually said in the Portuguese doctrine, this is not extended confiscation. This is, I repeat, «unexplained wealth confiscation» based on the difference between what the offender has and what he/she should have. Portugal still doesn't have extended confiscation, at least not as foreseen by Article 5 of the Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (cases «where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal

conduct»)[9]. The national law prescribes the confiscation of the incongruent value, not the confiscation of one specific asset. Fortunately, sooner or later, the legislator will have to fully transpose the Directive and then the judicial authorities will have one more tool to fight against crime.

2.5. Non-conviction based confiscation

The last substantial mechanism to fight against the proceeds of crime is non-conviction based confiscation (Article 110-5 of the Criminal Code). In Portugal, since long time ago, confiscation is not a punishment. Since crime shouldn't pay, the authorities have to put the criminal in the patrimonial situation he/she had before committing the crime. Confiscation has a reparative function, righting a moral wrong, by remedying an injustice. Confiscation is hence possible even without a final conviction.

It is true that the Portuguese system doesn't provide civil or administrative confiscation like there is in the United States and in other countries. However, there is non-conviction based confiscation in the criminal proceedings. I know that this peculiar mechanism is very different form the civil confiscation: it is in the criminal proceedings, the rules are the criminal rules, namely the burden of proof and the standard of proof. Even so, despite having to prove the offence, the judicial authorities don't need a final conviction anymore. Thus, when the accused person has died, the defendant has fled, the proceedings are statute barred, there is an amnesty, an immunity or in other similar cases, it is possible to confiscate without a final conviction. The Portuguese law sets forth a general clause that can be applied in all imaginable cases and is able to solve the lack of criminal conviction. The confiscation is possible even in these cases.

[9] Instead of the broad definition set forth by Article 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property that allowed different approaches, Article 5 of the Directive 2014/42/EU provides a much narrow definition of extended powers.

2.6. Freezing

Besides the material criminal law, Portugal also has good procedural laws regarding assets recovery. They complement each other, creating a reliable system. One is worth nothing without the other. In fact, Portugal has no icebergs (as you already know, the weather is not so cold here) but the Portuguese procedural law allows the authorities to freeze, and one can say that this is a very important tool to make confiscation effective (Articles 178 and 228 of the Code of Criminal Procedure and Article 10 of Law No. 5/2002, of 11 January 2002). If the authorities don't freeze the assets in a very early stage of the proceedings, when they issue the final decision probably they will have nothing to execute anymore. The earlier you freeze the better. It is the only way to ensure the effectiveness of the final decision.

Unfortunately, some months ago, the Portuguese Parliament amended the law and now is more difficult to freeze. Nowadays the Public Prosecutor must always prove that there is *periculum in mora* (Article 10-2 of Law No. 5/2002, of 11 January 2002). And as you all already know, this is not so easy. Usually is even almost impossible to prove that. So I can predict that in the future there will be lots of very good decisions without any possibility of enforcement. The criminals are going to transfer and hid the proceeds of crime somewhere far from the eye of the authorities. As soon as they heard about the proceedings, if the authorities do nothing, they are going to take the necessary precautions to avoid confiscation.

2.7. Assets Recovery Office and Assets Management Office

To help the Public Prosecutor with all these tools, in 2011 the Portuguese government created an Assets Recovery Office that carries out the financial and patrimonial investigation in the most difficult cases and cooperates with other bodies and entities at international level. It is an interdisciplinary agency, created by Law No. 45/2011, of 24 June 2011, with personnel from the police forces, the tax administration and the

registry, working together in order to identify, to trace and to freeze the ill-gotten assets[10].

After that moment it is with the Portuguese Assets Management Office, created by the same law. It will provide for the management of the frozen assets in order to increase their value, if possible. Instead of the traditional approach where nobody cared about the management of the frozen assets and so usually they depreciated, the logic is now the desirable increase of value. Hence, even if in the end the judicial authorities have to give back the assets, their value is the same or even higher and the State doesn't have to pay any compensation.

Both these two institutions are very important because they can deal with the confiscation aspect while the police forces, the public prosecutor and even the judge are dealing with the criminal aspect. I can even say that they are the cornerstone of our assets recovery system. More than the material and procedural confiscation mechanisms, the competent authorities need institutions which can help them with the practical aspects of confiscation. One can know a lot about confiscation and yet one may have serious problems when trying to confiscate.

3. The importance of asset confiscation in corruption cases

This assets recovery system applies in almost all cases, especially in corruption cases, and should (I have to stress again) always be used. The authorities should never forget the confiscation of the proceeds of crime as an important part of the decision. As I said at the beginning, the authorities can't: punish the offender and, at the same time, forget the proceeds of the crime. Both aspects of the case are required since they are the different faces of the same coin. In fact, only the confiscation of the proceeds of crime can prevent the corrosive effect of criminal wealth on legitimate business,

[10] About the Portuguese Assets Recovery Office see, Correia, João Conde, «Gabinete de Recuperação de Ativos: a pedra angular do sistema Português de confisco», *Investigação Criminal, ciências criminais e forenses* (2017), 1, p. 48 e ss.

financial markets, and the wider economical system. The investment of ill-gotten gains in the legal economy is a problem that can undermine the foundations of our democracy. By attacking the capacity of criminal wealth to penetrate the legitimate economic, «markets will be more stable, more reliable and less prone to the detrimental effects of counterfeiting and others illegitimate acts»[11].

Furthermore, the prospect of losing their ill-gotten gains dissuades offenders from committing crimes. So, confiscation has an important deterrent role[12]: it reduces the capital available to invest in illicit enterprise, removes criminal role models from communities, and spreads the message that crime doesn't pay.

One should also never forget that the United Nations Convention Against Corruption, «the most recent and comprehensive anti-corruption treaty»[13], includes a specific chapter (Articles 51 to 59) on assets recovery in order to return the ill-gotten gains to their lawful owners, including countries from which they had been taken illicitly[14]. This is particularly important for many developing States where there is high level corruption that is taking away the resources needed for the country. To recover and return the stolen assets is also the only way to make justice.

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Co-operation and Development (OECD) also sets forth the confiscation of the proceeds of crime (Articles 3-3 and 7) and the same happens with the Criminal Law Convention on Corruption of the Council of Europe (Articles 13, 19-3 and 23). All these norms show the actual importance of assets recovery. People who trade with their position have to be deprived from their illicit gains.

[11] Bullock, Karen/ Lister, Stuart, Post-Conviction Confiscation of assets in England and Wales: rhetoric and reality, in Coling King / Clive Walker (eds) Dirty Assets Emerging Issues in the Regulation of Criminal and Terrorist Assets, Ashgate, Surrey (2014), p. 49.
[12] Bowles, Roger/Faure, Michael/Garoupa, Nuno, Forfeiture of Illegal Gain: an Economic Perspective «*Oxford Journal of Legal Studies*» (2005), 25, p. 275.
[13] Ivory, Radha, *Corruption, Asset Recovery, and the Protection of Property in Public International Law: The Human Rights of Bad Guys*, Cambridge University Press, Cambridge (2014), p. 1.
[14] About the importance of assets recovery in this Convention, see Ivory, Radha, *Corruption, Asset Recovery*..., p. 22.

4. Conclusions

As you have seen, the Portuguese written law is very good indeed. It has almost all the tools that are needed to confiscate the proceeds of crime. The problem, our problem, is another one, as I have already said: it is the problem of the *praxis*. Law in books can be very beautiful like the beautiful old library of the University of Coimbra. It's from the eighteenth century and has lots of old books. But nowadays almost nobody uses it anymore. People go there to see the books, not to read them. Only few people want to do that and so I can say they are almost dead.

The same happens with the law. If nobody applies the law we don't even know if it is good or bad. It is the same with confiscation. Once again, if nobody uses confiscation we don't know how it works.

This is our biggest problem. The more I read and think about confiscation, the more I think that we have here a cultural problem. In Portugal, and I guess in other countries too[15], there is a lack of application of the confiscation rules. The police forces, the public prosecutors, and even the judges are focused in the criminal aspect and usually forget the confiscation aspect. They try to punish the criminals, but sometimes they forget their assets. So I beg you, please. Let's put those two aspects together. Let's go confiscate the proceeds of crime. Let's go demonstrate that crime (in general and corruption in particular) doesn't pay.

[15] In the same sense, Vettori, Babara, *Tough on Criminal Wealth Exploring the Practice of Proceeds from Crime confiscation in the EU*, Springer, Dordrecht (2006), p. 114]. Paradoxically, the same happens in the common law systems, where confiscation has much higher levels (Cassela Stefam D, «The American Perspective on Recovering Criminal Proceeds», in Katalin Ligeti / Michele Simontato (eds), Chasing Criminal Money – Challenges and Perspectives On Asset Recovery in the EU, Hart, Oxford (2017), p. 257).

Current measurement efforts. Why and how to measure?

On-going challenges and potentials

Summary of the presentation

Frédéric Boehm (OECD)

Economist, Policy Analyst

Organisation for Economic Cooperation and Development - OECD

Importance of monitoring and evaluation of corruption, integrity and integrity policies.

Why measuring? What? How?

Challenges: diversity of corruption and hidden/illicit practices. Avoid relying on a single indicator. Number of detected cases is not an indicator of the corruption level. We are left with subjective data: measurement through surveys, thus producing perception indexes, and so on.

Alternatives: experimental designs, structural equation model, estimating "missing investments" or "missing earnings"...

Climate of measuring the integrity: the "positive" side.

CEV model (Kaptein, 2009).

The BAK's efforts towards enhancing the EU-wide and cross-sectorial promotion of integrity and prevention of corruption

Summary of the presentation

Verena Wessely (Austria)

Head of Unit, International Cooperation

Federal Bureau of Anti-corruption - BAK

It's best to prevent than to investigate later on.

There are limitations on perception indexes: they do not measure the sustainability of policies.

Use of positive terms: integrity, not corruption.

First informal steps in the survey of a member, together with EPAC/EACN (March 2017).

From the big picture to the fine print: a practical view of integrity assessments

Summary of the presentation

João Paulo Batalha (Portugal)

President of Transparency and Integrity, Civic Association - TIAC

There's a mismatch between perception (everywhere) and experience (nowhere).

Corruption is the biggest threat to existing solid democracies.

Participatory tools: partnerships, integrity pacts, etc.

Civil society is crucial when there's no political will.

PARALLEL WORKSHOP OF THE ANTI-CORRUPTION AUTHORITIES (ACA)

NOTE: Please see the presentation of the conclusions of this workshop at the Plenary Session 5, at pages 163-175.

16 Nov. 2017

Corruption and the financing of political parties:

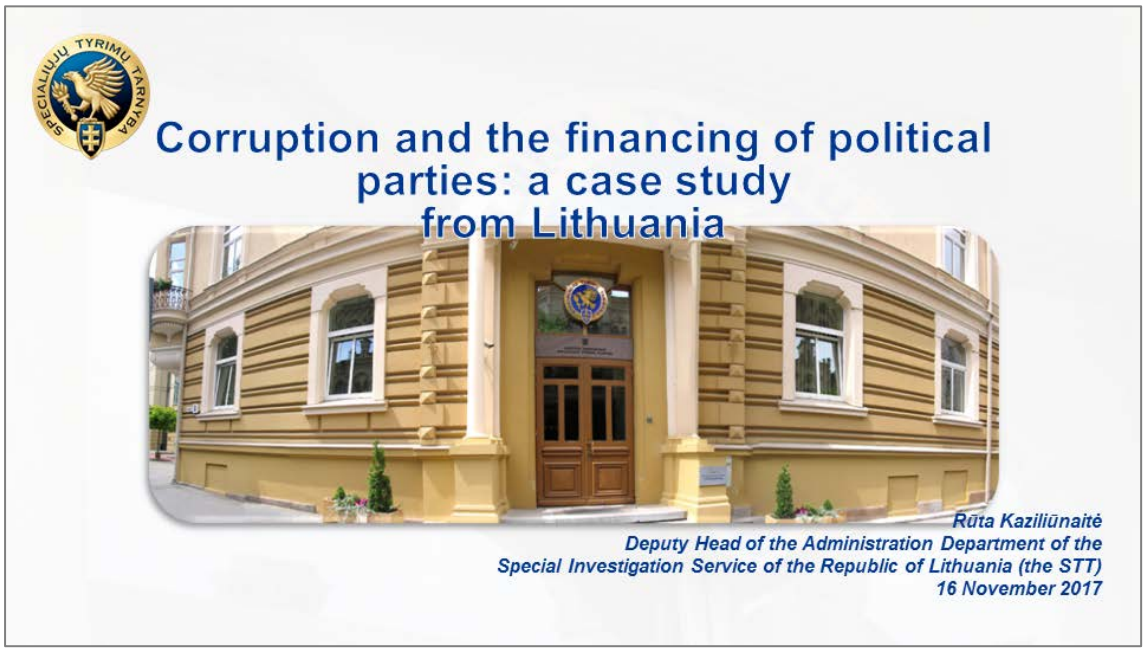
a case study from Lithuania

Rūta Kaziliūnaitė (Lithuania)

EPAC/EACN Deputy Vice President

Deputy Head of Administration Department

Special Investigation Service of the Republic of Lithuania - STT



The STT – who we are and what we do?

We are a law enforcement agency acting on a statutory basis, independent from the executive power and accountable to the President and the Parliament of the Republic of Lithuania

Our main activities are:

- Investigation of highest-level corruption cases
- Corruption prevention
- Anti-corruption education and awareness raising

Current top priority - complete elimination of systemic corruption from the political arena preventing any further spill-over effect of corruption

The STT - how we got there?

1997: the STT was established and investigated all kinds of corruption cases

2000: the STT was reformed, systematic fight against corruption started and priorities were se

2000 – 2016: the STT was moving up the political ladder with it's investigations

2015: 1149 cases of corruption opened, only 6,7 percent of them – most serious, complex and high-ranking - cases was investigated by the STT

2016: the year when one of the most prominent political corruption cases in Lithuanian history was opened

Main features of the case

- Case No. 02-7-00010-16
- AKA „the MG case“ (after a major group of business enterprises involved) or „the case of the Liberals“ (after one of the political parties involved)
- Opened on 11th May, 2016
- Still in pre-trial phase – must be stressed that all acts of bribery which will be mentioned are **alleged** and respect for **the presumption of innocence** must be paid
- Expected beginning of the court trial phase – end of the year 2017

Main features of the case: natural persons involved

Five natural persons having the status of a suspect

- E. M. – MP, chairman of one the leading political parties with growing popularity (the party „L.“)
- G. S. – MP, deputy chairman of the party „L.“, deputy chair of the political group of the party „L.“ in the Parliament
- Š. G. – MP, associated with the party „L.“
- V. G. – MP, first deputy chairman of the party „D.“
- R. K. – vice-president of a major group of business enterprises acting in Lithuania (the Group)

Main features of the case: legal persons involved

Three legal persons having the status of a suspect:

- the party „L.“ – a political party with liberal views, which held 12 seats in the Parliament and enjoyed growing popularity in the perspective of upcoming general elections, all in all – one of the main actors of Lithuanian political life
- the party „D.“ – a political party of a rather controversial reputation, which avoided being convicted in another criminal case only by reorganization and which held 28 seats in the Parliament
- the Group - a group of companies engaged in retail and wholesale, logistics, manufacturing, media, real estate development and management, construction, IT and telecommunications industries; also a major actor in Lithuania

Main features of the case: types of bribes and their ties with the funding of political parties

- 106 000 Euro in cash intended to be used for the needs of the party „L.“
- Intended funding for a public establishment represented by G.S., a charity fund and electoral campaign of G.S.
- 8 700 Euro bribe disguised as funding for a public establishment related to Š.G.
- 12 000 Euro bribe in the form of discount for political advertisement in the media controlled by the Group
- Around 15 000 Euro bribe disguised as funding for a public establishment related to the Party „D.“

Main features of the case: actions desired by the bribers

- Acting in favor of the Group while fulfilling the duties of the MPs in a manner which amounts to abuse of office
- Voting for laws important for the business interests of the Group
- Voting for a public-private partnership project worth 169 300 000 Euros
- Influencing one of the Ministers so that he makes decisions favorable to the Group
- Influencing outcomes of public procurement procedures where the Group had particular interests
- Voting against a particular candidate for the position of the Prosecutor General of the Republic of Lithuania

Main features of the case: investigative techniques employed

- 26 searches and seizures conducted
- > 100 witnesses interviewed (~60 MP's)
- forensic analysis of relevant audio conversations conducted
- forensic analysis of handwriting conducted
- forensic analysis of computers an other electronic devices conducted
- expertise of the State Tax Inspectorate invoked
- expertise of the Central electoral commission invoked

Main features of the case: timing and effect

- Time – the pre-trial investigation was opened on 11th May, 2016
- 9th October, 2016 – elections to the Parliament
- Popularity of the party „L.“ fell from 15.5 in April, 2016, to 6.6 in May, 2016, and 5 in September, 2016
- According to political scientists – major negative effect for the performance of the party „L.“ in general elections
- The decision of the Central Electoral Commission to cut budgetary funding for the party „L.“ worth 395 000 Euro

What it all says about Lithuanian political system and functioning of the democracy?

- (a) Lithuanian political system is corrupt and lacks integrity OR (b) there are effective safeguards against political corruption in Lithuania?
- (a) Lithuania is a country where law enforcement can be invoked to achieve political goals OR (b) Lithuania is a democracy where law enforcement agencies can perform their functions despite the highest ranks of the suspects?
- (a) Lithuanian electorate can be easily influenced by a bribery scandal OR (b) the voters in Lithuania are intolerant towards corruption?

The correct answer is (b) in all three cases

Thank you for your attention

Money and Politics: the links between public procurement and political parties

Septimius Pârvu (Romania)
Project Manager, Expert Forum Association - EFOR

Frauds during the electoral processes tend to happen less during the e-day, but more and more through sophisticated means that involve abuse of public resources. Politicians use legislation, allocations from public funds or procurement procedures to fuel their own well-being and the electoral campaigns of their parties. Therefore, the purpose of the presentation was to demonstrate the links between the illegal financing of political parties and procurement.

