



Counter Corruption Best Practices for Europe

**Specialized Counter-Corruption Bodies:
Models and Challenges**

Sofia, March 16-18, 2010

International standards for AC Bodies

Resolution (97)24 on the 20 Guiding Principles for the fight against corruption (Committee of Ministers, Council of Europe) - Principle n° 3 & Principle n° 7

Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns – Article 14 (independent monitoring)

Criminal Law Convention on Corruption (CETS no 173)

- Entry into force: July 2002
- Entry into force in 2002 for 17 CoE member countries (mainly SEE and Central Europe)
- Currently fully into force for the majority of CoE member states (with exception of Austria, Germany, Italy, Liechtenstein, San Marino, Spain)
- Article 20 – *Specialized authorities*

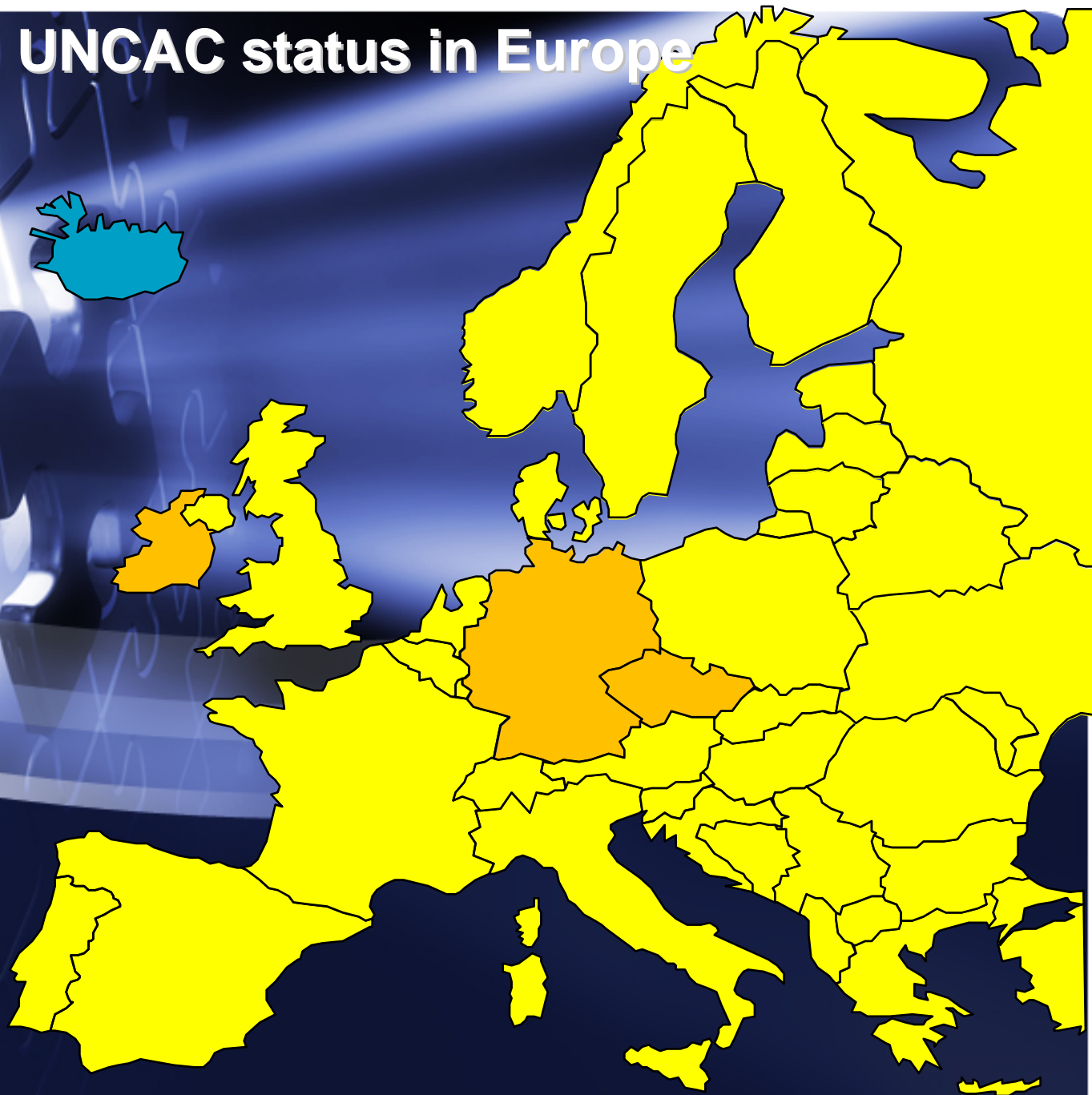
International standards for AC Bodies (2)

