

# Setting Standards for Europe Handbook



## EPAC/EACN Anti-Corruption Authority Standards and Police Oversight Principles

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# We network against corruption.

National bodies mandated either with the fight against corruption or police oversight have the duty to operate under the highest ethical standards in answering to the public they serve. Their credibility in the eyes of the citizens is dependent on transparency, integrity, accountability and freedom from undue influence.

The present Handbook is a practical tool developed by the European Partners Against Corruption (EPAC) and European anti-corruption contact point network (EACN) in an effort to render the work of these bodies more efficient. The two recommendatory documents contained are the result of year-long negotiations among over 60 anti-corruption authorities and police oversight bodies which make up EPAC/EACN. They serve as guidelines and purport to define common European standards and best practices to assist anti-corruption authorities and police oversight bodies in developing and preserving effective systems of oversight and accountability. Being in line with major international conventions and jurisprudence, they are to be seen in accordance with the fundamental principles of a country's legal system.

My gratitude goes to all EPAC/EACN members for their efforts and contributions to this Handbook. I would especially like to thank the Independent Police Complaints Commission (IPCC) of England & Wales, the Latvian Corruption Prevention and Combating Bureau (KNAB), the Lithuanian Special Investigation Service (STT), the Slovenian Commission for the Prevention of Corruption (CPC) and the Romanian National Anticorruption Directorate (DNA) for their valuable work and for (co) chairing working groups.

These recommendatory documents derive from practitioners' daily experiences, taking a wide range of approaches into account. They have been developed for professionals by professionals. May they be widely disseminated and translated into reality.



Martin Kreutner  
President EPAC/EACN





# INTRODUCTION

## Introduction

**EPAC AND EACN – NETWORKS AGAINST CORRUPTION**

The European Partner Against Corruption (EPAC) and European contact-point network against corruption (EACN) are independent forums for anti-corruption and police oversight practitioners. While EPAC was initiated in 2001 and subsequently established in 2004, EACN grew out of EU Council Decision 2008/852/JHA of October 2008 as a more formal network based on EPAC's preexisting structures. Having started out as a small unconventional forum, today EPAC brings together 63 anti-corruption authorities and police oversight bodies from Council of Europe and European Union Member States. EACN comprises a total of 48 anti-corruption authorities from EU Member States, and includes the European Anti-Fraud Office (OLAF). The European Commission, Europol and Eurojust are fully associated with the activities of EACN.

Together, EPAC and EACN provide a platform for practitioners to exchange expertise and information, assist each other, and cooperate across national borders, both on a practical and professional level. In line with their respective constitutions, EPAC and EACN also advocate international legal instruments and offer assistance to other bodies for establishing transparent, efficient mechanisms. Their overall goal is to contribute to police oversight and the global fight against corruption through dialogue and joint efforts.

**DEVELOPING WORKING STANDARDS AND BEST PRACTICES**

Over the last few years, the development and promotion of common working standards and best practices for police oversight bodies and anti-corruption authorities has been a key issue on EPAC/EACN's agenda. For this purpose, the networks established working groups on police oversight and anti-corruption, respectively, bringing together European bodies of diverse origin, different kinds of competences and varied legal forms. Their task was to establish guidelines for efficient police oversight and anti-corruption work in order to better address common challenges and find a unified response.

After years of relentless efforts and negotiations, in November 2011 the EPAC/EACN General Assembly unanimously adopted the guidelines these working groups came up with – The Police Oversight Principles and Anti-Corruption Authority Standards. These guidelines, documents of a recommendatory nature, form this Handbook. Not of a legally binding nature, they have been drafted in conformity with major international frameworks and are intended to be responsive to the variety of national legal and policy frameworks.

## Introduction

**ANTI-CORRUPTION AUTHORITY STANDARDS**

The Anti-Corruption Authority Standards and their annex, The Ten Guiding Principles on the Notion of Independence, are intended for specialized units and bodies in public administration, and law enforcement institutions with a mandate to fight and prevent corruption. They are designed to promote transparent, independent anti-corruption bodies through sustainable modes of operation, as called for by Articles 6 and 36 of the UNCAC for example.