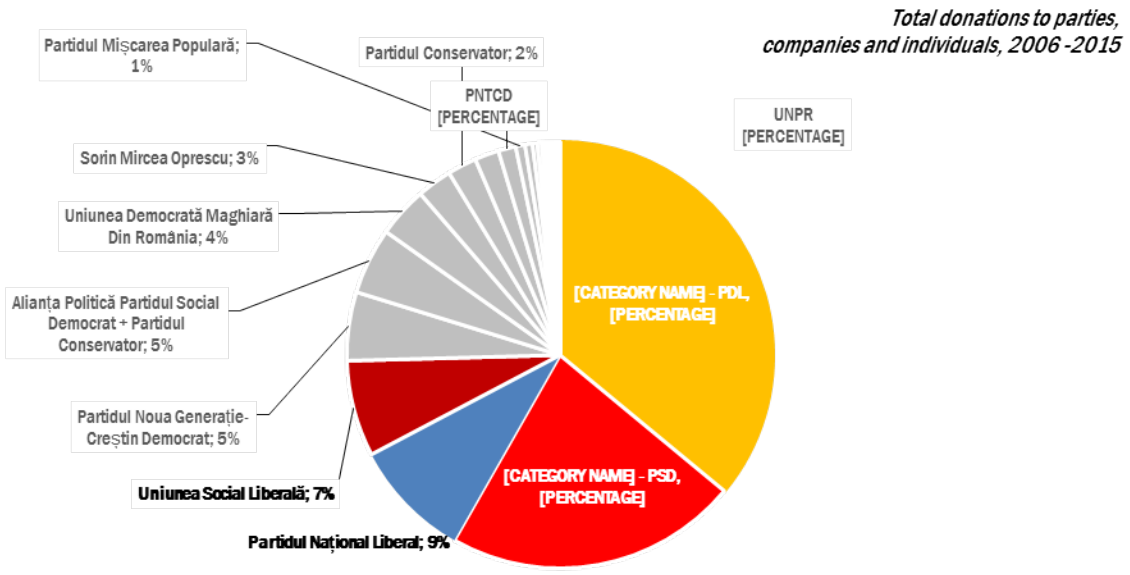
In order to reach these conclusions, we have analysed a series of databases including procurement, political finances, outcomes of the elections and ownership and history of the companies that received a high number of contracts from public funds. We went through millions of procurement procedures and decisions to allocate funds from the Romanian Operational Programs (Regional, Transport and Environment), the National Program for Rural Development (2007-2013), investments funded with Romanian money through the National Investments Company (CNI) and the National Program for Local Development for 2007-2016 (PNDL). The conclusions are also based on meetings with experts, investigative and regulatory institutions or representatives of the political parties and companies.

Generous companies

According to the Romanian legislation, companies are allowed to donate to the political parties and the amounts are published in the Official Gazette over certain thresholds. The total sum of political donations between 2006 and 2015, made by both individuals and legal entities, is 263.701.111 RON (56 mil. EUR). A number of 1724

companies donated to parties in this interval: 616 won public procurement (both national and EU funds) and 303 signed contracts from EU funds. According to the statistics, the Democrat Liberal Party (PD/PDL) received 36% of these funds, while the Social Democrats (PSD) almost 22%.

As mentioned above, donating funds to a political party is legal. But, in terms of vulnerabilities, it can demonstrate a potential connection between that certain company and the political parties.



Based on their ownership and relation to the parties, we have identified several typologies of donor companies. They are not exhaustive, but illustrate quite faithfully why some of the competitors may have success. Universal donors contribute to the budgets of all the political parties that come to power in order to maintain their efficient business relations. Several companies that donate have family or affinity relations with elected officials, while others are administrated or include in their shareholding former employees of contracting authorities with which the companies currently have commercial relations. Conflicts of interests occur quite frequently, in the sense that a representative from the management of the company is connected to decision-makers from the contracting authority; in some cases they coincide. Other successful companies that donate include in their management former members of

the communist nomenclature that after 1989 gained positions as councillors, state secretaries etc. One of the most interesting type of company is the one that donates to the political foes. The last circumstance illustrates that the power relations are more important than the political ones and that politicians from different parties can collaborate in order to receive access to funds or power[16].

But one of the main questions related to success is how the important companies - donors or not - managed to monopolize the market. According to our interlocutors, many successful competitors do not need to "fix" procurement procedures anymore, because they have the financial and human resources capacities to win contracts in a fair manner. Still, by looking into their history, we can see that there are key moments when they have been supported by politicians through diverse manners: helpful legislation, politicians in the management or donors, fixing contracts etc. Our research has shown that almost 75% of top 30-40 construction and consultancy companies in terms of contract values from EU funds are directly or circumscribed by political parties or have criminal files for fraud, tax evasion or money laundering.

Abusing the public resources: mechanisms and results

One of the research objectives was to identify what are the main channels through which the public resources are abused and their destination. And we have identified a series of such mechanisms, based on data collection and analysis of criminal cases that resulted in convictions. Some of them are related to clientelism, which means mostly supportive measures to allocate funds to friendly mayors or presidents of county councils, while other are related to corruption.

The methods have changed over time and are getting more and more sophisticated. In the recent years, cases or bags of illegal money used for the financing of the elections have become rarer and have been replaced by contracts. For example, one common avenue for siphoning funds is using consultancy contracts, which in many cases are

[16] Read more about these companies in EFOR report, *Money and Politics – the links between public procurement and political parties*, http://expertforum.ro/en/report-money-and-politics/

fictitious or overpriced. The final product is hard to assess, while working time or the final products can be easily manipulated. Some politicians use their own or friendly companies to do the dirty job and to channel the resources.

The most common mechanisms to fraud or abuse public resources are the following:

- Preferential allocation of funds (Reserve Fund, PNDL, etc.) for same colour local administrations, generating dependency to the centre;
- Manipulation of legislation in order to create exceptions or more rights for some contracting authorities (i.e. Emergency Government Ordinances 6 and 9/2017[17]);
- Determining the local decision-makers (mayors, for example) by a county council president or other political leader to cast votes in exchange for approving funds (for example, from the National Program for Local Development);
- Paying a commission or bribe (typically 10-20% of the contract) to the contracting authority to win the procurement procedure or to approve payments for works already executed by companies;
- Using false or overrated consultancy contracts to mask the illegal campaign funding;
- Using false documents to get EU funds / changing the destination of the funds;
- Obtaining funds in situations of conflict of interests:

  – the decision-maker is the shareholder, administrator or is controlling the firm in any other form and uses the public office to get contracts for the company

  – potential conflict of interests: the existence of companies whose owners work/ed in public institutions such as CNADNR or MDRAP;
- Politicians soliciting from companies various products or services for electoral campaigns / companies offering products or services;
- Obtaining funds illegally under the pretext of organizing public events, by paying participation fees that actually cover political campaigns;

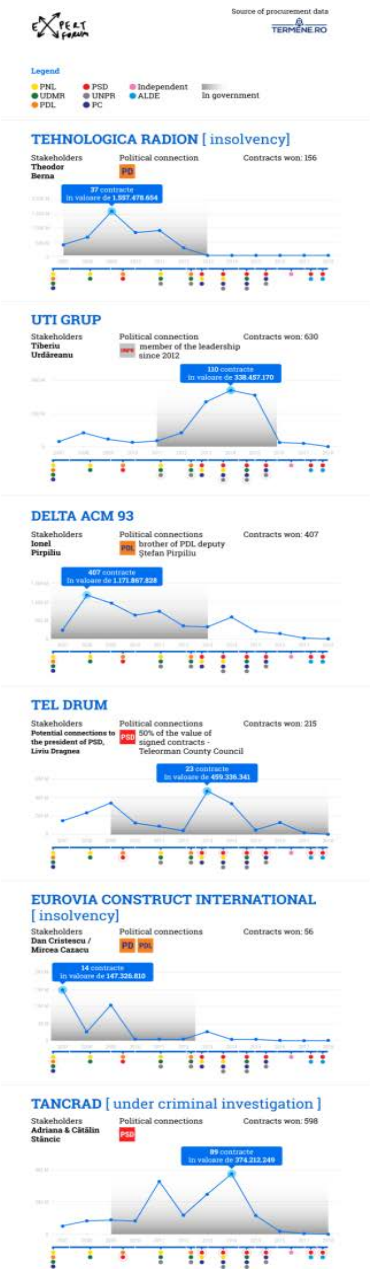
[17] http://www.nineoclock.ro/senate-has-adopted-geo-6-basescu-it-is-an-ordinance-in-the-psd-style/

- Appointing people close to political parties in key posts (for example at the head of state-owned companies) to facilitate the procurement of public procurement contracts; part of the money to get to the party[18].

Some of the recurrent vulnerabilities related to the procurement that may determine fraud or abuse - identified during our research and non-exhaustive - are the following:

- Conflicts of interests; companies related to stakeholders in the contracting authorities or at higher levels;
- Political influence in decision related to the results of the procurement/ pressures from the managers of the institutions or from politicians;
- Multiple, overlapping contracts for the same investments, from different financial sources (for example contracts related to floods);
- Systematic contracting for feasibility studies or consultancy with the local authorities from a certain county or region;
- Poor quality of the feasibility studies that are reflected in over-evaluation of the estimated value; copy-paste studies that are sold to several contracting authorities or studies that have already been done and they are re-done to receive additional funds;
- Superficial documentations and involvement of the same company in several stages of the procedures; Specifications tailor-made for certain companies; Unclear selection or evaluation criteria;
- Abuse of negotiated procedures;
- Abuse of emergency grounds to justify use of non-competitive or fast-track procedures;
- Amendments of the contract terms after conclusion of the contract;
- Lack of professional capacity of the personnel in the contracting authorities, mostly in the rural municipalities.

[18] See detailed infographics with the mechanisms described: http://expertforum.ro/banipolitica/

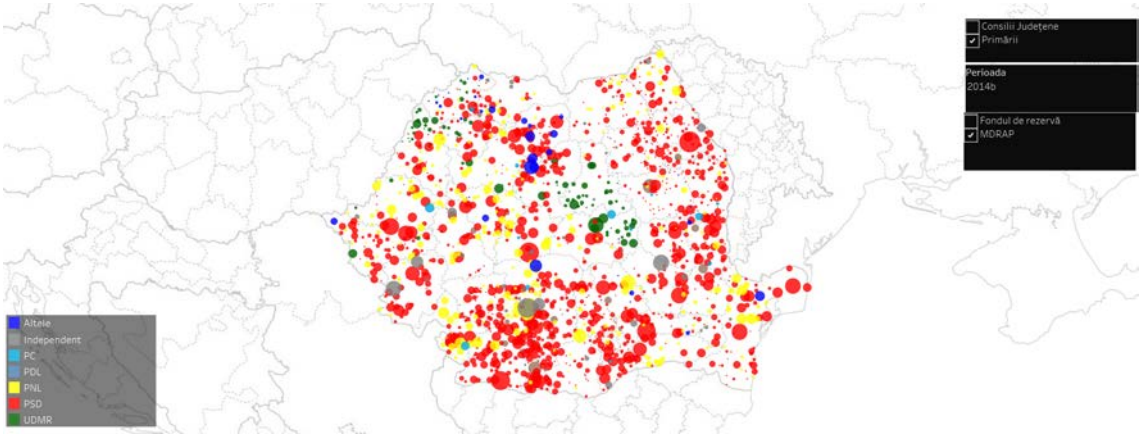


Moreover, the analysis of data shows that we can draw links between the success of some companies and the political leadership of that same period. Some of the major competitors have registered unusual spikes in their procurement records that can be interpreted as an anomaly. It can be normal for a company to have better or worse period in its activity, but we can interpret as a political help the fact that a certain competitor stops receiving contracts after national elections or after the fall of a certain party. Such examples can be seen in the enclosed infographic. These are just exemplifying companies, but they are not the only ones that fit into this pattern.

When we talk about the destination of funds, we believe that most of the politicians who abuse public resources are interested in their own personal gains and are not using illegal means just for the benefit of the party; therefore, only a rather small portion of the funds or goods are allocated to the party for electoral activities, slander campaigns, getting people on board, councillors or party trolls.

An important conclusion is that national money are more vulnerable than the EU funds, due to the lack of strict control mechanisms and to politicized allocation mechanisms. Therefore, money from the Reserve or Intervention funds managed by the Government or from PNDL can be connected to political interests both in terms of allocation and public procurement. Still, EU funds are not fraud-proof, even though the control and audit system are much more complex and lengthy.

Expert Forum has developed an Index that measures the degree of clientelism in allocations from the central government to the local municipalities. The measurement shows that in 2007 a mayor from the party in power had three times more opportunities to get money than one from the opposition. In 2012-2006 the report was 2/1. It's worth mentioning that all the parties in power used this kind of mechanism. And allocation grew mostly in electoral years, as an incentive for the mayors that bring votes for the party.



See more details on EFOR's Map of Clientelism – www.expertforum.ro/en/clientelism-map.

The situation is similar if we analyse the manner in which the public procurement procedures take place. In around 25% of the counties 4-5 firms out of 50-60 get 50-60% of the funds; this percentage illustrates a kind of monopoly, especially if we take into consideration that they are politically connected or have criminal records for embezzlement, fraud, tax evasion, fixed procurement etc. Moreover, between 40 and 60% of the procedures do not have their winner introduced in the official procurement platform. In the case of the Reserve Fund, there are situations of local or regional monopoly, especially when a large part of the procurement takes place through direct purchases or negotiation without publication.

A first step to solve these issues is to increase transparency, publish procedures and explanations related to the decision to allocated funds. For example, if we take PNDL, the existing data is confusing and it is less than sufficient. No statistics related to the

way money are spent or the success of the program are published, although more than 6.3 billion EUR are allocated for PNDL 2 (2017-2020). The poor quality of data remains a major vulnerability. Databases do not connect, although they (sometimes) contain the same indicators or information, while the incorrect and incomplete figures in SEAP (the official procurement platform) distort the conclusions.

Secondly, we have identified a visible lack of communication and collaboration between the public institutions that oversee the funds, either that we speak about those who monitor the procurement, the Court of Accounts, the fiscal authorities or the investigative ones. Therefore, in order to identify the patterns that we have shown and to look into them, a closer inter-institutional collaboration is obligatory.

Lastly, there is a need for political will and vision to stop the abuse and this may be the hardest thing to do. The mayors are kept in a state of dependency from the central government[19,] especially if we take into consideration that 2/3 of the communes in Romania cannot support their own expenses. Therefore, the national funds come as a constant support from the leading party; when a new party comes to power, the mayor may be more interested to switch the political orientation and to go towards the money[20.]

[19] Read more about the costs of clientelism and 'bazaar' allocation in EFOR's annual report for 2018 *The bazaar governance*, http://expertforum.ro/en/annual-report-2018/

[20] In September – October 2014, through GEO 55 a number of 552 mayors out of more than 3186 changes party, mostly towards PSD. The reason is mostly connected to the presidential elections organized at the end of 2014. The Constitutional Court decided that the decision is not constitutional. None of the mayors lost the mandate. More details on EFOR Map of Political Migration, http://expertforum.ro/en/political-migration/

A DATA-DRIVEN APPROACH:

Implementation and effectiveness of the French interests and assets disclosure system

David Ginocchi (France)
Head of Legal Affairs
High Authority for Transparency in Public Life, France

Introduction – the High Authority: an independent institution for public integrity

The laws of 11 October 2013 on transparency in public life, which created the High Authority for transparency in public life, were drafted and discussed in order to address issues in the French institutional architecture with regard to exemplarity and transparency in public life. Regulation of public integrity sought to be entrusted to a unique, fully independent, and more effective authority, in charge of enforcing the control of declarations of assets and interests, preventing conflicts of interests – a notion defined for the first time in French law –, counseling and advising public officials or institutions, and promoting transparency in public life.

Since its creation in 2013, several laws expanded the scope and missions of the High Authority. Among them, the law of 9 December 2016 (regarding transparency, fight against corruption and modernization of economic life), established an online public lobbying register to inform citizens about the relations between lobbyists and public authorities.

Under French law, the High Authority is an "independent administrative authority": it is a permanent body in the administrative structure responsible for guaranteeing integrity amongst French public officials, but it cannot be instructed nor ordered to take any action by the Government. The institution is thus not answerable to the executive power and is solely subject to audit by the Supreme Court of auditors and

the Parliament (e.g. auditions, parliamentary investigation committees) and control of administrative and judicial courts.

To guarantee its independence, the High Authority is composed of a collegial board of nine members responsible for taking the main decisions of the institution. In addition to its President, appointed by the President of the French Republic following a procedure entrenched in the Constitution, six members of France's highest judicial bodies (Supreme Court of auditors, Court of cassation, Council of State) sit, along with two members appointed by the speakers of each House of Parliament. The High Authority's members are appointed through collegial votes to avoid individual considerations, and according to the principle of gender parity. They serve a non-renewable and non-revocable six year term, and can neither receive nor seek orders or instructions from the Government.

The board of the High Authority is submitted to strict ethical rules and to professional secrecy, provided by the institution rules of procedure. As all members of boards of independent administrative authorities, they have to submit asset and interests declarations to the High Authority with strict rules of deport as they are checked within the institution. Yet, unlike other members of boards of independent administrative authorities, their declarations are made public and available online. Under the authority of the President, the 50 staff members of the High Authority are divided into 6 divisions, coordinated by a general secretariat. About 20 additional part-time rapporteurs from the highest French jurisdictions complete the work force of the authority and intervene to lead complex investigations.

The scope of the laws of 11 October 2013 was initially covering about 10 000 public officials. It has incrementally expanded since then, to reach about 15 800 public officials on 1 January 2018. The following elected and non-elected high-ranking public officials now have to submit electronic declarations of assets and/or declarations of interests to the High Authority:

- Members of the Government, a pre-vetting procedure may take place before their nomination;
- Members of the Parliament;
- Candidates to the presidential election (declaration are published at least two weeks before the first round);
- French Members of the European Parliament;
- Major local elected officials (president of regional or departmental councils, mayors of towns of 20 000 inhabitants and more, etc.);
- High-ranking civil servants nominated by the Council of Ministers (ambassadors, prefects, central administration directors, Secretaries general, etc.);
- Advisors to the President of the Republic, Ministers, Presidents of the National Assembly and Senate, but also directors, deputy-directors and heads of cabinets of major local elected officials, etc.;
- Members of the Supreme Council of the Judiciary
    - In France, there is no dedicated institution in charge of controlling declarations of assets and interest of judges. Provisions regarding such obligation and control were included in the Law n° 2016-1090 of 8 August 2016 relating to statutory guarantees, ethical obligations and the recruitment of magistrates and to the Supreme Council of the Judiciary but were censored by the Constitutional Council in its decision n° 2016-732. The Constitutional Council considered that by submitting only the most important magistrates to a declaration of asset, the law disregarded the principle of equal treatment between all judges. Nonetheless, all members of the judiciary have to file a declaration of interests to the President of their court or to their Prosecutor;
- Members of independent administrative authorities;
- Heads of publicly owned entities;
- Some civil servants and military officials;

- Chairpersons of sports federations, sport professional leagues and organizing committees of major sports events (like the 2024 Olympics).

1. Getting a clearer picture of public officials

One of the rationale behind the creation of the High Authority was to allow citizens to better know these public officials in order to make sure they do not unduly benefit from their positions and that private interest do not interfere with public decision making processes.

A specific step in the procedure applies to future Members of Government and intervenes even before their nomination. Indeed, the High Authority operates a pre-vetting of cabinet members by implementing a preliminary check of both their tax returns and interest disclosure. Following a scandal in the early years of existence of the High Authority and the resignation of a minister after a few hours in his functions, this became a practice before each nomination and, since 2017, is now included in the laws of 11 October 2013.