United Nations Convention against Corruption (UNCAC)

- Entry into force: December 2005
- Currently entry into force for 143 countries of the world, from which 32 European countries (24 EU members + 7 acceding countries)
- Article 6 – *Preventive anti-corruption body or bodies*
- Article 36 – *Specialised authorities*
- UNCAC is currently into force in:

<i>Status of UNCAC ratifications in Europe and Eurasia</i>	
24 EU member countries + Switzerland and EU	(excepting, Czech Republic, Germany and Ireland)
7 SEE candidate or potential countries to EU	(including Turkey)
10 CIS members	(+ Ukraine and Georgia)

UNCAC status in Europe



Main requirements from international standards



AC Models in Europe

Multi-purpose Agencies (with law enforcement powers)

- Lithuania – 2/1997, 5/2000
- Latvia – 10/2002

Law enforcement bodies

- Belgium – 1998
- Poland – 2006
- Spain – 1995
- Romania – 2002
- Croatia – 2001
- Albania – 11/2005, 9/2007

Preventive and policy coordination bodies

- France – 2/1993
- Slovenia – 7/2001, 1/2004
- Albania – 11/1998, 9/2002, 2/2006
- Montenegro – 1/2001
- Macedonia – 11/2002
- Serbia – 1/2010
- Bosnia and Herzegovina (to be established)

AC Models in South East Europe

No Multi-purpose Agencies with law enforcement powers

Law enforcement bodies

- Romania – National Anti-Corruption Directorate (NAD)
- Croatia – Office for the Suppression of Corruption and Organized Crime (USKOK)
- Albania – Joint Investigative Units against Economic Crime and Corruption (JIUs) – Tirana + 6 regional prosecutor's offices
- Moldova – Center for Combating Economic Crimes and Corruption (CCECC) – 2002

Preventive and policy coordination bodies

- Albania – Department of Internal Administrative Control and Anti-corruption (DIACA)
- Montenegro – Directorate for Anti-corruption Initiatives (DACI)
- Macedonia – State Commission of Prevention of Corruption (SCPC) – 2002
- Serbia – Agency for Combating Corruption (2010)
- Bosnia and Herzegovina (new ACA to be established)
- Kosovo – Anti-Corruption Agency (2004)

AC Models in South East Europe (2)

Integrity institutions

(assets declaration and conflict of interest prevention and/or political party funding)

- Albania – High Inspectorate for Declaration and Audit of Assets (HIDAA) – 2003, 2005
- Bosnia and Herzegovina – Central Election Commission (CEC) - 2001
- Bulgaria – National Audit Office (NAO) – from 2006
- Croatia – Commission for Prevention of Conflict of Interest
- Montenegro – Commission for Prevention of Conflict of Interest – 2005, 2008
- Macedonia – State Commission of Prevention of Corruption (SCPC) - 2002
- Romania – National Integrity Agency (NIA) – 2008
- Serbia – Agency for Combating Corruption (2010)