**POLICE OVERSIGHT PRINCIPLES**

The Police Oversight Principles are intended for bodies with police oversight competences and not necessarily for members of the judiciary. They are designed to promote accountable policing systems which take human rights and the rule of law into highest account; a model of effective police oversight that organizations and governments can aspire to.

Designed for professionals by professionals, these guidelines strive to reach out to bodies in Europe and beyond.





EPAC/EACN

## ANTI-CORRUPTION AUTHORITY STANDARDS

These principles and standards are intended to be aspirational rather than legally binding on organisations. They recognise that there are many different approaches across the world and are thus intended to be responsive to the legal and policy frameworks in place in individual countries and organisations. At the same time, they are based upon our common understanding and our recommendation that these principles and standards may ultimately be supported by our legal systems.

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## **INTRODUCTION**

In the Budapest Declaration 2006, the European Partners Against Corruption (EPAC) agreed, on a voluntary basis and subject to national legislation, to set up the working group, Common Standards and Best Practice for Anti-Corruption Authorities (Chair: Latvia/Lithuania). The Chairs of this working group elaborated a report which was presented at the EPAC Conference in 2007 in Helsinki and published in May 2008 ([www.epac.at](http://www.epac.at)).

At the 9<sup>th</sup> Annual Professional Conference of the European Police Oversight Bodies (POBs) and Anti-Corruption Authorities (ACAs), which was held in Slovenia in 2009, all Partners agreed in the Perla Declaration to support the development of common standards and principles for ACAs and to set up the working group, ACA Standards, chaired by Slovenia.

At EPAC's 10<sup>th</sup> Annual Professional Conference (and General Assembly) held in Romania in 2010, all Partners were invited in the Oradea Declaration to participate in the 2011 working group, ACA Standards, chaired by the Vice-President.

The group held its first meeting on 22 April 2010 in Ljubljana, Slovenia. The preliminary results were presented by the Chair at EPAC's 10<sup>th</sup> Annual Professional Conference (and General Assembly), and were further discussed at the Project Conference, held under the Hungarian EU Presidency in Budapest from 13 to 14 April 2011. A final coordination meeting was held in Vienna from 4 to 5 August 2011. The EPAC Secretariat supported the group in its deliberations and work.

The current working group has considered contributions from representatives of Austria, Bulgaria, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Romania, Slovakia, Slovenia and the United Kingdom. The working group was initially chaired by Slovenia, followed by Romania.

Representatives prepared detailed papers on each standard. The supporting papers have been made available to EPAC Partners for reference. This paper represents the key messages contained within the aforementioned background documents.

## CONCLUSIONS

The following standards are consistent with international conventions and legal instruments such as the United Nations Convention against Corruption (UNCAC), the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), etc. It goes without saying that the ACA Standards are to be seen in accordance with the fundamental principles of a country's legal system.

### 1. THE RULE OF LAW

One of the essential prerequisites and components for an effective anti-corruption authority (ACA) is to provide a proper and stable legal framework, which serves the purpose of the establishment and maintenance of the ACA, as well as of regulating the functions of this body.

Among the most important rules which have to be contained in such a law are provisions on the main attributes of the ACA, its position in the existing institutional framework of the country, and its powers and accountability.

It has to be clear within the ACA and to the wider public under which rules the authority will operate and what the means of challenging its procedures and decisions are.

#### UNDERLYING INSTRUMENTS

<b>United Nations Convention against Corruption (UNCAC)</b>	
Art 5	Preventive anti-corruption policies and practices
Art 6	Preventive anti-corruption body or bodies
Art 65	Implementation of the Convention

<b>Council of Europe Criminal Law Convention on Corruption (CETS 173)</b>	
Art 20	Specialised authorities

<b>EPAC Declarations 2004-2011</b>	
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## 2. INDEPENDENCE<sup>1</sup>

Independence must be understood as enabling the ACA to perform its functions without undue influence. Independence is a key element for establishing and safeguarding the overall credibility of the ACA.