The public officials falling within the aforementioned scope must submit to the High Authority, in the two months following their entry into functions or the beginning of their mandate, two declarations: a declaration of assets and a declaration of interests.

The declarations aim at providing a precise picture of the assets and interests held by a public official at a given time. Filing guidelines published by the High Authority detail practical modalities, timeframe to file declarations, the exact content of each declaration, the modalities – if applicable – of publication of these declarations, how they should signal any evolution in their assets or interests or how to obtain support for filling the declaration.

Public officials falling within the scope of these obligations must fill in a declaration of interest in the first two months after their election or nomination. In case of a substantial modification of the public official's interests (new activities or involvements, change in the spouse or partner's professional activity, substantial change in the action portfolios, etc.), he or she must update the. This instrument is one of the tools at the disposition of the High Authority to fulfill its mission of prevention of conflicts of interests.

The second instrument, the declaration of assets, includes:

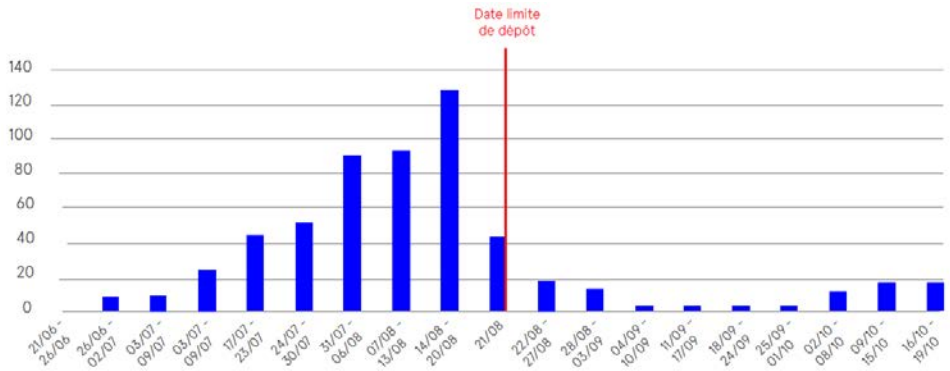
Public officials submitting declarations to the High Authority need to do so in the two months following their nomination or election too. They must also submit an end-of-term or end-of-office declaration at the latest two months after termination of their functions or before the end of term for elected officials. In between, they must update their declaration of assets in case of substantive change, (inheritance, acquisition of a property, etc.). If they did it in the previous year however, they do not have to issue a new declaration of assets, except in case of substantial modification of the assets.

The objective behind the declaration of assets is to verify that the exercise of a mandate or functions has not been the occasion of an unexplained variation of wealth. The High Authority thus control the variation of assets during the mandate or the functions.

2. Disclosing interests and assets

Under French law, some of the declarations collected must be published on the website of the High Authority and in an open data format and, for a small number, in local Government offices.

In October 2017 for instance, the High Authority published all interest and activities declarations of the 577 incoming Members of the National Assembly, following the 2017 legislative elections.



Out of the 577 declarations of MP's:

- 487 were received in compliance with the delays;
- 84 after the deadline, following reminders;
- 6 were still missing on 19 October when all MPs' declarations were made public on the website

The High Authority publishes the declarations once they have been checked in order to allow access to all to complete and accurate information and to accompany the declarations of a public statement in case the High Authority identifies an irregularity.

Under Article 5 and article 12 of the law n°2013-907 of 11 October 2013 on transparency in public, the content of the declarations of assets and the declaration of interests of the members of the Government and members of the Parliament are made public in the three months following the reception of the opinion of the tax administration on their declarations. Yet, in peculiarly demanding periods (renewal of the National assembly, Senate, etc.), considering human resources of the High Authority and the implementation of a contradictory approach allowing filers to justify or complete the information transmitted, delays have been faced or are to be expected.

The published declarations remain online until the end of the mandate or the functions. When the declaration is filed after termination of the mandate or the functions, its content remains accessible for six months after that date.

One of the main objectives of the Laws of 11 October 2013 was to foster transparency in public life through the publication of these declarations on the website in a reusable way. On 15 October 2016, online disclosure became mandatory and all declarations are now filed online, which made it possible to publish their content in an open data format starting in 2017. It was one of the priorities of 2017 with the conception and implementation of a lobbying register, which was launched on 3 July 2017. The list of published statements is available on the High Authority website but also on the platform data.gouv.fr. They are published under open license. This allows, notably, a great liberty of reuse of information, the commercial adaption and exploitation of data and to promote the quality of sources the only constraint is the mention of sources.

In 2017, which was an electoral year in France, several sets of declarations were published in order for citizens to scrutinize public officials. It was the case in March 2017 with the publication of declarations of candidates to the presidential election. These declarations are the only ones to be published without being controlled as the High Authority has not been given the mandate to do so. Upon their publication,

250,000 pages were viewed in 48 hours on the website. Then, in October 2017, declarations of interests and activities of incoming Members of the National Assembly were published upon completion of their control. 200,000 pages were viewed in the next 48 hours. In comparison, 20,000 pages were viewed on the three days before this publication. It meant that the pages viewed in 48 hours amounted to the number of pages viewed over the 6 previous weeks. And it is worth noting that 72% of the users that consulted the websites at that time of the year consulted several pages, which tend to indicate that citizens searched for more than one declaration.

Beyond the interest of journalists and regular citizens for this exercise, publication of interest and activities declarations in an open data format gives civil society organizations the possibility to take part in the detection of conflicts of interest. Indeed, the High Authority is likely to reopen checks if the services and College daily monitoring highlight new developments and in case of alerts from civil society organizations or from any citizen. Such openness to citizens and civil society was actually recognized in the laws of 11 October 2013, under the form of an approval for referral to anticorruption civil society organizations. In this respect, the laws have granted them with the possibility to refer to the High Authority for transparency of public life when they have knowledge of a situation or facts likely to constitute a breach to the various obligations set out in the law.

3. Two complementary components of a thorough control

Upon reception of any declaration, a first formal check of the disclosed data is operated. It is a double check, making sure that public officials submitting a declaration fall within the scope of the High Authority (eligibility check) and that declarations are complete (completeness check).

After reception and the first formal systematic verification of both declarations, the completeness, accuracy and consistency of the content is later checked to ensure there are no omissions, misevaluations or shortcomings. This control follows two complementary logics. On the one hand, the monitoring of a declaration of assets pursues three objectives: verify the coherence of the declaration, detect any substantial omissions or inexplicable variation of assets and prevent illicit enrichment. And the other hand, the monitoring of a declaration of interests allows to prevent conflicts of interests. Indeed, the identification of such situations in the control process can lead to several outcomes depending on the type of conflict of interests.

For the first time in French Law, the law of 11 October 2013 on transparency in public life defined the notion of conflict of interest as "a situation in which a private or public interest interferes with a public interest in such a way that it influences or appears to influence the independent, impartial and objective performance of a duty".

This provision highlights three criteria to define conflict of interests. Firstly, the public official must hold an interest which can be direct or indirect, private or public, material or moral. Secondly, this interest must interfere with the exercise of a public duty. And finally, this interference may influence, or appear to influence the "independent, impartial and objective performance of a duty": there is a conflict of interest when the interference is sufficiently strong to raise reasonable doubts as to a public official's capacity to carry out his or her functions objectively.

Based on the control of the declaration of interest, but also on investigations, when a situation of conflict of interests is detected, the High Authority has different lever of actions:

- The High Authority can recommend an appropriate solution to prevent or to stop a conflict of interest. The options can be the revelation of the problematic interest, the reorganization of work (to avoid handling a subject linked to his or her interest) or the abandonment of an interest;

- If the situation continues, the High Authority can issue injunctions against public officials (except members of Parliament) requiring them to cease the activity causing the conflict of interest. The injunction can be made public, and it can be transferred to a prosecutor. Any non-compliance is a criminal offense liable to a year of imprisonment and a 15,000 € fine. This injunction power has not been used so far.

Beyond the first formal check and the systematic check of all declarations of interest, some of them are subject to a more thorough control.

Five motives can lead to such an in-depth verification process:

- A specific exposure;
- The fact that, upon formal verification, the declarations are visibly incomplete, sent after the delays or erroneous;
- Red flags (civil society organizations, citizens, other administrations, etc.);
- A random check, selected across all categories of filers by random computer generated draws;
- Abnormalities revealed in controlling assets variation during the mandate or time in office.

A very important partner of the High Authority in its control missions is the tax administration. In 2016, the High Authority and the tax administration signed a protocol to clarify their relations. Since January 2017, the High Authority staff members are allowed to connect directly to some of the tax administration databases and applications to carry out routine checks, especially to value real estates, to access the list of registered bank accounts or to access cadastral information. But the tax administration remains a powerful partner to check public officials' income, access and

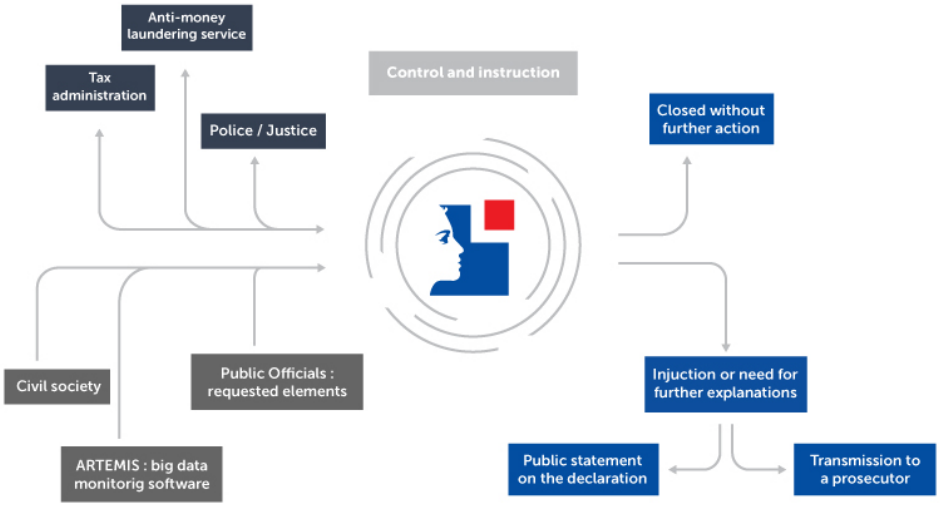
gather other information (bank or notarial information, international assistance for assets held abroad, etc.).

In addition, cooperation between the national anti-money laundering service and the High Authority has been subject to legislative developments in December 2016. The anti-money laundering service and the High Authority can now share relevant information to their respective controls and investigation procedures. A protocol between the two institutions was signed in September 2017. Regarding cooperation with courts, a memo of the Directorate for Criminal Matters and Pardons and an instruction of the Attorney General for financial magistrates have been drafted and signed to formalize information sharing procedures with prosecutors and audit courts.

The High Authority also uses a number of publicly available databases (open or upon subscription) such as commercial registries, etc. As mentioned with regard to the control of declarations of interests, an internal software has been designed and is currently being used to centralize all information (news, social media, databases, etc.) on public officials falling in the scope of the missions entrusted to the High Authority.

In the contradictory phase of the control procedures, public officials are allowed to justify the content of their declarations and to update their declaration of interest if needed. Only for 2017, 606 modificative declarations of assets have been filed. This figure includes such updates and corrections after exchanges with the services of the High Authority but also substantial modifications declared by public officials as they occurred (inheritance, sale of a house or land, etc.), in order to notify them to the High Authority as foreseen in the law.

Information sources, inter-institutional partnerships and results of the control procedures



At the end of the monitoring procedure, the High Authority is entitled to:

- close the review;
- issue a public assessment regarding the lack of "exhaustiveness, accuracy and sincerity" of the declaration, after giving the person the opportunity to send its comments;
- in the most problematic cases, refer the case to the public prosecutor's office, who will then decide whether or not to pursue a criminal investigation. Regarding members of Parliament, the file must also be referred to the Bureau of the relevant assembly.

Overall, control of both declarations is closely intertwined. For instance, the High Authority transmitted to the Prosecutor both declarations for a public official who had forgotten to declare a bank account both in his declaration of interests and of assets. Moreover, the declaration of interests may shed light on the control of the variation of assets in the declarations of asset (parts in societies, peculiar interests or remunerated activities, etc.) and may allow detecting criminal offences, like taking an illegal advantage which is a felony referred to in article 432-12 of the French criminal code.

Such tools may also bring more evidence to ongoing judicial procedures related to fraud for instance or money laundering. They may thus be used in closer cooperation with the judicial authorities.

4. Clear enforced sanctions

If the board of the High Authority identifies potential infractions, several sanction may apply.

With regard to the declaration of assets, article 26 of the Law of 11 October 2013 provides that "if one of the persons referred to in Articles 4 or 11 of this Act does not file one of the declarations provided for in said Articles, fails to declare a substantive part of their assets or their interests or provides an untruthful evaluation of their assets, they shall receive a three-year prison sentence and a €45,000 fine".

Additional penalties may be handed down in the form of loss of civic rights, in accordance with Articles 131-26 and 131-26-1 of the Criminal Code, as well as the prohibition of holding public office, in accordance with Article 131-27 of the same Code.

Moreover, if nominated public officials that are listed in section III of article 11 of the Law Nr. 2013-907 of 11 October 2013 do not submit a declaration after the two month-delay, their nomination is considered null.

With regard to the declaration of interests, if the conflict of interests meet the criteria of the criminal offence provided at article 432-12 of the criminal code (taking an illegal advantage), it can lead to a sentence of 5 years in prison, a 500,000 € fine and a disqualification for any public office for a maximum of 10 years.

In practice, the control procedures resulted in the transmission of a declaration to prosecutors for inaccurate submission in 30 cases since 2013, for offences provided for in the Law on transparency in public life: 9 in 2014-2015, 12 in 2016 and 9 in 2017. In comparison, the pre-existing administrative commission had transmitted 12 files to courts in 25 years of existence but only one resulted in an actual conviction.

All cases referred to competent public prosecutors have so far resulted in systematic judicial investigations and proceedings. The first definitive sanctions were pronounced in 2016 and a few examples now include:

- in April 2016: a six-month suspended sentence and 60,000€ fine for a senator;
- in September 2016: a 1-year ineligibility and 2-month suspended sentence and a 5,000€ fine for a former Minister;
- in November 2016: a 45,000€ fine for a member of the National Assembly;
- in October 2017: a four-month suspended sentence and a 30,000€ fine for a former Member of the National Assembly.

PARALLEL WORKSHOP OF THE POLICE OVERSIGHT BODIES (POB)

NOTE: Please see the presentation of the conclusions of this workshop at the Plenary Session 5, at pages 176-184.

16 Nov. 2017

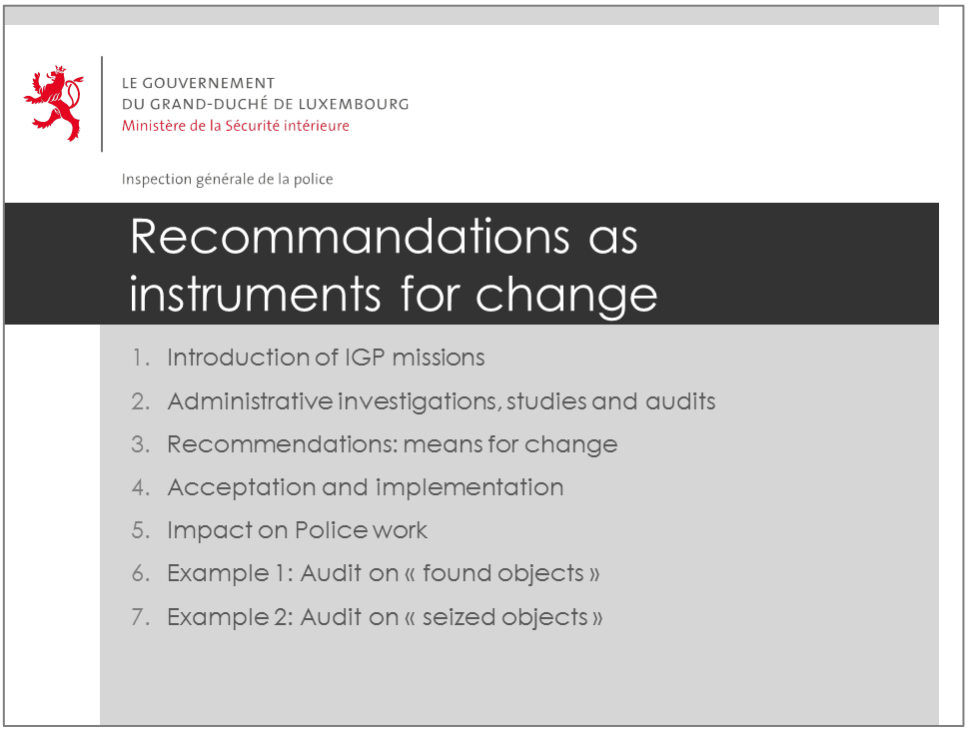
Recommendations: Tools of change

Monique Stirn (Luxemburg)

EPAC/EACN Deputy Vice President

Inspector General of IGP

Inspectorate General of the Police - IGP



1. IGP missions: institutional setup

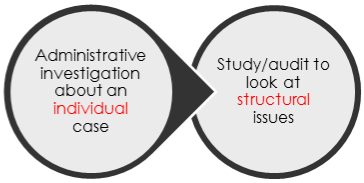
- IGP is a service under the authority of the Ministry for internal Security
- The service is for now organically independent from the Police
  - but is meant to become a separate administration with its own personnel start of 2018: a draft bill increasing its independence and enlarging its competencies is currently discussed in parliament
- Created in 1999 by the national legislator, one of its main task consists in supervising the functioning of the Police
  - Control of legality
  - Assessment of quality of police work (effectiveness and efficiency)

1. Means to complete missions

- This main task is carried out through:
  - the legality monitoring
    - Control of the lawfulness of police measures, procedures, operations and practices and reports failures to the competent authority (Ministry for internal Security)
    - IGP is free to initiate all administrative investigations and to take necessary control measures
    - Often the IGP acts upon a complaint issued by a citizen or a public authority
  - studies and audits upon request of
    - the Ministry for internal Security,
    - the Ministry of Justice or
    - the General Public Prosecutor
  - judicial investigations

2. Studies and audits

- Control of legality and studies/audits have in common
  - both constitute an evaluation of the existing situation
  - both will suggest actions to improve the situation
- The difference is in the scope of analysis
  - the legality monitoring is mainly focused on a specific case
  - the study/audit normally covers a broad matter (a specific procedure, a department, etc.)
- A legality monitoring executed through administrative investigations can trigger a study
- Example: audit about the national response centre (nº113)



2. Recommendations from studies/audits

- IGP issues recommendations and conclusions aimed at
  - improving the functioning of the Police,
  - the quality of policing and
  - minimizing (operational and reputational) risks for the Police
- Recommendations are then implemented through
  - measures affecting the internal rules of the Police (service prescriptions)
  - measures relating to the training of the Police forces
  - material changes (affecting the tools and software used by the Police for instance)
- The best recommendation is the one that produces a sustainable impact with the Police

3. Acceptation and implementation

1. Acceptation: The recommendations issued by the IGP need to be accepted by the Police(receptivity of IGP recommendations).
   - An action plan drawn by the Police illustrates its readiness to accept certain recommendations

2. The transposition is the means by which the Police implements a recommendation.

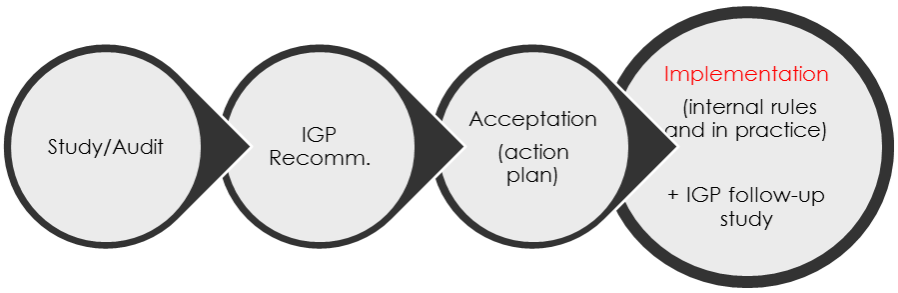
The implementation of the accepted recommendations needs a decision on
   - the exact measures to be taken
   - the timing and duration of implementation

Most often, internal rules (service prescriptions and service notes) are adapted, but training initiatives can also be suggested.