General status of ACAs in SEE

- The AC process started more or less during last 10 years (domestic needs, international pressure and assistance)
- Criminalisation of corruption – responsibility of classical independent law enforcement bodies
 - Specific legal mandate for prosecutorial bodies such as in Romania or Croatia;
 - Joint teams (police officers, prosecutors, taxes and customs services and intelligent services) – Albania
 - Existing law enforcement bodies – other SEE countries
- General recent trends of specialised units
- Recent promising trends with regard to law enforcement institutions (seizure and confiscation + management of assets) – independent body in Bulgaria, ongoing processes in some other countries

General status of ACAs in SEE (2)

- SEE has been a laboratory for developing prevention tools against corruption (establishment of preventive bodies, AC strategies and action plans)
- Several independent preventive ACAs (Albania, Bulgaria, Macedonia, Moldova, Romania, Serbia, BiH – to be established soon)
- Some government preventive and coordination ACAs or structures (Albania, Montenegro, Croatia, Romania)

Independence of ACAs

- Level and intensity of independence
- Full independent institutions maybe do not exist and are probably a myth
- Institutional maturity and public trust and support
- Full structural independence has resulted in some cases in:

lack of functioning (operational independence), lack of staff, incapacity of means and resources

lack of accountability leading to poor institutional or operational performance and the potential for corruption

Criminalisation of corruption

(Investigation, Prosecution, Trial, Asset Recovery)

▪ **Positive trends:**

- ✓ Specialisation trends
- ✓ Use of Special Investigative Means
- ✓ Asset Recovery legal and institutional trends

▪ **Needs and challenges:**

- ✓ Cooperation between police officers and prosecutors, between those bodies and other law enforcement bodies
- ✓ Transition between administrative and criminal proceedings
- ✓ No practice yet on liability of legal persons
- ✓ Exchange of information tools (data collection and data management capacities)
- ✓ Standards and criteria for case management
- ✓ Managing statistics in the criminal system
- ✓ Cross-border cooperation and practice
- ✓ Tailored specialised needs of assistance

Prevention of corruption

(Policy Development, Research, Monitoring and Coordination)

▪ **Best practices:**

- ✓ AC strategies and Action Plans – 3rd generation
- ✓ Integrity Mechanisms Experiences (CoI, integrity plans)
- ✓ Civil society involvement

▪ **Needs and challenges:**

- ✓ Continuity of AC strategies, implementation Action Plans
- ✓ Monitoring Framework (indicators, reporting, assesment)
- ✓ Cross-agency cooperation (preventive - law enforcement bodies)
- ✓ Sustainability of civil society involvement
- ✓ Measures in public procurement and licensing / permits / certificates systems
- ✓ Specific areas (Political party financing, local level, health and education systems, land reform...)

Public Education, Awareness and Participation

▪ Best practices:

- ✓ Public awareness campaigns (through international assistance or by countries themselves)
- ✓ Some legal and institutional cases to ensure public collaboration in the fight against corruption (whistleblowing)

▪ Needs and challenges:

- ✓ Sustainability of awareness campaigns
- ✓ Corporate governance and anti-corruption measures in the private sector
- ✓ Sound public awareness and education instruments (politisation, citizens participation, academic institutions involvement, role of the media, education tools for young generations)
- ✓ Ensuring public participation in the fight against corruption

Whistleblowing legal and institutional framework

- Few cases : Romania and Albania, but there is not yet any assessment on the practical implementation and results
- Some discussions are under process in other countries. Hotlines and Helplines exist also in other countries but without being based on clear regulations and safeguards.
- Necessity of such framework:
 - Increases public participation to report corruption and improves public trust on ACAs
 - There is still a reduced level of cases initiated ex officio by ACAs themselves
 - Other stakeholders involvement (including citizens) is very important to the success and credibility of ACAs

Inter-institutional cooperation

- Coordination mechanisms between different bodies dealing with anti-corruption agenda
- Solid cooperation frameworks based more on instruments and procedures than on informal and personal relations
- Cooperation in the area of criminal cooperation has proven most difficult. Also close cooperation among agencies with preventive mandates and those with enforcement functions
- Institutional cooperation culture and reduction of institutional competition
- Horizontal and vertical networks
- Inter-agency cooperation accros borders => yet lack of practice, due also to lack of trust