There are several aspects to independence, which include political independence, functional and operational independence, as well as financial independence.

The ACA needs to operate without fear or favour. In this context, the freedom of decision-making and the freedom to take appropriate actions are of utmost importance for the ACA, especially to investigate and/or prosecute allegations effectively and efficiently and without undue influence or undue reporting obligations.

#### UNDERLYING INSTRUMENTS

<b>United Nations Convention against Corruption (UNCAC)</b>	
Art 6	Preventive anti-corruption body or bodies
Art 36	Specialized authorities

<b>Council of Europe Criminal Law Convention on Corruption (CETS 173)</b>	
Art 20	Specialised authorities

<b>Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption</b>	
Guiding Principle 3	

<b>EPAC Declarations 2004-2011</b>	
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## 3. ACCOUNTABILITY

In order to ensure public confidence, the ACA needs to be accountable for the way in which it discharges its responsibilities and conducts itself. Likewise, staff within the ACA must be accountable for their decisions and actions.

Appropriate mechanisms should be established to ensure proper governance of the ACA, its performance and effectiveness, and compliance with the relevant statutory, regulatory and ethical frameworks.

Similar systems need to be set in place to encourage and ensure that the staff members within the ACA are accountable. There must be adequate procedures to ensure compliance with personal and professional standards and to respond



## Anti-Corruption Authority Standards

to complaints and allegations of inappropriate, unethical behaviour or other misconduct. These procedures should also provide for mechanisms to deal with malicious and unjustified accusations and provide credible and swift exoneration in such cases. These protective mechanisms should not inhibit proper judicial review.

ACAs shall report regularly and publicly on their activities, for example via annual reports.

### UNDERLYING INSTRUMENTS

#### United Nations Convention against Corruption (UNCAC)

- Art 1 Statement of purpose
- Art 8 Codes of conduct for public officials

#### Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption

- Guiding Principle 10
- Guiding Principle 11
- Guiding Principle 13

#### EPAC Declarations 2004-2011

## 4. INTEGRITY AND IMPARTIALITY

Integrity may be defined as acting or being in accordance with the moral values, norms and rules, valid within the context in which one operates. In public administration, integrity refers to honesty and trustworthiness in the discharge of official duties, serving as an antithesis to corruption or the abuse of office for private gain.

Impartiality means acting independently of any partisanship. This reinforces the independence and autonomy of the ACA but is distinct in that, in addition to the ability to act, the ACA and its staff must be able to make objective decisions based upon the merits and circumstances of a particular case or situation without undue influence or prejudice.

In order to promote integrity and impartiality, the ACA and its staff should be an exemplar of those standards and values that it seeks to promote and enforce. This may include further specifications of the behaviour expected from its staff by appropriate means, such as a code of ethics, code of conduct, mission statement, best practice or other instruments.

## Anti-Corruption Authority Standards

### UNDERLYING INSTRUMENTS

#### United Nations Convention against Corruption (UNCAC)

- Art 1 Statement of purpose
- Art 5 Preventive anti-corruption policies and practices

#### Resolution 51/59 UN General Assembly

- International Code of Conduct for public officials

#### Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption

- Guiding Principle 10

#### EPAC Declarations 2004-2011

## 5. ACCESSIBILITY

ACAs shall provide citizens with the means to prevent, take action against, and especially report instances of corruption. Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption, the ACA should be available to the general public, including by offering channels of anonymous communication, especially but not limited to, taking reports alleging corruption.

The ACA should be able to independently engage with all relevant stakeholders, e.g. victims, complainants, witnesses, collaborators of justice, the media, civil society and academia, at its own discretion and without consultation or approval.

The ACA must have access to all necessary information, subject only to limitations or restrictions which are necessary in a democratic society, in order to conduct investigations into corrupt activities, identify and trace proceeds of corruption, research, understand and disseminate knowledge about and prevent corruption.