3. The application is about determining whether in practice the adopted changes are actually followed on the ground.

4. The IGP follow-up : has the Police kept its promises ?

3. Recommendation process



3. Features of a « good » recommendation

- The impact potential of a recommendation depends on
  - its relevance
  - its clarity and legibility
  - + the « right » degree of precision in its content in function of the audited/studied domain and the desired outcome
- This last element is hard to get right as two extremes can happen:
  - The « framework » recommendation that leaves a certain degree of flexibility in terms of its implementation
  - The « tailored » recommendation that is very detailed as to how it should be put into practice
- The middle path : the outline and content of a solution are set out without entering into too much implementation detail
- In the end, a lot depends on the audited domain and on the objective of the recommendation itself

4. Recommendations from studies and audits

Topic	Formulated RCs	Accepted RCs	Accept. ratio	Implemented RCs according to follow-up	Implement. ratio	Implemented RCs / accepted RCs
CI LUX	50	38	76%	19	38 %	50%
CI GRE	52	26	50%	11	21,2%	42,3%
CI DIE	38	20	52,6%	6	15,8%	30%
CI E/A	83	70	84,3%	34	41%	48,6%
CI CAP	56	48	85,7%	33	58,9%	68,8%
CI MER	50	45	90%	27	54%	60%
Welcome	42	29	69%	9	21,4%	31%
Found objects	35	35	100%	26	74,3%	74,3%
Service accidents	13	11	69,2%	3	23,1%	33,3%
TOTAL	419	320	76,4%	168	40,1%	52,5%

5. Measuring impact and follow-up work

- Two approaches to measuring impact
  - Quantitative assessment ⇨ good overview, but does not give any indication on magnitude of a recommendation
  - Qualitative evaluation ⇨ recommendations are assessed in the context of the actual Police work (low, satisfactory and optimal impact)
- Both approaches are needed, as complementary
- Importance of the follow-up: a continuous assessment tool:
  - 2-3 years after initial report was finished
  - Means to assess the degree of implementation of the action plan (theoretically and on the ground)
  - Gives the opportunity to adjust IGP recommendations, to formulate new ones and to cancel others

5. Observatory and long-term assessment

- A current draft bill considers the creation of an observatory inside the IGP that would provide a constant, global and long-term evaluation of Police work in the light of the IGP's recommendations
- Its mission would be, among others, in this domain
  - to proceed with a quality analysis of the implementation of IGP recommendations (impact report)
    - those that have emerged through studies and audits
    - but also those expressed following other IGP control mechanisms
    - to appreciate the respect of the recommendations over time, hence going beyond the follow-up studies/audits
  - to carry out a follow-up of the recommendations that either have not been integrated in the Police action plan or those integrated in the plan, but not implemented at all

6. Example 1: audit on « found objects »

- In view of problems concerning « found objects » the General Public Prosecutor ordered a study on the topic (September 2006)
- The IGP undertook an audit with 35 recommendations (June 2007)
- The Police set out an action plan in order to implement the recommendations (February 2008)
  - all recommendations to be implemented
  - considerable changes in service prescriptions
  - formally all recommendations have been carried out
- In 2011, IGP presented its follow-up audit
  - gap between new service prescriptions and practical application on the ground
  - some weaknesses in internal control mechanism

6. Example 1: audit on « found objects »

- Quantitative impact
  - Excellent receptivity of recommendations
  - 75% of all recommendations integrated into Police action plan have been realised
- Qualitative impact
  - Very substantial impact
  - New management system for « found objects » has been put into place

7. Example 2: audit on « seized objects »

- The IGP has been asked by the Ministry of Justice to study the procedure by which objects are seized in judiciary proceedings (recording, digital management, secured storing) (December 2008)
- The IGP undertook an audit, 60 recommendations were issued, 25 of them being considered of high importance
  - main advice
    - a unique system of digital management of the « seized objects »
    - defined responsibilities along the chain of custody
    - each object getting a unique barcode
- Most recommendations were shared by the judicial authorities, implementation depended on the disposal of adequate levels of financial means and HR, technical solutions have delayed the implementation of the unique barcode

Final thoughts on impact

- IGP recommendations should be clear
- Constructive exchanges with Police over time are central to build trust
- Yet, issues of public finances and of political agendas can impede some desirables outcomes
- Some recommendations are harder to implement than others (technical and HR issues for instance)

➢ IGP recommendations have contributed to raise the quality, the effectiveness and efficiency of Police work


Thanks for your attention!
16
Inspection générale de la Police
21/12/2018

Auditing Police processes: Health, safety and wellbeing of police officers at work

José San Segundo Corchero (Spain)
Inspector – Auditor of IPSS
State Police Agencies Inspectorate - IPSS

General legislation

The Spanish Constitution entrusts public authorities to ensure health and safety at work.

Under this constitutional mandate and as a transposition of the European Framework Directive 89/391 / CEE, the Law for the Prevention of Occupational Risks in Spain was enacted in 1995.

The purpose of this Law is to promote the health and safety of workers, establishing general principles.

Through a Royal Decree, in 1998 the occupational risk prevention legislation was adapted to the General State Administration, which is applicable to civilian personnel at the service of Public Administrations, but not to the State Security Forces.

The functions assigned to the members of the *Policia Nacional* and *Guardia Civil* to protect the free exercise of rights and freedoms and to guarantee citizen security, present specific characteristics that allow, according to the European Framework Directive of 1989 and Spanish Law of 1995, to exclude them from their scope of application, since there may be serious risks to the life and physical integrity of the police officers in the actions they have to carry out in order to fulfill that mission.

Specifically the 1995 general law Labor Risks excludes all those activities whose particularities impede its application in the field of public functions. Not only excludes those related to police, but also others like security, customs guard and the

operational services of civil protection and forensic expertise in the cases of serious risk, catastrophe and public calamity.

However, it doesn't mean that the police officers' health and safety shouldn't be protected. On the contrary, due to the special nature of the Police functions and the means they use to carry out their duties, it was necessary a particular regulation taking into account all these issues.

Specific OHSW (Occupational Health and Safety alt Work) rules

There are two rules specifically established in the State Police Agencies:

A Royal Decree published in 2005 regulates Occupational health and safety at work (OHSW) in *Guardia Civil*.

Another Royal Decree published in January 2006 regulates the same matter within *Policia Nacional*.

These Royal Decrees establish a Central Prevention Service in both State Police Bodies, with "inspection and internal control" powers. The IPSS (Spanish POB) is in charge of the "inspection and external control" of the activity developed by those Central Prevention Services.

The IPSS, in case of detecting any infringement of the OHSW legislation, is empowered to require the Central Prevention Service concerned the measures to rectify the non-compliances or irregularities, assuming the IPSS the same competences that, in the general scope, corresponds to the ITSS (Labor and Social Security Inspectorate) for the rest of the workers of the Public Administration as well as the private sector.

STATE POLICE AGENCIES CENTRAL PREVENTION SERVICES

The Central Prevention Service of each State police agency is in charge of:

1. The design, implementation and coordination of an occupational risk prevention plan that allows the integration of prevention in the general management system, as well as preventive action programs;

2. Submit the prevention plan and preventive action programs to the General Director of the Civil Guard or National Police for its approval;

3. Identification and evaluation of risk factors that may affect the safety and health of personnel who work in the police facilities;

4. Preparation of emergency plans;

5. Study and analysis of the accidents that occurred during the official service and of the professional illnesses;

6. Information to the personnel affected in the matter of prevention of occupational health risks;

7. Collaboration with the Training Division in the training of personnel in matters of occupational risk prevention;

8. Determining the appropriate priorities and monitoring their effectiveness.

As it is said before, the Spanish POB is the external audit authority.

SPANISH POB STRUCTURE AND COMPETENCIES

At the operational level, the IPSS (the Spanish POB) is structured in seven inspection teams, one of them in charge of the external control of the activities developed by the central services of prevention of labor risks of the state police agencies.

The other six teams are general inspection teams. In each of these teams one inspector auditor is in charge of specific occupational and safety at work issues.

Specifically, during the inspection visits, this team member is responsible for monitoring that the occupational risk prevention system has been correctly implemented in each of the police specialties, taking into account all risks and hazards. In addition, he performs a special monitoring of the shooting galleries, the detention and custody areas and the personal protective equipment (PPE) assigned to each police officer.

He is also in charge of checking that the emergency procedures have been correctly implemented in the police station facilities and the maintenance contracts are being fulfilled.

Maintenance is a big issue, above all, preventive maintenance.

The advantages of maintaining good preventive maintenance are:

- ♣ Replace worn components before they fail, prevents the larger expenditure of replacing the whole system;
- ♣ Clean and restore components before performance degrades;
- ♣ Avoid consequences of component system failure;
- ♣ Improve reliability and predictability;
- ♣ Train experts on proper procedure and technique.

Functions of the specific OHSW Team

The central occupational risk prevention Service of each state police agency, in accordance with an instruction from the Secretary of State for Security, is obliged to keep the specific occupational risk prevention team of the Spanish POB permanently informed, with respect to the following matters:

- The occupational risk management system and its subsequent modifications, as a result of new risk and hazard assessments;

- Accidents and incidents that occur in official police units;

- Illnesses that may be related to professional activity

- Suicides and suicide attempts committed by police officers.

The latter ones and the accidents when are serious or affect four or more people must be communicated before 24 hours.

In any case, this POB inspection team may make the requirements in case of breaches of the rules of prevention of occupational hazards call to the Central Service for appropriate measures to be taken.

Rights of police officers in matters of occupational risk prevention

- Right to their safety and health will be protected. Protection measures will be adopted, both collective and individual;
- Right to information. Right to be informed of the risks that may exist, the measures that are adopted to alleviate them, as well as the measures that they themselves may adopt;
- Right to participation and representation. It may be carried out through the representative bodies such as unions (*Policia Nacional*) or professional associations (*Guardia Civil*) or through the Central Services of occupational risk prevention. At the same time, police officers can also participate directly on their own making the proposals they deem appropriate to improve their safety and health;
- Right to receive training regarding the prevention of occupational risks;
- Right to health surveillance. It is guaranteed that the health of the police officers is periodically monitored, establishing medical examinations every year or every two years, depending on the type of service they provide and the risks that each entails.

Central Services have to send to the Spanish POB the complaints they received form the Unions or associations o directly from the police officers or from their representatives in the own Central Services.

At the same time, it's quite frequently that police officers, unions and associations address their proposals, suggestions and complaints directly to the Spanish POB or to the Labour and Social Security Inspectorate.

In this case, the agreement between both Inspectorates is being set up and implemented.

As you can see this is an open system in which anyone can make proposals, suggestions and complaints about OHSW and send them to the competent authorities

In this matter is very important the participation of every police officer, being proactive and reporting any potential hazard that he/she can find in their workplace.

Looking 12 years back, this system is, without a doubt, an important breakthrough in the protection of health and safety of police officers at work in Spain.

In conclusion, this system is designed to stimulate police officers' participation in the process of identifying hazards and associated risks and in the process of implementation of the OHSW (Health, Safety and Wellbeing at Work) Management System.

From the Spanish POB we encourage every police officer to be proactive and report the hazards they find in their daily work.

The IGGN and its role in the assessment and evaluation process

Philippe de Boysère (France)

General

General Inspectorate of the French National *Gendarmerie* - IGGN

Auditing police processes

EPAC
EUROPEAN PARTNERS AGAINST CORRUPTION

LISBON November 2017

2

All police forces have been entrusted by their State, while respecting the legality, with responsibilities and duties:

- towards their citizens

- towards their staff

A police oversight body does not have only a repressive role of fighting corruption.

Through its daily audits and checks :

- it contributes to the promotion of honesty, integrity and morality.

- it ensures the quality of the service delivered to the population

4

In the French gendarmerie, the general inspectorate (G. Insp) is in charge of numerous audits and controls to be carried out within the institution.

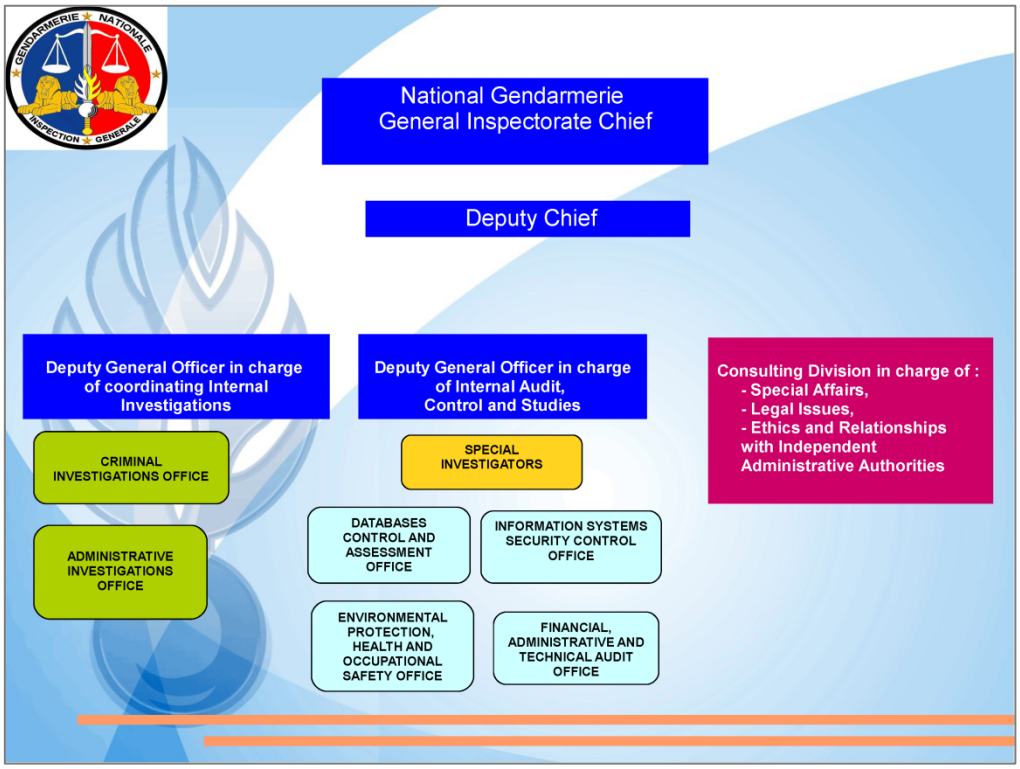
*►The G. Insp provides a **quality insurance** to the general director, the judicial authorities and the minister of the interior.*

5

- *As **a quality insurance**, the G. Insp has an educational, support and advisory rôle in many aspects. Pedagogical methods are privileged.*

- *In that way, the G. Insp has specialists in many aspects of service*

6



WHAT ARE THE KEY ISSUES OF INTERNAL CONTROL ?

1 – What are the key requirements ?

2 – What are the major risks ?

3 – What are the major control points ?