Legal Needs and Challenges

- Further harmonisation of international standards in the domestic legal framework
- Role and involvement of ACAs for any relevant legislative initiatives and changes related to the anti-corruption field, including public procurement provisions
- Effective sanctioning regimes for corruption and related offences, including administrative penalties, confiscation and fines
- Ongoing process and further needs in addressing recovery of assets from corruption activities (seizure, confiscation, assets management, shifting the burden of proof, illicit enrichment, human rights limits)
- Continuous monitoring and assessment of the practical application and effectiveness of legal measures

Institutional Needs and Challenges

- Establishment of better coordination and information exchange mechanisms - well-functioning framework/network of ACAs
- Support and sustainability of specialized investigative and prosecutorial bodies
- Dealing as a priority with high-level corruption cases
- Prevention framework, including public administration reform and the development of the respective institutional capacities, development of codes of ethics, standards for recruitment, promotion and removal and retirement of public officials
- Public awareness raising campaigns and outreach addressing (mis-) perceptions about corruption
- Educational measures targeting public officials, youth and the public in general
- Development of specialized anti-corruption capacities in criminal courts/sections

Operations Needs and Challenges

- Use of special investigative techniques in detection and investigation of corruption cases
- Horizontal and vertical networking among bodies with anti-corruption mandates
- Staff training on handling corruption cases, in particular for specialized prosecutors and investigators. Training should be organized using local expertise/trainers and focusing on practical and procedural aspects of investigating, prosecuting and trying corruption cases
- Establishment of criteria for case management
- Human, financial and material resources
- Necessity for a national anti-corruption strategy and an effective monitoring mechanism
- Enhanced analytical and strategic planning capacity of ACAs
- Regional networks of ACAs, integrity agencies, police officers, prosecutors, judges and any other law enforcement body

Operations Needs and Challenges (2)

- Effective relations with media, in particular enhancing media's capacities and professionalism
- Development of data collection and data management capacities including software
- Ensuring access to existing data banks of other institutions, such as FIUs, tax authorities, financial supervisory bodies, etc.
- Establishing an effective regime to strengthen and maintain the integrity and accountability of the judiciary
- Expertise capacities within ACAs

Lessons learnt

- ACAs are not the golden solution to the fight against corruption. They bring coordination, synergy, concentrated power and autonomy to the general framework
- The lack of political will may transform them as window dressing
- ACAs cannot cure or substitute for bad governance in general. ACAs cannot themselves address alone macroeconomic distortions, economic developments (i.e. informality level), the lack of credible courts and watchdog instruments, political imbalances, regulatory incentives toward bribery and any other “driver” of corruption
- Role and performance of ACAs is also dependent to the maturity of political system and efficient cooperation with other public agencies and government bodies
- Regional and international cooperation has proven to be a necessity for operation, self-sustainability and credibility of ACAs

Risk factors for ACAs



- Political will to fight corruption:
 - Large-scale corruption cases often suffer from political hidden and undue interference
 - Attempts by political parties to establish or conserve their influence on the ACAs (appointment and/or dismissal instruments)
 - The balance between international and donor pressure aiming at addressing the political will and continuous support to ACAs
- Politisation of the fight against corruption
 - Anti-corruption argument is more and more often used during electoral campaigns
 - The overall result of politisation is the decrease of independence
- The balance between independence and accountability

Current and future challenges for ACAs...

Challenges for better sustainability of ACAs

Accountability

Cooperation

Public support

Performance



CONCLUSION

Various positive experiences

Corruption still remains an important challenge for any domestic and other actor

Regional dimension is very important for addressing transnational features of corruption and other crimes, technical cooperation and assistance

ACAs sustainability remains important to consolidate current acquis and address remaining and future challenges



Thank you for your attention

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QUESTIONS