### UNDERLYING INSTRUMENTS

#### United Nations Convention against Corruption (UNCAC)

- Art 13 Participation of society
- Art 32 Protection of witnesses, experts and victims
- Art 33 Protection of reporting persons
- Art 34 Consequences of acts of corruption
- Art 37 Cooperation with law enforcement authorities
- Art 40 Bank secrecy
- Art 61 Collection, exchange and analysis of information on corruption

**Council of Europe Criminal Law Convention on Corruption (CETS 173)**

- Art 21 Co-operation with and between national authorities
- Art 22 Protection of collaborators of justice and witnesses

**Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption**

- Guiding Principle 16

**6. TRANSPARENCY AND CONFIDENTIALITY**

The ACA should operate transparently in order to ensure public confidence in its independence, fairness and effectiveness. Transparency should only be subject to limitations or restrictions which are necessary in a democratic society.

There is a balance to be achieved between the need for transparency of the ACA and the need to ensure confidentiality of sources, tactics and methodology in order to effectively discharge its duties, especially in conducting investigations, as well as to protect the legitimate rights of others.

In order to maintain confidence and ensure operational security, mechanisms must be available to protect those reporting or alleging corruption, or otherwise assisting the ACA in conducting its activity.

**UNDERLYING INSTRUMENTS****United Nations Convention against Corruption (UNCAC)**

- Art 13 Participation of society
- Art 32 Protection of witnesses, experts and victims
- Art 33 Protection of reporting persons

**Council of Europe Criminal Law Convention on Corruption (CETS 173)**

- Art 22 Protection of collaborators of justice and witnesses

**Council of Europe Civil Law Convention on Corruption (CETS 174)**

- Art 9 Protection of employees

**Council of Europe Resolution (97) 24 on the twenty Guiding Principles for the fight against corruption**

- Guiding Principle 9
- Guiding Principle 14
- Guiding Principle 16

**EPAC Declarations 2004-2011****7. RESOURCES**

In order to function properly and fulfil its mandate effectively and efficiently, the ACA must have adequate financial and material resources. These should allow the employment of a sufficient number of qualified staff, appropriate systems of remuneration and incentives, and ensure proper working conditions.

The timely, planned and reliable provision of a sufficient budget for the necessary operational expenditure and technical facilities is vital for the success of the ACA.

As the fight against corruption is ultimately to be seen as a safeguard for overall social and economic prosperity and the rule of law, it is fair to expect that the funding for the ACA should primarily come from public sources.

**UNDERLYING INSTRUMENTS****United Nations Convention against Corruption (UNCAC)**

- Art 6 Preventive anti-corruption body or bodies
- Art 7 Public sector
- Art 36 Specialized authorities

**Council of Europe Criminal Law Convention on Corruption (CETS 173)**

- Art 20 Specialised authorities

**Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption**

- Guiding Principle 3
- Guiding Principle 7

**EPAC Declarations 2004-2011****8. RECRUITMENT, CAREER, AND TRAINING**

It is imperative for the ACA to attract highly qualified individuals exhibiting the necessary skills, experience and behaviour. Staff members require high levels of personal integrity and resilience as well as the ability to maintain trust and confidence.

The recruitment of personnel must be based upon the principles of efficiency, transparency and fairness and upon known and objective criteria such as merit, equity and aptitude.

Credible specialist training incorporating strategic and academic analysis as well

as practical skills and experience is crucial to provide and maintain the necessary level of qualification.

Working within an ACA should not have a detrimental impact on wider career management. Therefore, mechanisms should be provided with regard to reasonable terms of office, protection against undue dismissal and undue displacement as well as subsequent career development.