8

SOME EXAMPLES OF INTERNAL CONTROL

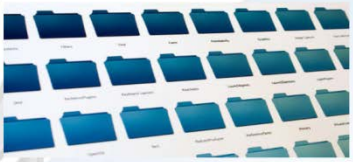
1 – The tools for self assesment of the elementary units

2 – The monitoring of the conditions of police custody

3 – The evaluation of public reception in the units

9

1 - Self assesment of the elementary units



10

1 - Self assesment of the elementary units

– *Implementation of a continuous, secure and standardized internal control system*

– *This self-assessment, downloadable from Intranet, is articulated around 40 points*

- *The objective is to check points according to a defined schedule (monthly, quaterly or biannual)*

11

1 - Self assesment of the elementary units

– the questionnaire is part of a strong logic of accountability of the chain of command

– The self-assessment is completed in 3 sensitive areas by an external inspection by hierarchical superior
(arms, exhibits, police custody register)

- Visits to the unit are scheduled or unexpected, at the superior'option

12

1 - Self assesment of the elementary units

Contrôle interne des unités élémentaires
Réalisé à l'échelon de l'unité

Données administratives

Type et nom de l'unité

Grade et nom du commandant d'unité

Légende

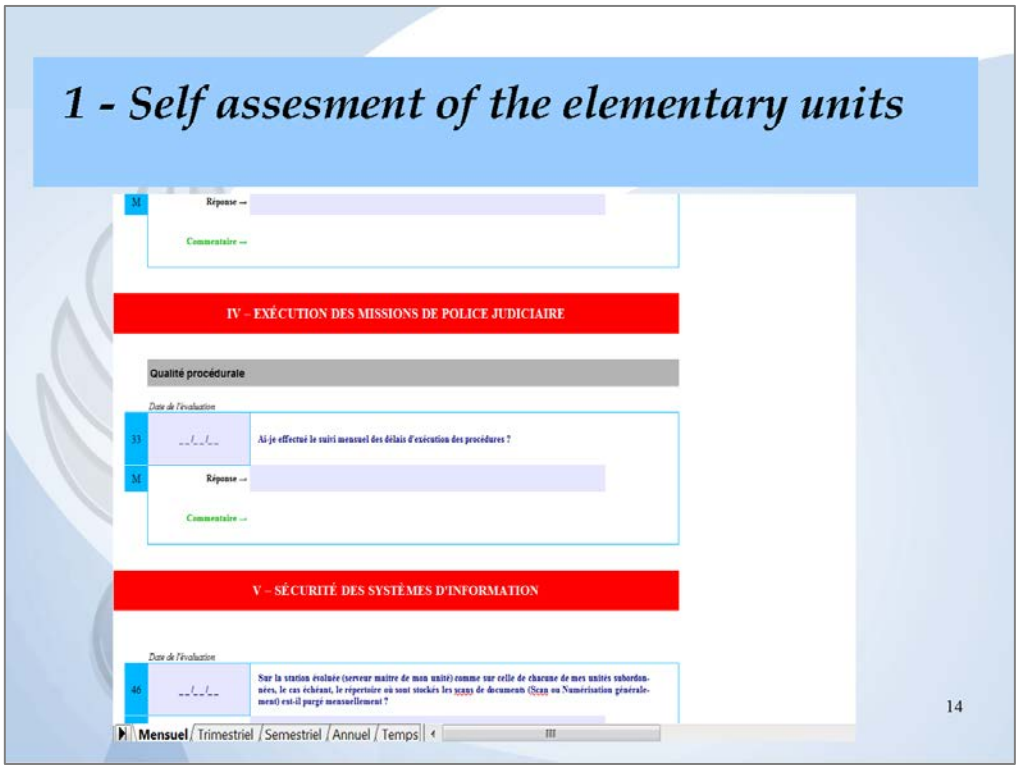
- Risque faible
- Risque modéré
- Risque important
- Risque critique

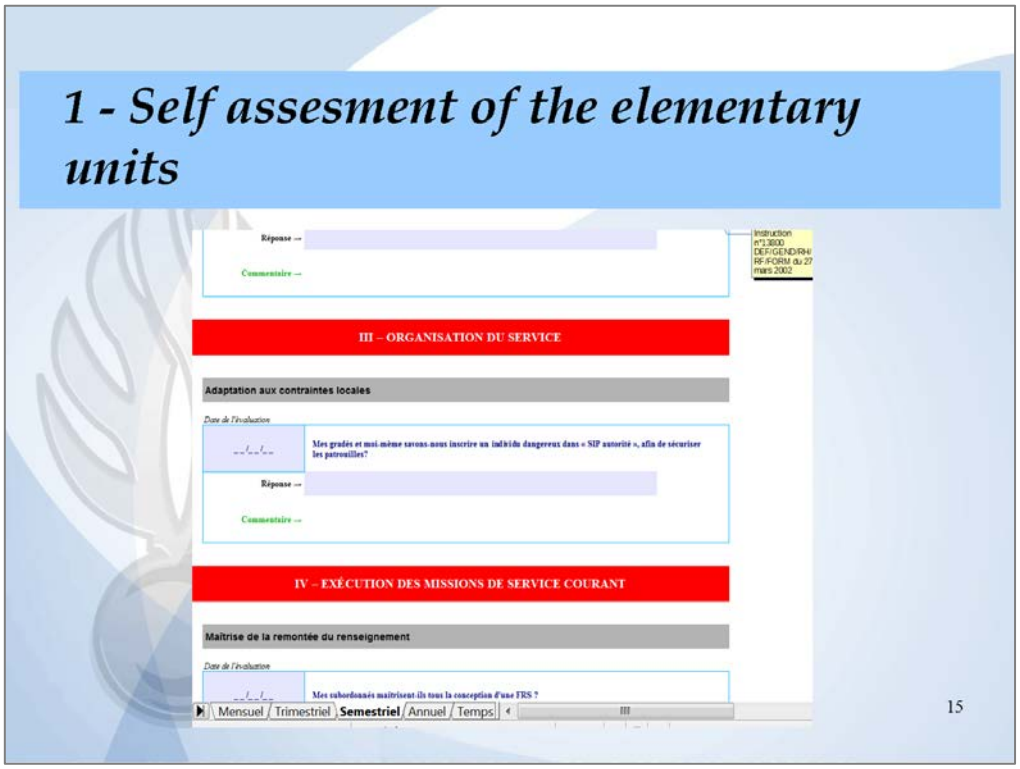
Notice d'utilisation

Le contrôle interne, outil de maîtrise des risques et d'aide au commandement prend la forme d'un questionnaire d'auto-évaluation à destination des commandants d'unités élémentaires.
Il s'inscrit dans une logique forte de responsabilisation du titulaire du commandement, tout en l'éclairant sur les vulnérabilités éventuelles de son unité.
Cet outil propose à partir d'un menu déroulant, les réponses possibles qui conduisent à une cotation du risque (vert, jaune, orange, rouge). Il est renseigné par le titulaire du commandement (CCB et commandant d'unité autonome) selon une périodicité déterminée (mensuelle, trimestrielle, semestrielle ou annuelle) avant d'être envoyé par voie dématérialisée à l'échelon supérieur.
L'auto-évaluation est complétée dans 3 domaines sensibles par un contrôle semestriel externe du commandant de compagnie ou d'EDSR :
- la tenue du registre de gardes à vue, des carnets de transfèrements, des registres sécurité et d'abandon d'armes à l'État ;
- les conditions de stockage des scellés, des produits stupéfiants, de l'armement ;
- les modalités de perception et de réintégration de l'armement par les gendarmes adjoints volontaires.
Ces contrôles annuels sont effectués à la diligence de l'échelon compagnie ou EDSR. Ils sont matérialisés par un écrit et réalisés à l'occasion de visites programmées ou inopinées.

Une aide à la compréhension de certaines questions est disponible lorsqu'il existe un point rouge dans le coin haut droit de la case question.

13


1 - Self assesment of the elementary units
Réponse →
Commentaire →
IV – EXÉCUTION DES MISSIONS DE POLICE JUDICIAIRE
Qualité procédurale
Date de l'évaluation
33
Ai-je effectué le suivi mensuel des délais d'exécution des procédures ?
M
Réponse →
Commentaire →
V – SÉCURITÉ DES SYSTÈMES D'INFORMATION
Date de l'évaluation
46
Sur la station évoluée (serveur maitre de mon unité) comme sur celle de chacune de mes unités subordonnées, le cas échéant, le répertoire où sont stockés les scans de documents (Scan ou Numérisation générale-ment) est-il purgé mensuellement ?
Mensuel
Trimestriel
Semestriel
Annuel
Temps
14


1 - Self assesment of the elementary units
Réponse →
Commentaire →
Instruction n°13800 DEF/GEND/RH/ RF/FORM du 27 mars 2002
III – ORGANISATION DU SERVICE
Adaptation aux contraintes locales
Date de l'évaluation
Mes gradés et moi-même savons-nous inscrire un individu dangereux dans « SIP autorité », afin de sécuriser les patrouilles?
Réponse →
Commentaire →
IV – EXÉCUTION DES MISSIONS DE SERVICE COURANT
Maîtrise de la remontée du renseignement
Date de l'évaluation
Mes subordonnés maîtrisent-ils tous la conception d'une FRS ?
Mensuel
Trimestriel
Semestriel
Annuel
Temps
15

2 – The monitoring of the conditions of police custody units






16

2 – The monitoring of the conditions of police custody units

– Elaboration of an annual questionnaire to implement police custody controls

– Elaboration of the annual percentage of visits to be carried out

- The objective is to check in the spot the major points in order to limit the risks

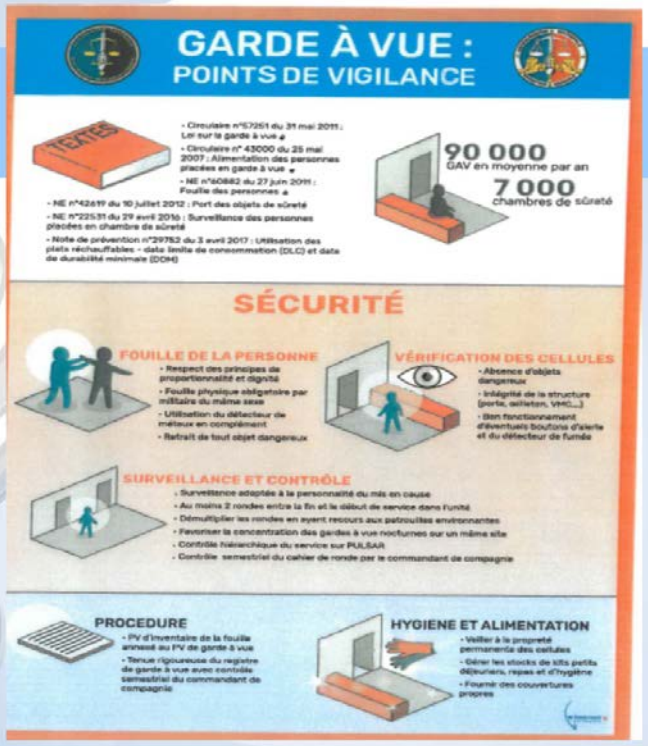
17

2 – The monitoring of the conditions of police custody units

– The objective is to check different points:

- infrastructure,
- jail
- inmate traceability
- night regular surveillance
- hygiene
- food

2 –



19

2 – The monitoring of the conditions of police custody units

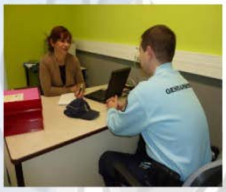
– The IG analyses the answers to the questionnaire and makes a synthesis

- The IG imposes a re-examination in case of malfunctions

- In 2016, 10 % of the units were controled
► 355 units likely to receive a person for a police custody

20

3 -Evaluation of public reception in the units



21

3 -Evaluation of public reception in the units

– Annual evaluation campaign (350 units/year)

– Control of opening hours and telephone calling procedures

– Confidentiality at the reception

- Maintaining contact with victims (survey)

- Study of public complaints when bad reception

22

Conclusions

► The G. Insp is an excellent observato[illegible] the "state of health of the gendarmerie"

►It has the ability to deal with many issues, with extensive powers, to optimize functioning and working methods

► It generates a permanent evolution of the institution

► Ethics and respect for the person are constant attentions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PLENARY SESSION 3

Admissibility of electronic evidence and CCTV

16 Nov. 2017

DIGITAL EVIDENCE

(what could possibly go wrong?)

Krystian Dobrzyński (Poland)
Head of Digital Forensics Unit at Operational Techniques Bureau
Central Anti-Corruption Bureau, Poland

Nowadays everything is becoming digital. Documents, pictures, even reality seems to be more virtual than real. So it is not a surprise that also crime is moving in that direction. Today it does not matter what kind of crime was committed, digital evidence became the most important and desired one. As IT branch is growing dynamically, giving new, almost unrestricted possibilities, the forensic science is always few steps behind and – to be honest – there is no hope for it to be changed in the nearest future. And we cannot blame technology itself, it is simply that the law and forensic sciences are not gaining knowledge fast enough. It this article I will try to present the common problems we have to face when playing with digital evidences. I will also show the good practices that we are using at the Central Anti-Corruption Bureau (which in fact are more or less the same as for other agencies in whole world) and the issues they create.

WHAT DIGITAL EVIDENCE IS LIKE?

We can think of digital evidence in two ways: as a classical evidence (the same as fingerprints or paper document) and as a whole new kind. Both approaches are correct in general, but particularly we need to divide them and – what is the most important – understand the differences. When comparing the classical evidence in a

wide point of view there are a lot of things in common. There is a long process before it will go to the court and help the judge or the juries to decide who is guilty. It is also obvious that witness experts in most of science speak quite different language than, let's just say, ordinary human. The expert also thinks on the other lever of abstraction, so his or her hardest challenge is to translate everything so it will be understandable to everyone. Particularly for digital data expert is (at least should) working on binary level (sometimes called hex level). What we need to keep in mind is that digital evidence on binary level is fully reliable and verifiable. And – what makes it different from any other kind of devices – fully and 100% replicable. We can make unfinished copies of digital evidence, even one from another, and we will still have exactly the same evidence as original one. That is good news for forensics. If we have digital picture or sound or document, each copy will not create a single lack of quality or details. What is more – for each copy we can be sure it is still exactly the same as original by comparing its electronic fingerprint, made usually by calculating hash values (MD5 or SHA algorithms). Perfect, isn't it? Yes. But what is good on one hand can be an issue on another. Analog correction or changes mostly leave a trace. Some of changes made on digital data will not leave a trace and cannot be reconstructed. '0' changed to '1' will be '1' and there is no way to find out what value it has unless we have some previous version of data written in other place. So, digital data can be easily and perfectly manipulated, if someone has enough IT knowledge.

We have to remember that binary data is the only reliable view of digital evidence. But this view can be interpreted differently. So as acquired data is the evidence itself, we can have different meanings of this data presented before court. Unfortunately (in this point of view) the judge or juries will rely on interpretation, as they do not have enough knowledge to interpret the data themselves. To make this situation even more complicated - digital data is captured and frozen in particular moment of time (usually it is a moment of acquisition). In example: if a device (like computer) is working, the data on its hard drive was different one minute before

acquisition and will be different one minute after. So in fact we are making a kind of snapshot. All above implicates some issues, as shown in the following example. The most common question about digital evidence in court is “when this document was created?”. So I made a short experiment. I have created a document and moved it from one device to another, using different methods; let’s take a look at how its system dates were changed. Let’s omit the date as it has the same and focus on time.

Operation	**Creation time**	**Modification time**	**Access time**
Creation	15:27	15:26	15:27
Sending via e-mail	15:32	15:32	15:32
Saving on pendrive	15:34	15:32	01:00
Moving from pendrive back to computer	15:36	15:32	15:36
Changing content	15:36	15:39	15:39

Let’s imagine that after last operation we acquire the content of a hard drive. So… when was the file created? Is 15:36 an actual time of file creation? If we would like to interpret a ‘creation time’ field we should say that it is the last time of creation of a particular file on the particular storage device. If the case is international (and it is quite usual for digital data to be moved across the borders) we also should take in consideration time zones. And that is the point when potentially easiest question in the court hall becomes very hard to answer unambiguously.

Some may say that we have other meta-dates stored inside the file (not by file system as above ones). They are usually not changed by copying or moving operations. But they can be changed by edition of content of file, or… edition of meta-dates itself! There is plenty of software which can help us to do so and even operational system lets us to edit some of the meta-dates by hand.

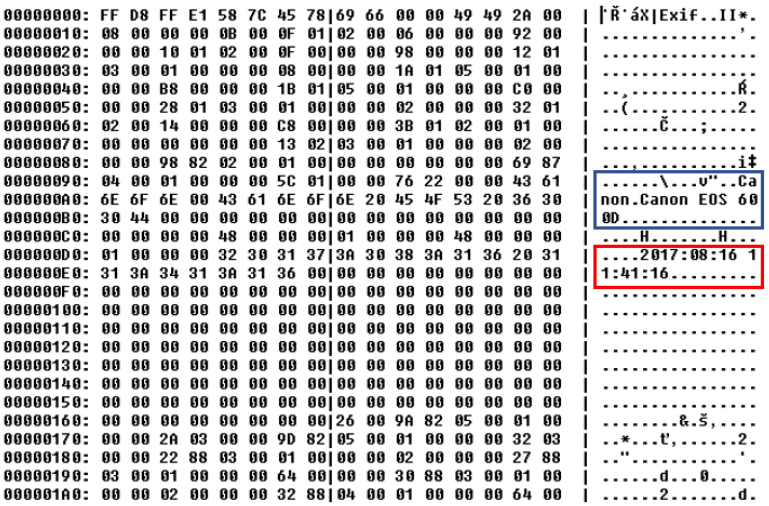


Figure 1. Binary header of photo file made on 16.08.2017, 11:41:16 with Canon EOS 600D camera.

PROCEDURES vs. REALITY

There is a lot of guides how to work with digital evidences, how to seizure them, analyse interpret and present before court. All of them are working good for the most common cases. The problem is that in digital forensics there are pretty less of common cases. In autopsy we have common schemas of cuts to get access to the most important part of body. But interpretation of what is found inside depends on pathologist's knowledge. It is most likely the same for digital forensics. Let's take a look at different stages of evidence processing and the issues they can bring.

1. **SELECTION** – in Poland it is up to Prosecutor what will be written in search warrant. It should be generally unambiguous but sometimes it leaves a field for interpretation. So the officer in charge has to make a final decision, what will be taken. As it usually creates no doubts when search is performed at private home, then it is more complicated when it is some kind of commercial company. This decision should be reasonable as seizure of too many devices (when there is no suspicion that we will find anything important there) in the name of rule "just in case" can simply effect in blockage of investigation when analysts will become stuck with huge amount of data to process.

2. **SEIZURE** – there are two ways of seizure content of electronical devices – physical (taking a device) or copy. Copying is the most common way for investigation on commercial companies, to prevent them from stopping their work when key computers (like servers) are taken away for analysis. We can make binary copy (exactly the same as the content of original storage) or logical copy, when in fact only particular data are acquired. Logical copy is sometimes faster and usually easier than binary one. But by choosing it we can loose the data that is not natively visible in the system (like deleted files). Choosing a copy instead of seizure of physical device can sometimes effect in loosing the possibility to get access to data (when encryption of hard drive is dependent on device itself).

3. **PACKING & MARKING** – the main goal of packing is to prevent the device (or data) from being destroyed or broken or accessed by person who is not allowed. Electronic devices are quite delicate in most cases so it is best to pack them individually in soft (like air bubble) envelopes. When permanently closed, they will be prevented also from accessing it or taking out some removable media or storage. Marking should be unambiguous (type of device, model, serial number, case number, where and from who it was taken, etc.) and

permanently tied to the package. It is also the best moment for connect corresponding “chain of custody” table.

4. **ANALYSIS** – there is a variety of tools for analysing electronic evidences. Analyst should take in consideration the type of data he or she is expecting to find while choosing the best method or tools. Unfortunately different tools can vary in results when performing analysis that sounds the same at the beginning. So it is up to analyst to choose the right one basing on his or her experience and knowledge. It is worth to remember that on this stage work analysts will depend mostly on the precision of Prosecutor or officer in charge in defining what they are expecting to find. The more imprecise expectations will result in longer time of analysis and significantly bigger amount of produced data for secondary analysis.

5. **RESULTS INTERPRETATION** – it is the most important part of evidence processing. On this stage witness expert will set his or her opinion. It should be based mostly on technical artefacts, then on knowledge and experience. Judges are expecting unambiguous opinions but witness expert should be extremely careful when giving one, like answering the question “when this document was created?”. Analysts should definitely avoid conjectures and guessing the answer as this may lead to wrong judgement.

6. **PRESENTATION** – as the opinion of witness expert can be ambiguous in some cases, that the substantiation of the opinion definitely should not be. IT talk can be pretty hard to understand when it comes to the details, as most of the scientific languages. So the presentation of results has to be clear and understandable. It is not always easy as different forensics tools create different reports, some of them are easy to read, some other are too technical and can be understand only by an expert. Sometimes there is a need of rewriting original reports for visualising the final result, so it can be more clear.

WITNESS EXPERT ROLE IN POLAND

In each forensics subjects witness experts are the most important persons. Their opinions are treated by the court as reliable and complete. That is why witness expert should be fully trustworthy as on his knowledge and experience often it depends if someone will be treated as guilty or not of performing a crime. Over the last decade in Poland there are attempts of developing the Act on witness expert which should create the regulations about evaluation of candidate for a witness expert as well as evaluation of existing expert's work. At the moment witness experts are nominated by Chairman of each District Court independently. In most of fields of forensics science there are no particular rules about what kind of education expert should have or how his or her experience and knowledge should be proven. That resulted in pathology on the witness expert market. Nowadays IT experts are the most needed so the expectation for their knowledge and experience are relatively low. Unfortunately the cost is often more important than the quality (which is hard to evaluate when there are no standards) so the most desired is "cheap and fast" expert who usually is not able to perform detailed and complete analysis because of the lack of the tools (both hardware & software) and restricted time for each analysis. Because there is no real evaluation of witness expert work (judge himself usually has no knowledge to evaluate the quality of expert, he must rely on his opinion) the responsibility of expert is also illusive.

THE SUMMARY

What is obvious is that the meaning of digital evidence will be growing fast in the incoming years. We can even expect that some of the cases will become fully dependant on this kind of evidences. As I tried to show there are a lot of issues we can face at each stage of digital evidence processing. If we stop improving our knowledge

or creating and updating procedures, we will only increase the distance between us (law enforcement) and the actual state of IT technologies and – in result – the criminals. There are lot of challenges in front of us like new electronic devices, data formats, encryption, big data analysis, etc. We have to work harder now to make sure that gold age of IT will not become the dark age of law enforcement.

Ensure data quality: a two-fold requirement

Clara Guerra (Portugal)

Portuguese Data Protection Authority – CNPD

Image and sound constitute personal data according to the European legal framework[21], if related to an individual. Therefore, the data processing by CCTV systems are subject to data protection laws and to the constitutional framework, once the protection of personal data is a fundamental right in Portugal and in the Union[22].

The use of video surveillance systems is always considered an intrusion in individuals' private life according to steady jurisprudence of the European Court of Human Rights and also of the Portuguese Constitutional Court. Thus, the level of intrusion should be assessed, the values and rights at stake should be evaluated and a balance between the right to data protection and privacy and the right to security should be accomplished.

From a data protection perspective, this means that data processing should be limited to what is strictly necessary, adequate and proportionate, in view of the objectives to be achieved. That certainly frames the legal requirements to obtain evidence in this context.

Though video surveillance has a preventive role, due to its possible deterrent action, its ultimate purpose is to be used as evidence in criminal proceedings, once it allows identifying the individuals involved. So, it is indispensable to have a forensic approach.

[21] Under Directive 95/46/EC (Data Protection Directive), as well as under the new legal rules consisting of Regulation (EU) 2016/679 (General Data Protection Regulation) and of Directive (EU) 2016/680.
[22] Right recognized in Article 35 of the Constitution of the Portuguese Republic and in Article 8 of the Charter of Fundamental Rights of the European Union.

Technological developments also had an impact in the CCTV systems, which evolved into the digital age. Without doubt analogical systems were much harder to hack than the digital ones.

Subsequently, preserve the footage in an adequate manner to use them effectively as e-evidence in criminal proceedings demands the fulfilment of certain requirements, such as:

- Footage shall have enough quality to properly identify the perpetrator;
- Video surveillance systems shall ensure the integrity of the data, i.e. that footage was not subject to editing procedures or somehow tampered;
    - To achieve this, there has to be restriction of access to the information and logs of the operations performed in the system;
    - Logs themselves should be encrypted and their integrity also guaranteed;
    - Any copies of footage shall be digitally signed with a hash key;

- CCTV systems shall also provide a time stamp, ensuring the accuracy of the date and time of the events; and it is crucial that there is consistency with real time, so a NTP – Network Time Protocol should be used;

- Lastly, the extraction of evidence requires following certain rules (including the use of digital signature, not working in the original data set and frozen if copied);

These are not frivolous or less significant conditions. If a strict and proper procedure is not put in place, the e-evidence will most likely be challenged in court.

Data quality is therefore a two-fold requirement. On the one hand, in the context of data protection to ensure compliance with the key- principle of data accuracy, because

if data has no quality, then it will not accomplish the data processing purpose and the data will be regarded as excessive and not necessary. On the other hand, to ensure that e-evidence is suitably collected and plays its role in the course of criminal proceeding.

Nowadays, CCTV systems are scattered everywhere; still we may say they are low-cost systems since the great majority of them do not meet the minimum quality standards.

The legal framework does not provide for specific technical requirements[23], having in mind systems' security and the possible use of footage in criminal proceeding. This constitutes a hindrance to the effective use of CCTV footage as e-evidence.

Another strand of the use of video surveillance footage as e-evidence concerns the current possibility of having systems streaming images outwards without storing them locally.

Actually this new reality raises several issues, in terms of getting access to e-evidence, because it is easier and cheaper with Internet to use data hosting services located in another country where national authorities have no jurisdiction.

So, in order to obtain such data national competent authorities will need to use Mutual Legal Assistance instruments, where available, or now the European Investigation Order- recently transposed to the Portuguese law[24].

Furthermore, there is an increasing trend to have data stored in cloud computing services, hence data might be stored anywhere. The option for cloud computing poses an additional problem to the collection of e-evidence, due to the multi-tenancy of those infrastructures and services, that may render impossible the execution of a mandate.

In conclusion, fast technological changes in a world interlinked by a cross border virtual network surely pose new challenges to law enforcement and to judicial authorities.

[23] There are some legal rules providing for technical requirements for the use of cameras operated by law enforcement authorities but they have a very limited scope of application.
[24] Law 88/2017, of 21 August, transposing Directive 2014/41/EU, of 3 April

A consistent and improved legal framework, as well as awareness and training of all stakeholders are essential to deal with the new setting of e-evidence. Important steps were already taken with the Budapest Convention[25]. Within this context, further improvements to enhance international cooperation are envisaged for a near future.

New initiatives on e-evidence are in the pipeline in the EU as well[26], though already rising conflicting debates.

Whatever the path might be, the rule of law must prevail and the fundamental rights of the citizens must be safeguarded. Shortcuts are not admissible in this regard.

[25] Council of Europe Convention on Cybercrime.

[26] After this speech, the European Commission presented, in 17 April 2018, new rules to get access to e-evidence in criminal matters, under the form of a Proposal for a Regulation and a Proposal for a Directive, available in https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/e-evidence_en

Some keynotes on police video surveillance in Portuguese law

Summary of the presentation

Paulo Joaquim da Mota Osório Dá Mesquita (Portugal)

Senior Judge, Court of Auditors

This speaker was the author of the Legal Opinion Nr. 10/2017, of the Advisory Council of the Prosecutor General's Office, published in the Official Gazette, Series II, on 28/07/2017[*].

The author developed, in the conference, a concept of video surveillance that excludes image capture in criminal procedure.

The separation between crime prevention and criminal justice was stressed.

The author refers the legal procedures for the use of video surveillance images.

The Portuguese legal solution finds some support in the constitutional framework and the European law but there is a need to examine the control on the video surveillance mechanisms.

[*] Text in Portuguese at http://www.ministeriopublico.pt/sites/default/files/documentos/pdf/dr_n145_28-07-2017.pdf

The relevance of CCTV/video surveillance for police work

Summary of the presentation

José Bastos Leitão (Portugal)

Superintend of the Public Security Police - PSP

The author gives the point of view of the police.

Three different moments of relevance of CCTV: prevention / deterrence (mixed results according to situational factors); response / reaction (important to determinate the extent and nature of the incident, diminishes the lag of communication, effective to cover larger areas); crime investigation (important to collect clues and relevant data for police action).

The author stresses, in a critical way, that Portugal is in the back of the discussion about the balance between individual rights and security needs.

PLENARY SESSION 4

Misuse of data bases by police officers; breach of official secrecy

16 Nov. 2017

Breach of security and "The threat from within" regarding the leak of information

Matthew Gardner (United Kingdom)
Chief Superintendent
Directorate of Professional Standards
Metropolitan Police Service of London

NOTE: The speaker expressly asked for the non-disclosure/publication of his presentation.

Misuse of information and data systems

Anthony Duggan (Ireland)

Director of Administration

Garda Shíochána Ombudsman Commission

NOTE: The speaker expressly asked for the non-disclosure/publication of his presentation.

Controlling police conduct. Investigating and settling complaints against the police in Denmark and investigating criminal offences

Summary of the presentation

Christian Otto (Denmark)

Special Consultant

The Independent Police Complaints Authority (IPCA)

The speaker began his presentation with some information about the Independent Police Complaints Authority – IPCA, mentioning its implementation on the 1st of January 2012 as an organism which is independent from the Police and the Public Prosecution's Office. He showed an organization chart of the Police in Denmark and the Public Prosecution Service, under the authority of the Minister of Justice, and the organization chart of the IPCA.

He then mentioned some provisions of the Criminal Code of Denmark in the scope of his presentation, namely:

- **Article 152 – violation of official secrecy** (in the legal framework of Denmark not every violation of the law is susceptible of being included in this kind of offence)
    - **penalty:** fine and up to 6 months of imprisonment; if the type of offence is qualified/aggravated, the penalty may reach up to 2 years of imprisonment; however, not all breaches of the law are qualified as violations since they may only be classified as misconduct and a disciplinary sanction be imposed;

- **Article 155 – undue use of databases**
  - **penalty**: fine and up to 4 months of imprisonment; if there are aggravating circumstances, the penalty may reach up to 2 years of imprisonment.

The speaker then mentioned the role of the IPCA, highlighting the following aspests of its mission:

- investigation of offences committed by members of the security forces during the exercise of their duties;
- investigation of incidents where there has been death of persons or serious injuries, as a consequence of police intervention or under police custody;
- analysis and decision-making regarding complaints of misconduct by members of the security forces during the exercise of their duties, rejecting such behaviours and investigating them; in this matter, it has the same competencies as the Police and also the legal obligation to make a report on the results of its investigation and send it to the Public Prosecution Service, the entity responsible for the final decision.

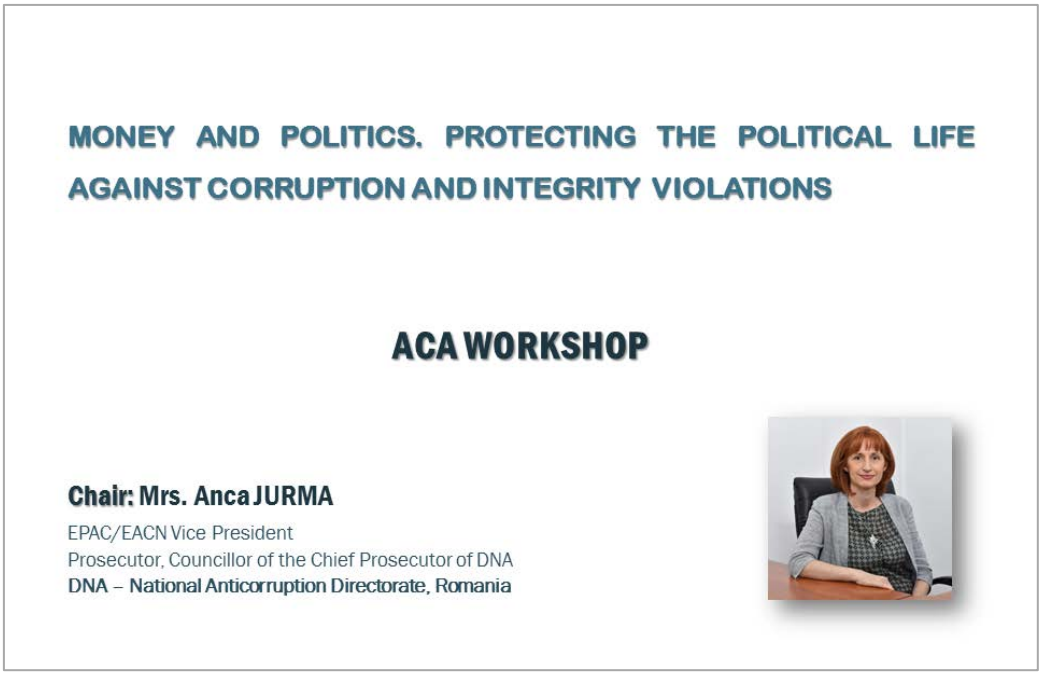
The speaker finished his presentation with a reference to the following case studies:

- "The tattoo case";
- "The rape case";
- "The cow case";
- "The farmer case".

PLENARY SESSION 5

16 Nov. 2017

1. Presentation of the conclusions of the workshop of the Anti-Corruption Authorities (ACA):



SPEAKERS AND CHAIRS

ANTI- CORRUPTION AUTHORITIES (ACA) WORKSHOP:

MONEY AND POLITICS. PROTECTING THE POLITICAL LIFE AGAINST CORRUPTION AND INTEGRITY VIOLATIONS

ROLE	NAME	COUNTRY
Chair	**Mrs. Anca Jurma** EPAC/EACN Vice President **Prosecutor, Councillor of the Chief Prosecutor of DNA** DNA - National Anticorruption Directorate	ROMANIA
Keynote Speakers	**Ms. Ruta Kaziliunaite** EPAC/EACN Deputy Vice President Deputy Head of Administration Department **STT - Special Investigation Service** «Corruption and the financing of political parties: a case study from Lithuania»	LITHUANIA
	Mr. Bernhard Weratschnig, Senior Public Prosecutor **Public Prosecutor's Office for Combatting Economic Crimes and Corruption** »Different ways of obtaining extra money for polical parties»	AUSTRIA

SPEAKERS AND CHAIRS

ANTI- CORRUPTION AUTHORITIES (ACA) WORKSHOP:

MONEY AND POLITICS. PROTECTING THE POLITICAL LIFE AGAINST CORRUPTION AND INTEGRITY VIOLATIONS

ROLE	NAME	COUNTRY
Keynote Speakers	**Mr. Septimius Parvu** Project Manager **EFOR – Expert Forum Association** «Money and politics. The links between public procurement and political parties»	ROMANIA
	Mr. David Ginocchi Head of legal affairs **HATVP – High Authority for Transparency in Public Life** «A data-driven approach : Implementation and effectiveness of the French interests and assets disclosure system»	FRANCE
	Mr. Marius Bulancea Chief Prosecutor of the Section for Combating Offences Assimilated to those of Corruption **DNA – National Anticorruption Directorate** «Illegal financing of political campaigns – A criminal approach»	ROMANIA

MANY THANKS TO

Ms. Ruta Kaziliunaite,

Deputy head of Administration Department ,

STT - Special Investigation Service of the Republic of Lithuania

Mr. Bernhard Weratschnig,

Senior Public Prosecutor ,

Public Prosecutor's Office for Combatting Economic Crimes and Corruption,

Austria

Mr. Septimius Parvu,

Project Manager,

EFOR – Expert Forum Association

Romania

Mr. David Ginocchi,

Head of legal affairs,

HATVP – High Authority for Transparency in Public Life,
France

Mr. Marius Bulancea,

Chief Prosecutor of the Section for Combating Offences Assimilated to those of Corruption,

DNA – National Anti-Corruption Directorate

Romania

RUTA KAZILIUNAITE
LITHUANIA

STT - SPECIAL INVESTIGATION SERVICE

"Corruption and the financing of political parties: a case study from Lithuania"

Take-away messages:

The STT as a law enforcement agency, independent from the executive power which:

- investigates highest-level corruption cases;
- is active on corruption prevention, anti-corruption education and awareness raising;
- has as priority to eliminate systemic corruption from political arena and prevent spill-over effect of corruption.

Case discussion involving high profile politicians and a group of companies that are major actors in Lithuania; the disguise of bribes (funding, discounts on advertisement) in return for influencing major political decisions.

BERNHARD WERATSCHNIG
AUSTRIA

PUBLIC PROSECUTOR'S OFFICE FOR COMBATTING ECONOMIC CRIMES AND CORRUPTION

«Different ways of obtaining extra money for political parties»

Take-away messages:

- The WKstA as a centralized office with expanding jurisdictional scope since its creation;
- the advantages of existing only one contact point and having a uniform interpretation of the law;
- deals with corruption offences, in the public and private sectors, if the value of the benefit is more than 3.000 Euro, economic crimes, if the damage is more than 5 Million Euro, and tax crimes, if the evaded tax is more than 5 Million Euro.

Discussion of three case studies involving commissions received by political leaders through a tax consultant that meddles a business between provincial government and a holding company; bribes in the form of commission on investments paid to public officer, in return for granting Austrian citizenship; and transmission of fake bills by media company to public government, of which a member receives payment.

SEPTIMIUS PARVU
ROMANIA

EFOR - EXPERT FORUM ASSOCIATION

«Money and politics. The links between public procurement and political parties»

Take-away messages:

- the role of the Expert Forum (EFOR), a think tank originated in the civil society, formed by experts in public policy and public governance reform, who target, among other subjects, administration reform and public sector integrity, justice and anticorruption reform;
- the EFOR oversees various public sectors and its relations with private businesses, analysis and evaluates institutional reforms in the public administration, trying to achieve a cleaner and more responsible government.

Brought us an analysis of the donations made to political parties and its relation with public contracts won by those donors. And also an analysis of the money allocated from central government to mayors aligned with the ruling party, as opposed to the money allocated to "unfriendly" mayors.

DAVID GINOCCHI
FRANCE

HATVP – HIGH AUTHORITY FOR TRANSPARENCY IN PUBLIC LIFE

"A data-driven approach : Implementation and effectiveness of the French interests and assets disclosure system"

Take-away messages:

- the HATVP as an independent body with an increasing scope, checking the assets, interests and activities of presidential candidates, members of government and members of parliament;
- role of HATVP in preventing conflicts between public and private interests, controlling the consistency and completeness and investigating potential omissions or unexplained variations during office.

Described the instruments to get a clearer picture of public officials, through assets and interests / activities declarations, and its systematic control that leads to the investigation (and eventual sanctions enforcement) of omissions and unexplained variations.

MARIUS BULANCEA
ROMANIA

DNA - NATIONAL ANTICORRUPTION DIRECTORATE

«Illegal financing of political campaigns – A criminal approach»

Take-away messages:

- The DNA as a specialized prosecution structure, independent and integrated in the judiciary, with exclusive competence for high level corruption and a complex structure formed by prosecutors, police officers and experts;
- deals with corruption offences and assimilated to corruption, when committed by persons with certain high level public positions, and also with offences against the financial interests of the European Union and abuse of office and diversion of public tender.
- in the DNA challenges we can find differentiating between administrative irregularities and corruption crimes, accessing relevant information, having cooperative witnesses and tools for financial analysis.

Described us cases involving indictment of highest level dignitaries, including the campaign of the then President of Romania, whose director was at the center of a scheme using fictitious contracts to finance the campaign.