#### UNDERLYING INSTRUMENTS

##### **United Nations Convention against Corruption (UNCAC)**

- Art 6 Preventive anti-corruption body or bodies
- Art 7 Public sector
- Art 8 Codes of conduct for public officials
- Art 36 Specialized authorities

##### **Council of Europe Criminal Law Convention on Corruption (CETS 173)**

- Art 20 Specialised authorities

##### **Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption**

- Guiding Principle 7

##### **The EU Justice and Home Affairs Council, JAI 473 (M.A.D.R.I.D. Report), from 26 May 2010**

## 9. COOPERATION

The success of an ACA depends to a large extent on the degree and quality of its cooperation with other stakeholders. Cooperation should include cross-sector, interagency, interdisciplinary and transnational approaches.

Through smooth and fruitful cooperation, the ACA can, in a timely manner, obtain quality information and data; access operational support and joint investigative activities; gather intelligence and evidence related to corruption offences including, where appropriate, the identification and recovery of the proceeds of corruption.

Cooperation should facilitate the exchange of best practice, standards, experiences and lessons learned. It also represents a safety net and a mutual support network for the ACA in the face of difficulties.

#### UNDERLYING INSTRUMENTS

##### **United Nations Convention against Corruption (UNCAC)**

- Art 1 Statement of purpose
- Art 5 Preventive anti-corruption policies and practices
- Art 12 Private sector
- Art 13 Participation of society
- Art 37 Cooperation with law enforcement authorities
- Art 38 Cooperation between national authorities
- Art 39 Cooperation between national authorities and the private sector
- Chapter IV International cooperation
- Art 55 International cooperation for purposes of confiscation
- Art 58 Financial intelligence unit
- Art 59 Bilateral and multilateral agreements and arrangements
- Art 62 Other measures: implementation of the Convention through economic development and technical assistance
- Art 63 Conference of the States Parties to the Convention

##### **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)**

- Art 4 Jurisdiction
- Art 9 Mutual Legal Assistance
- Art 10 Extradition

##### **Council of Europe Criminal Law Convention on Corruption (CETS 173)**

- Art 21 Co-operation with and between national authorities
- Chapter IV International co-operation

##### **Council of Europe Civil Law Convention on Corruption (CETS 174)**

- Art 13 International co-operation

##### **Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption, L 301/38.**

##### **Commission Decision of 6.6.2011 establishing an EU Anti-corruption reporting mechanism for periodic assessment („EU Anti-corruption Report“), C(2011) 3673 final.**

##### **The EU Justice and Home Affairs Council, JAI 473 (M.A.D.R.I.D. Report), from 26 May 2010**

##### **EPAC Declarations 2004-2011**

## 10. HOLISTIC APPROACH TO PREVENTING AND FIGHTING CORRUPTION

Corruption is a cross-cutting issue involving numerous and multi-faceted aspects and phenomena of social interaction. As a consequence, corruption needs to be addressed and tackled holistically.

ACAs operate with varied legal, executive, administrative and operational responsibilities. Regardless of their mandate, whether or not they hold preventive, investigative or coercive powers or capabilities, the strategies they own, promote or implement and the activities they undertake, should consider corruption in its entire context.

### UNDERLYING INSTRUMENTS

#### United Nations Convention against Corruption (UNCAC)

Preamble

Art 5 Preventive anti-corruption policies and practices

Art 13 Participation of society

#### EPAC Declarations 2004-2011

## ANNEX

### EPAC/EACN 10 Guiding Principles and Parameters on the Notion of Independence of AC Bodies<sup>2</sup>

In summarising and in compliance with all major international conventions and recommendations, anti-corruption bodies shall be granted [the 10 Guiding Principles]:

1. **The backbone of an appropriate, comprehensive and stable statutory/constitutional legal framework.**
2. **Appropriate allocation of highly qualified personnel, sufficient (public) funds and resources (including remunerations and incentives), effective and efficient institutional and organisational frameworks free from any inappropriate and undue influence, as well as appropriate professional training possibilities; in addition to that, the ability to decide upon these**

**resources (including personnel) and to use these capabilities at their own discretion without prior consultation or approval.**

**3. Transparent and objective recruitment (dismissal) procedures/mechanisms for the head of the ACA and all other personnel, which are based on the principles of efficiency and transparency and objective criteria, and which focus on a proven record of the individual's integrity, skills, education and training, experience and professionalism only; including provisions and factual safeguards against appointments (dismissals) motivated by undue considerations.**