ACA WORKSHOP

Findings to be drawn from the 5 presentations

How money corrupts the politics

- Illegal financing of political parties, candidates and electoral campaigns
- Manipulating the public procurement procedures by clientelist mechanisms
- Distribution of local budget depends on the votes that local elected people bring to the ruling party
- Illicit enrichments of high level political persons
- Conflict of interests
- Decisions of the high level public officials holding political or administrative positions can be bought by briber individuals and companies

How money corrupts the politics (2)

- a root cause for corruption is the need to support campaign expenses, and difficulty to cover its costs, leading to use of influence by party leaders to acquire the necessary funds and eagerness of businessmen to obtain political favors;
- political leaders legitimize their position within the party by making available to the campaign significant sums of money, the higher the position, the greater the expectations;
- special relations between businessmen and institutions in the sphere of influence of the political leader;
- political adversities are often put aside, when money is involved, power relations count more;
- Government money can be embezzled by fraudulent arrangements between party leaders and private individuals

Illegal financing of political parties / campaigns

- bypassing the regulations on financing of political parties and electoral campaigns (e.g. eluding the legal limits for donations, the obligation of publication of the donations, etc.)
- fictitious contracts, fake bills used to cover the illegal payment of electoral campaigns (consultancy, advertising, printing posters, promotional materials, etc.)
- media companies, advertisement companies are often used to channel the bribes for electoral campaigns
- politicians promise that the payments will be recovered through the awarding of public contracts

Manipulating the public procurement

- bypassing the regulations on public procurement (loopholes in the law, interpretable provisions, deficiencies in the administrative control, etc.)
- paying a commission/bribe of 10-20% to win the contract or to get the payment approval for works already executed
- same companies (or companies owned by the same people) often win most of the public contracts; some of them make donations to all the relevant political parties ("universal" donors)

Typologies and modus operandi

- connections between politicians and top profit companies. In some cases, a few companies win most of the public contracts;
- existence of revolving doors between public officers and private sector, in main decision areas;
- organization of events as cover for obtaining funds illegally, by paying participation fees;
- companies connected to political parties in power tend to win more public contracts
- Money intended to the benefit of:
  - political public official who is bribed (the biggest portion)
  - political party / political campaign

What the bribers expect in return

- awarding public contracts or facilitating the timely payment
- voting on laws important for the briber company, groups or individuals
- appointing or dismissing a certain senior public official
- facilitate the granting of citizenship of the country

How to deal with cases of illegal use of money in politics

➢ *Prevention:*

- ACAs: - in the case of France's HATVP, assets and interests disclosures, activity declarations (incompatibilities), prevention of conflicts of interests, checks on unexplained wealth;

- NGOs: in the case of the Expert Forum (EFOR), who with its studies and analysis of public sectors and public governance, aims to raise awareness on the consequences of the abuse and corruption in the spending of public resources

➢ ***Investigations and prosecution*** of corruption and corruption related offences.

Discussion about prevention of corruption

From the prevention view point, we heard about:

- the importance of making the declarations of assets and interests public in the form of open data, as a tool for increasing the transparency of the public life and the self awareness of the public officials on the compliance with the transparency regulations
- the need to establish clear enforced sanctions for those public officers not complying with their obligations (administrative and criminal sanctions). Ineligibility – a deterrent sanction.
- It is essential to set legal transparency requirements, such as limits on the amount of donations, prohibition of financing from companies that carry out activities financed by public funds, recording and publication of all donations.

Discussion about investigation of corruption:

From the investigation view point, we heard:

- the importance of inside information, be it a key witness or someone involved in the crime (confessing / cooperating);
- The importance of the financial analysis - follow back the origin of the funds; establishing the real purpose of the payments
- The usefulness of investigation techniques involving searches and seizures, interviews, forensic analysis of audio conversations, handwriting, of computers and other electronic devices, and expertise of other public offices.

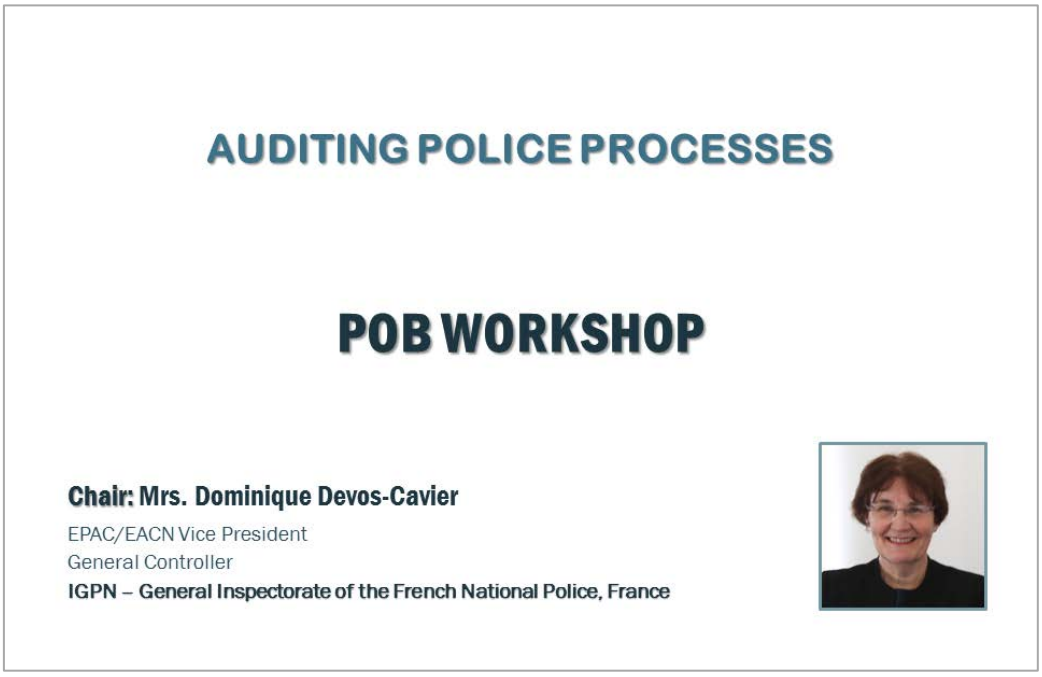
Challenges of the investigations

- limits of the use of cooperating witnesses,
- use of offshore companies, banks,
- access to relevant information
- access to analytical tools
- accusations of political bias

Ways forward in the fight against corruption in politics

- Need to deepen the communication between institutions and interdisciplinary institutional analysis
- Specialization of the investigators,
- Enhanced independence for the offices fighting corruption,
- International cooperation (e.g. EPAC/EACN),
- A greater emphasis on prevention and ex-ante control of the use of public funds,
- More transparency in financing of political parties,
- Enhanced inter-institutional cooperation; involvement of the civil society.

2. Presentation of the conclusions of the workshop of the Police Oversight Bodies (POB):



SPEAKERS AND CHAIRS

POLICE OVERSIGHT BODIES (POB) WORKSHOP:

AUDITING POLICE PROCESSES

ROLE	NAME	COUNTRY
Chair	**Mrs. Dominique Devos-Cavier** EPAC/EACN Vice President General Controller **IGPN – General Inspectorate of the French National Police**	FRANCE
Keynote Speakers	**Mrs Beata Adameová** **Mr Milan Lucansky** General Director **Control Section and Inspection Service from the Ministry of Interior** «Auditing Police processes: the Control Section and Inspection Service in Slovakia	SLOVAK REPUBLIC
	Mrs Astrid Brūls, Committee P Legal advisor **Mr Jack Vissers**, Member of the Committee P **Mr Kristof de Pauw**, General Director of the Investigation Department of the Committee P **Committee P – Standing Police Monitoring Committee** «Auditing police processes: the Belgian experience at the Committee P»	BELGIUM

SPEAKERS AND CHAIRS

POLICE OVERSIGHT BODIES (POB) WORKSHOP:

AUDITING POLICE PROCESSES

ROLE	NAME	COUNTRY
Keynote Speakers	**Mrs. Monique Stirn** EPAC/EACN Deputy Vice President Inspector General of Police **IGP – General Inspectorate of the Police** «Recommendations: Tools of change»	LUXEMBOURG
	Mr. José San Segundo Corchero Inspector - Auditor **IPSS – State Police Agencies Inspectorate** «Auditing Police Processes: Health, safety and welfare of police officers at Work»	SPAIN
	Mr Philippe de Boysère General **General Inspectorate of the French National Gendarmerie** «The IGGN and its role in the assessment and evaluation process»	FRANCE

MANY THANKS TO

Mr. Milan Lucansky
General Director ,
Control Section and Inspection Service (CSIS) from the Ministry of Interior,
Slovak Republic

Mrs. Astrid Brüls,
Legal Advisor,
Committee P – Standing Police Monitoring Committee,
Belgium

Mr. Jack Vissers,
Member of the Committee P,
Committee P – Standing Police Monitoring Committee,
Belgium

Mr. Kristof De Pauw,
General Director of the Investigation Department,
Committee P – Standing Police Monitoring Committee,
Belgium

MANY THANKS TO

Mrs Monique Stirn
EPAC/EACN Deputy Vice President
Inspector General of Police,
IGP – General Inspectorate of the Police,
Luxemburg

Mr. Phillipe De Boysère
Général,
General Inspectorate of the French National Gendarmerie,
France

Mr. José Corchero,
Inspector – Auditor,
IPSS – State Police Agencies Inspectorate,
Spain

Mrs Beata Ademeová
EPAC/EACN point of contact
CSIS, Control Section and Inspection Service from de MoI,
Slovak Republic

SLOVAK REPUBLIC

CONTROL SECTION AND INSPECTION SERVICE (CSIS) FROM THE MoI

«Auditing Police processes: the Control Section and Inspection Service in Slovakia»

Take-away messages:

- This independent body was definitely settled in 2007 and reports only to the minister.
- The Slovak National Security Authority is entitled to control this POB.
- The inspection division investigates criminal offences committed by police officers. It is also entitled to propose and promote changes in the police.
- The control section is dedicated to internal control and deals with the complaints and petitions sent to the MoI. The section received 2465 complaints in 2016 out of which 1813 were related to the police.
- The control section is also focused on administrative issues and personal data protection.

BELGIUM
COMMITTEE P – STANDING POLICE MONITORING COMMITTEE

«Auditing police processes: the Belgian experience at the Committee P»

Take-away messages:

- Directly answerable to the Parliament, the Committee P is an external monitoring POB of all police services in Belgium, their officers and officials entrusted with police powers
- The guidelines to steer and execute a monitoring inquiry, including also the reporting phase, range from risk analysis, problem analysis, the setting of objectives, the scoping of the problem, the research questions, the methodology and the planning.
- Areas covered by Committee P's monitoring inquiries are wide and deals with subjects that range from use of force to handling mentally ill persons
- Key objectives of the Committee P and its monitoring inquiries are:
- To examine how police services do perform their tasks
    - To pinpoint any imperfections or failings within the system, structures or methods
        - To make constructive proposals and recommendations
            - To monitor the implementation of the issued recommendations
- Challenges to be faced:
    - Focus on recommendations that contribute to a better performance of police services (nice versus need to monitor)
    - Make sure that reports are being read by the right persons
    - Make sure that there is a follow-up of recommendations

LUXEMBOURG

IGP – GENERAL INSPECTORATE OF THE POLICE, LUXEMBOURG

«Recommendations: Tools of change»

Take-away messages:

- The very important mission of auditing police processes, does not only consist in issuing clear recommendations
- But also implies:
  - Acceptance and implementation of recommendations
    - § in terms of formal adaptations at the Police level;
    - § and the behavioural changes by the Police forces on the ground.
- This monitoring should have a long-term approach
    - § through follow-up studies and audits;
    - § with potentially an observatory that offers a general overview of impact.
- Set up in this manner, POBs
    - § help optimise the functioning of the Police and
    - § hence raise the quality standards of Police forces in contact with citizens.

SPAIN

IPSS – STATE POLICE AGENCIES INSPECTORATE

«Auditing Police processes: Health, Safety and Wellbeing of police officers at Work»

Take-away messages:

- The IPSS is:
  - independent from Police Forces and reports to the State Secretariat for Security
  - an "**inspection and external control**" organization entrusted, among several others, with attributions in matters of Health, Safety and Wellbeing (HSW) of police officers at work.
- Among the seven Inspection Teams possessed by the IPSS, one is entirely dedicated to HSW.
- The IPSS has an occupational risk prevention management system (ORPMS) comprising procedures and operative instructions concerning HSW.
- The ORPMS addresses all sorts of risks, ranging from those associated with use of fire arms and vehicles, biological hazards, psychosocial factors, shift work, night work, to confined spaces or dealing with people or animals.
- Special monitoring is exercised, namely, in relation to shooting galleries, personal protective equipment, detainee custody areas or maintenance of police stations,
- State police agencies have to report to IPSS, accidents, suicides and professionally related sick leaves.
- The IPSS is empowered to require the adoption of measures to rectify non-compliances or irregularities in matters of HSW.

FRANCE

GENERAL INSPECTORATE OF THE FRENCH NATIONAL GENDARMERIE

«The IGGN and its role in the assessment and evaluation process»

Take-away messages:

- a POB should not have only a repressive role
- a POB must:
  - contribute to the promotion of ethical standards
  - ensure the quality of the service delivered to the population
- as a "**quality assurance**" provider, the Inspectorate has educational, advisory and support functions, performed by the Internal Audit, Control and Studies department
- the monitoring of police custody conditions was explained
- a very innovative self-assessment tool, accessible to the local units, was presented

AUDITING POLICE PROCESSES

POB WORKSHOP

Findings to be drawn from the 5 presentations and the ensuing discussions

Audit

A growing activity inside POBs

- A POB should not merely treat individual breaches
- A POB should guarantee a high level of quality of Police services
- A POB should offer guidance and support to operational units
- A POB should advise the management team
- A POB should anticipate, promote and follow change

Topics to investigate by POB

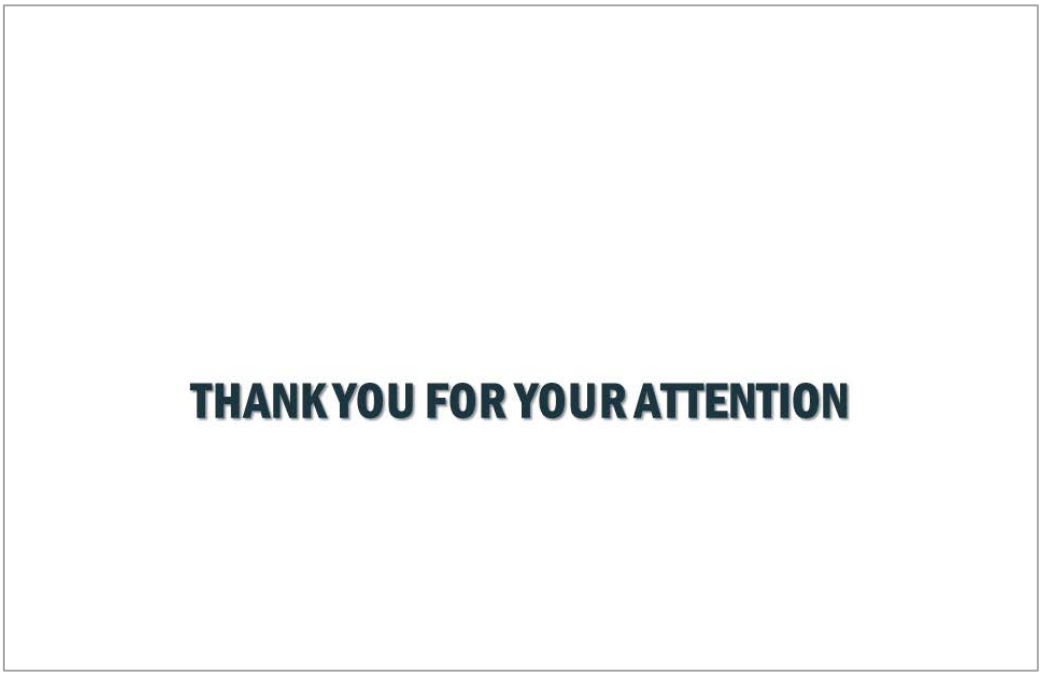
- The studied themes should evolve and follow the socio-professional context
- Some are rather "classical"
  - Circumstances of deprivation of freedom
  - Reception of the public facilities, conditions and procedures
  - Management of seized objects
- Others are more innovative:
  - Health and security regulations at the workplace
  - Use of Police files/ data bases (access, traceability of requests, data reliability)

Methods and Tools

- Classical inspection and unannounced checks
- Risk approach (risk assessment, risk management)
- Self-assessment

Impact

- Increased confidence from Police forces and the general public in the POB
- Improvements in internal processes
- Strike a balance between the individual level (breaches) and its "punitive" side, and the collective domain (functioning of Police services) in the sense of service improvements ("walking on two feet")
- A POB should make sure recommendations produce a sustainable effect


THANK YOU FOR YOUR ATTENTION

DEBATES AND ADOPTION OF REPORTS AND RECOMMENDATIONS

17 Nov. 2017

1. Discussion and approval of the reports and recommendations of the two Working Groups (ACA and POB):

   - Working Group **"Risk Management and Risk Analysis"**, whose final report is available at https://www.igai.pt/17-noticias/destaques/188-17-conferencia-profissional-anual-e-assembleia-geral-dos-parceiros-europeus-contra-a-corrupcao-epac-eacn;
   - Working Group "Analysis of Big Data, Related Legal Aspects, Use of Databases";

2. Presentation and approval of the final version of the "Handbook for evaluating the effectiveness/efficiency of police oversight bodies", which is available at https://www.igai.pt/17-noticias/destaques/188-17-conferencia-profissional-anual-e-assembleia-geral-dos-parceiros-europeus-contra-a-corrupcao-epac-eacn;

3. Presentation and explanation of the new performance and access of national experts to the Europol Platform for Experts (EPE);

4. Adoption of the Lisbon Declaration 2017.

DELIBERATIONS OF THE GENERAL ASSEMBLY

17 Nov. 2017

- The requests to be EPAC/EACN full members made by the *Agence française anticorruption* (AFA) and the *Haute Autorité pour la transparence de la vie publique* (HATVP) were accepted;
- Two new vice-presidents (Mati Ombler, Chief of the Estonian Corruption Crimes Bureau, to the ACA network, and Jack Vissers, of the Belgian Standing Police Monitoring Committee, to the POB network) were elected;
- Two working groups (one in the scope of the POB and another in the scope of the ACA) were created;
- The new EPAC/EACN logo was formally approved:

- The **Lisbon Declaration 2017** was approved.

CLOSING SESSION

17 Nov. 2017

JOSÉ ARTUR TAVARES NEVES

Secretary of State of Civil Protection (MAI)

17 Nov. 2017

Mister President of the European Anti-Corruption Network

Madam Inspector General of Home Affairs

High Executive Managers of the Public Administration

Dear Delegates

Ladies and Gentlemen

It is an honour to participate in the closing session of this Conference and I take the opportunity to congratulate the Inspectorate General of Home Affairs, in the person of the Inspector General, Ms Margarida Blasco and all her staff for the excellence of the interventions and quality of the speeches and debates we had the opportunity to witness.

A speech from my colleague, Ms Isabel Oneto, Assistant Secretary of State and Home Affairs, was foreseen for this closing session; however, for reasons of agenda, she could not be present.

Allow me to express my special satisfaction for having been awarded the mission of closing this international conference. This is an event of great dimension and significance, about a central subject in the national, European and worldwide agenda, in matters of justice and security.

Portugal has been implementing, for more than two decades, a consistent strategy of fight against corruption and economic and financial criminality, with very visible results.

In Portugal, according to the law, these crimes demand priority measures of prevention, considering the dignity of the protected legal assets and the necessity to protect the possible victims.

The Ministries of Home Affairs and Justice have the authority to control the Security Forces and Services, which, in close collaboration with the relevant services of the Ministry of Finances and agencies such as Europol and Interpol, have achieved remarkable results in combating economic and financial criminality.

The Government deems essential the prevention and fight against corruption by means of a greater transparency, democratic scrutiny, control of legality and promotion of pro-active policies of investigation.

Next, I will focus my intervention on the use of CCTV by public entities, given the importance that this subject has nowadays, either as an instrument of prevention of criminality and as an instrument of support to operational activity.

Portugal is a country of traditions and established practices and, in what concerns CCTV, we may say that we have been resistant to changes, at least regarding the use of CCTV in public spaces, which is a prerogative of the security forces.

Notwithstanding the fact that CCTV is common among us when used by private entities, as we can easily see when we go to any shopping mall, the resource to this technology by public entities is restricted to three city areas: Bairro Alto, a Lisbon borough where we can find several bars and nightclubs; Amadora, a peripheral

municipality of the metropolitan area of Lisbon; and the Sanctuary of Fátima, a place of Christian worship and pilgrimage for millions of devotees.

The advantages deriving from the use of this technological means are imposing. The Government considers that this is the moment to create a new drive to endow the security forces with this means, not only in what regards public security but also in what regards its use in the scope of civil protection, particularly in the prevention and fight of forest fires.

The present phenomena, namely those of a terrorist nature, impose this new approach, which must grab all available means to ensure a more effective and joint action from those who have the responsibility of ensuring the safety of citizens.

The management of operational activity and the decision on the commitment by all Security Forces constitute the purposes of use of CCTV.

For this reason, the Government is developing an amendment to the law in order to create the necessary legal database to obtain, in real time, images caught by CCTV cameras that are installed in certain places.

That may happen in places that, given their characteristics, are more of being the scenery of situations that call for the presence of the authorities, such as nightclubs, public transportations, sensitive infrastructures and spots, as well as places that, by reason of a risk assessment, deserve a special attention.

Some of these places, because of their distinct legal regimes – such as private security activity and the fight against violence in sport events – do already have the obligation to adopt a set of security measures, among them the implementation of CCTV; the images are then collected and monitored in their own control rooms or of duly authorised private security enterprises.

The amendment to the law will thus promote a technological evolution of the systems already in place, which must gradually be adopted to allow the visualisation of images collected in centres of control of the security forces.

What must be safeguarded, and also constitutes a challenge for this proceeding, is, on the one hand, the compatibility of public and private systems and, on the other hand, the images collected by private CCTV must have enough quality to achieve the goals that we intend to achieve.

Of course, in all this proceeding we must safeguard the compliance with adequate safety and protection measures for preservation and treatment of personal data.

This proceeding of legislative revision rests, because of the previously mentioned reasons, also on the need to speed up the use of movable cameras, namely when put on the commonly called “drones”.

The possibility of access to images collected from high spots is a tool of the utmost importance on the supervision of great events or serious accidents – we may consider a situation such as the leading of organised groups of supporters to a sport’s facility or the evacuation of persons in a place where there is a fire of huge dimension, as recently happened in the central region of the country.

I am sure that the debate you had during this conference, in the scope of the admissibility of the electronic evidence from CCTV, will be very useful to consolidate the legal regime we are working on.

In this 17th Annual Conference of the European Anti-Corruption Network, subjects of great importance were discussed, among which I would emphasised the anti-corruption policies in the scope of the European Union and at international level, the

implementation of assessment mechanisms, the creation of oversight and audit bodies and, finally, the matters related to the use of databases.

Once again, I express my congratulations to the organizers of this Conference and salute all participants hoping that, at the margin of the works, you have had the opportunity to visit Lisbon and return to this beautiful city in a near future.

Thank you for your attention.

LISBON DECLARATION 2017

17 Nov. 2017

We, the heads and key representatives of the national Police Oversight Bodies and Anti-Corruption Authorities of the Member States of the Council of Europe and the European Union, especially in such difficult times for Portugal, after the tragic wildfires that have recently taken place and have caused loss and suffering to so many people,

Expressing the gratitude to the Inspectorate General of Home Affairs of Portugal (IGAI) for generously hosting and efficiently organizing this conference;

Recalling international conventions, instruments and mechanisms, in particular the United Nations Convention against Corruption (UNCAC) and its Implementation Review Mechanism, relevant Council of Europe conventions, the GRECO monitoring mechanism and the OECD Anti-Bribery Convention;

Recalling the EPAC/EACN Declarations adopted in Riga (2016), Paris (2015), Sofia (2014), Krakow (2013), Barcelona (2012), Laxenburg (2011), Oradea (2010), Nova Gorica (2009), Manchester (2008), Helsinki (2007), Budapest (2006), Lisbon (2005), and Vienna (2004), and *thanking* the Austrian Federal Bureau of Anti-Corruption (BAK) for hosting the Secretariat;

Acknowledging that corruption is a serious threat to development and stability which has harmful consequences at all levels of governance and undermines public trust in democracy and its institutions;

Welcoming the adoption of the 2030 Agenda for Sustainable Development, and *recalling* target 16.5 calling States to "Substantially reduce corruption and bribery in all their forms";

Welcoming the achievements of the 7th Conference of the States Parties to the UNCAC in Vienna and particularly the resolutions adopted in this session;

Welcoming the forthcoming establishment of an independent and efficient European Public Prosecutor's Office (EPPO) as a major step to facilitating cross-border investigation and prosecution of fraud and corruption cases affecting the financial interests of the EU;

Reiterating the need to follow a holistic and comprehensive approach in the fight against corruption based on comprehensive prevention frameworks and efficient international cooperation among law enforcement agencies;

Emphasizing the imperative need for our members to live up to strong public expectations to provide effective remedies against corruption;

Stressing the importance of strengthening the independent, transparent and effective functioning of ACAs and POBs and providing for the necessary protection of officials involved in the anti-corruption and oversight efforts so as to guarantee that they can carry out their function without any form of pressure or interference;

Taking into account the work of the EPAC/EACN Working Groups, in particular the results of the EPAC/EACN Working Groups "Police Oversight Bodies' Effectiveness and Efficiency" and "Risk Management and Risk Analysis" as well as the outcomes and conclusions of the Lisbon conference workshops and plenary sessions:

- Recommend that every POB develops internal control and/or audit departments in order to improve the functioning of police forces and the service provided to the public;
- Encourage POBs to consider the use of the "Handbook for evaluating the effectiveness/efficiency of Police Oversight Bodies" for improving their performance;
- Encourage all members to conduct risk analyses and implement risk management as appropriate, in particular to increase the effectiveness of ACAs and POBs themselves;
- Commit to distribute the "Guideline on Integrity Risk Management for Anti-Corruption Authorities (ACAs) and Police Oversight Bodies (POBs)" among relevant national bodies, acknowledge that this guideline contributes to creating a shared basis for promoting the integrity of public organizations, and invite EPAC/EACN members to share their experiences in this regard within EPAC/EACN;
- Welcome the progress of the EPAC/EACN Working Group "Big Data, Legal Aspects, Use of Databases", set up by the General Assembly in Riga in November 2016;
- Take note that the 2018 Annual Professional Conference and General Assembly will be hosted by the Austrian Federal Bureau of Anti-Corruption in Austria.

The Declaration will be widely circulated by the members in their respective countries and submitted to relevant EU institutions and bodies, the Council of Europe's GRECO, and UNODC.

The Declaration was signed by:

Margarida Blasco, *Inspector General of IGA*I and Andreas Wieselthaler, *President of EPAC/EACN*.

17 ANNUAL CONFERENCE, 2017 – FAMILY PHOTO

SANA MALHOA HOTEL, LISBOA
15 Nov. 2017

ANNEX

Programme of the 17th Annual Professional Conference and General Assembly of EPAC/EACN

PROGRAMME 15 - 17 November 2017 LISBON 17th EPAC/EACN ANNUAL PROFESSIONAL CONFERENCE AND GENERAL ASSEMBLY	
Wednesday, 15 November, SANA Malhoa Hotel, Avenida José Malhoa, 8 1099-089 Lisbon, Portugal	
Morning	Arrival of participants, transportation to the conference hotel, welcome
11h00 – 13h00	Registration
12h30 – 13h30	Lunch buffet at the restaurant of SANA Malhoa Hotel
13h45 – 14h30	**Official Opening Session of the 17th EPAC/EACN Annual Professional Conference and General Assembly** Eduardo Arménio do Nascimento Cabrita, Minister of Home Affairs Andreas Wieselthaler, President of EPAC/EACN, Austria Margarida Blasco, Inspector General of Home Affairs, IGAI, Portugal
14h30 – 16h00	**Plenary session 1** Developments at international and European level *Presentations by representatives of international and European organisations, followed by a discussion* Chair: Mr Adriano Fraxenet de Chuquere Gonçalves da Cunha Deputy Director of Public Prosecutions Keynote speakers : • Mr Olivier Onidi Deputy Director General for Security, European Commission «Anti-corruption policies at EU level» • Mr Dimitri Vlassis Head of the Division for Treaty Affairs - Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime (UNODC) «The UNCAC Implementation Review Mechanism: process, progress, impact, prospects» • Mr Lorenzo Salazar Judge, Vice Chair of the OECD Working Group on Bribery «Fighting International Bribery. The OECD Working Group on Bribery» • Mr Frederic Pierson Head of the Europol Criminal Assets Bureau (ECAB), Europol «Europol initiatives to better support anti-corruption bodies in their operational activities» • Mr Vladan Joksimovic Head of Secretariat, Regional Anti-Corruption Initiative «How regional cooperation contributes to national anti-corruption efforts».

Wednesday, 15 November, SANA Malhoa Hotel, Avenida José Malhoa, 8		
	16h00 16h30	**Group picture with all participants followed by Coffee break**
	16h30 18h00	**Plenary session 2** Measurement of corruption, integrity and anti-corruption efforts *Keynote speeches, followed by a discussion* Chair: Mr Vitor Manuel da Silva Caldeira President of the Court of Auditors, Portugal Keynote speakers: • Ms Gemma Aiolfi Head of Compliance & Collective Action Basel Institute on Governance, Switzerland «Preventing Corruption through Collective Action - Recent developments and future trends» • Mr João Conde Correia PhD in Criminal Law Public Prosecutor, Portugal «The Portuguese Assets Recovery Model» • Mr Frédéric Boehm Economist, Policy Analyst Organisation for Economic Co-operation and Development (OECD) «Measurement of corruption, integrity and anti-corruption efforts» • Ms Verena Wessely Head of Unit, International Cooperation Federal Bureau of Anti-Corruption (BAK), Austria «The BAK's efforts towards enhancing the EU-wide and cross-sectorial promotion of integrity and prevention of corruption» • Mr João Paulo Batalha President of TIAC Transparency and Integrity Civic Association (TIAC), Portugal «From the big picture to the fine print: a practical view of integrity assessments»

Thursday, 16 November, SANA Malhoa Hotel, Avenida José Malhoa, 8 1099-089 Lisbon, Portugal	
09h00 – 11h00	**Parallel workshops**
	Anti-Corruption Authorities (ACA) Workshop: Money and politics. Protecting the political life against corruption and integrity violations *Presentations, followed by a discussion* Chair: Ms Anca Jurma EPAC/EACN Vice President Prosecutor, Councillor of the Chief Prosecutor of DNA National Anticorruption Directorate (DNA), Romania Keynote speakers: • Ms Rūta Kaziliūnaitė EPAC/EACN Deputy Vice President Deputy Head of Administration Department Special Investigation Service (STT), Lithuania «Corruption and the financing of political parties: a case study from Lithuania» • Mr Bernhard Weratschnig Senior Public Prosecutor Public Prosecutor's Office for Combating Economic Crimes and Corruption, Austria «Different ways of obtaining extra money for political parties» • Mr Septimius Parvu Project Manager Expert Forum Association (EFOR) «Money and politics. The links between public procurement and political parties» • Mr David Ginocchi Head of Legal Affairs High Authority for Transparency in Public Life (HATVP), France «Implementation and effectiveness of the French interests and assets disclosure system» • Mr Marius Bulancea Chief Prosecutor of the Section for Combating Offences Assimilated to those of Corruption DNA, National Anticorruption Directorate, Romania «Illegal financing of political campaigns – A criminal approach»

Thursday, 16 November, SANA Malhoa Hotel, Avenida José Malhoa, 8		**Parallel workshops**
	09h00 **11h00**	**Police Oversight Bodies (POB) Workshop:** Auditing police processes *Presentations, followed by a discussion* Chair: Ms Dominique Devos-Cavier EPAC/EACN Vice President General Controller of IGPN IGPN – General Inspectorate of the French National Police, France Keynote speakers: • Mr Milan Lucansky General Director of SKIS SKIS, Control Section and Inspection Service from the Ministry of Interior, Slovakia «Auditing police processes: the Control Section and Inspection Service in Slovakia» • Ms Astrid Brüls, Committee P Legal advisor Mr Jack Vissers, Member of the Committee P Mr Kristof de Pauw, General Director of the Investigation Department of Committee P Committee P, Standing Police Monitoring Committee, Belgium «Auditing police processes: the Belgian experience at the Committee P» • Ms Monique Stirn EPAC/EACN Deputy Vice President Inspector General of IGP Inspectorate General of the Police IGP, Luxembourg «Recommendations: Tools of change» • Mr José San Segundo Corchero Inspector – Auditor of IPSS State Police Agencies Inspectorate (IPSS), Spain «Health, Safety and Wellbeing of police officers at Work» • Mr Philippe de Boysère General of IGGN General Inspectorate of the French National Gendarmerie (IGGN), France «The IGGN and its role in the assessment and evaluation process»
	11h00 11h30	Coffee break

Thursday, 16 November, SANA Malhoa Hotel, Avenida José Malhoa, 8	**11h30** **13h00**	**Plenary session 3** Admissibility of electronic evidence and CCTV *Keynote speeches, followed by a discussion* Chair: Mr Manuel Magina da Silva Deputy National Director General of the PSP Public Security Police (PSP), Portugal Keynote speakers: • Mr Krystian Dobrzyński Head of Division of CBA Operational Techniques Bureau Central Anticorruption Bureau (CBA), Poland «Digital evidence (what could possibly go wrong?)» • Ms Clara Guerra Senior consultant of CNPD International Department National Data Protection Authority (CNPD), Portugal «Ensure data quality: a two-fold requirement» • Mr Paulo Joaquim da Mota Osório Dá Mesquita Senior Judge Court of Auditors, Portugal «Some keynotes on police video surveillance in Portuguese Law» • Mr. José Bastos Leitão Superintendent of the PSP Public Security Police (PSP), Portugal «The relevance of CCTV/video surveillance for police work»
	13h00 14h00	Lunch buffet at the restaurant of SANA Malhoa Hotel

Thursday, 16 November, SANA Malhoa Hotel, Avenida José Malhoa, 8	**14h00** **15h30**	**Plenary session 4** Misuse of data bases by police officers; breach of official secrecy *Keynote speeches, followed by a discussion* Chair: Mr José Nunes Fonseca Inspector of GNR GNR, National Republican Guard, Portugal Keynote speakers: • Mr Matthew Gardner Chief Superintendent Directorate of Professional Standards, Metropolitan Police Service, London, UK «Breach of Security and the 'The threat from within' regarding the leak of information» • Mr Anthony Duggan Director of Administration Garda Síochána Ombudsman Commission (GSOC), Ireland «Misuse of information and data systems» • Mr Christian Otto Special Consultant of IPCA Independent Police Complaints Authority (IPCA), Denmark «Controlling Police Conduct. Investigating and settling complaints against the Police in Denmark and investigating criminal offences» • Mr David Hucker Head of Professional Standards of the NCA Standards & Security Department NCA, National Crime Agency, UK «The misuse of police information for personal gain»

Thursday, 16 November, SANA Malhoa Hotel, Avenida José Malhoa, 8	**15h30** **16h00**	**Plenary session 5** Reports on the: • Anti-Corruption Authorities (ACAs) workshop Ms Anca Jurma EPAC/EACN Vice President Prosecutor, Councillor of the Chief Prosecutor of DNA DNA, National Anticorruption Directorate, Romania • Police Oversight Bodies (POBs) workshop Ms Dominique Devos-Cavier EPAC/EACN Vice President General Controller of IGPN IGPN, General Inspectorate of the French National Police, France
	16h00 16h15	Presentation of the Draft Lisbon Declaration
	16h15 16h45	Coffee break

Friday, 17 November, SANA Malhoa Hotel, Avenida José Malhoa, 8 1099-089 Lisbon, Portugal	
09h00 – 10h30	**Discussion and adoption of reports and recommendations of the two EPAC/EACN working groups (ACA and POB):** • WG on Risk Management and Risk Analysis Ms Martina Koger Head of Department Prevention, Education and International Cooperation BAK, Federal Bureau of Anti-Corruption, Austria • WG on Big Data Ms Rūta Kaziliūnaitė EPAC/EACN Deputy Vice President Deputy Head of Administration Department STT, Special Investigation Service, Lithuania • Presentation of the final version of the «Handbook for evaluating the effectiveness/efficiency of police oversight bodies» Ms Dominique Devos-Cavier EPAC/EACN Vice President General Controller of IGPN IGPN, General Inspectorate of the French National Police, France
10h30 – 10h45	**Information on the Europol Platform for Experts (EPE)** Mr René Stach EPAC/EACN Secretariat, Austria
10h45 – 11h15	Coffee break
11h15 – 12h30	**EPAC/EACN General Assembly**: • Decisions on membership applications • Election of two new vice presidents • Decisions on possible new working groups • Presentation and decision regarding a new EPAC/EACN logo • Adoption of the Lisbon Declaration 2017
12h30 – 13h00	**Closing session of the conference**, José Artur Tavares Neves, Secretary of State of Civil Protection
13h00 – 14h00	Lunch buffet at the restaurant of SANA Malhoa Hotel
Afternoon	Farewell, departure of participants, transportation to the airport