**4. Terms of office of a minimum of two (parliamentary) legislative periods plus one year each (i.e. in total preferably twelve years or more) for the head of the ACA and all other (key) personnel, without the possibility to be reappointed for a second term of office, and including a transparent system of reasonable and just follow-up careers for those who leave the ACA.**

**5. Terms of office/employment of ACA personnel on a voluntary basis by the respective individual.**

**6. The ability (of the ACA) to engage in its activities and carry out its functions – especially to investigate and/or prosecute concrete allegations – effectively and efficiently and without undue influence or undue preliminary or otherwise inappropriate reporting obligations at its own discretion without prior consultation or approval.**

**7. Unrestricted access to all necessary information, at the same time mechanisms and means to protect the persons helping the ACA (whistleblowers, witnesses, etc.) in preventing and combating corruption and also those preserving the confidentiality of investigations.**

**8. The ability and responsibility to cooperate with and address civil society, the media, academia and other stakeholders in society at all times at its own discretion without prior consultation or approval, and to be addressed by those, all to safeguard the ACA's overall transparency, accountability and legitimacy; in a similar vein, the accessibility by the general public at all times, including by offering channels of anonymous communication.**

**9. The ability and obligation to cooperate and liaise with similar organisations, networks and other stakeholders, nationally, trans-nationally as well as internationally, at their own discretion without prior consultation or approval.**

**10. An independent advisory/oversight instrument or mechanism to monitor and provide “air cover”, to investigate alleged misconduct of the body, to further proceed against it or those responsible via appropriate channels if reasonably grounded, and – on the other hand – to provide credible and swift exoneration in cases of unjustified accusations against the body and/or its employees by politics, the media, those under investigation or others.**

There is now a common and undisputed consensus within academia, practitioners, and other experts alike that institutions working in the field of preventing and combating corruption shall be independent from those that fall under their remit. The major international conventions and instruments in the anti-corruption field, both on a global and regional level, have taken up this notion and contain – in most cases – mandatory provisions that urge and require States (Parties) or member countries to establish and maintain the “necessary independence” of their anti-corruption body or bodies<sup>3</sup> (ACAs)<sup>4</sup>.

Art. 20 on Specialised authorities of the Council of Europe’s Criminal Law Convention on Corruption<sup>5</sup> (CoE’s CrimLCoC) stipulates: “Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure.” In addition to that, Resolution (97) 24 of the Committee of Ministers of the Council of Europe on Twenty Guiding Principles for the Fight against Corruption<sup>6</sup> (CoE’s 20 GPs) in its Principle 3 states: “[The Committee agrees] to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations.”

The most comprehensive global instrument to this date, the United Nations Convention against Corruption (UNCAC)<sup>7</sup>, also called “Mérida Convention”<sup>8</sup>, in its Art. 6 on Preventive anti-corruption body or bodies, Chapter II on Preventive measures, as well as in Art. 36 on Specialized authorities, Chapter III on

Criminalization and law enforcement, follows similar lines. It requires States Parties not only to ensure - in accordance with the fundamental principles of its (i.e. the State Party’s) legal system - the existence of a body or bodies that prevent corruption and a body, bodies or persons specialised in combating corruption through law enforcement, but also to ensure that “such body or bodies (or persons) shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to enable the body or bodies (be able)<sup>9</sup> to carry out their functions effectively and without any undue influence.”

The UNCAC does not mandate the establishment or maintenance of more than one body or organisation for the a/m tasks but recognises that, given the range of responsibilities and functions, these may already be assigned to different existing agencies. In a similar vein, the Convention deals with preventive and law enforcement functions and corresponding bodies under two different Articles (i.e. Arts. 6 and 36, respectively), yet, the States Parties may decide to entrust one body with a combination of preventive and law enforcement functions.<sup>10</sup> However, both types of functions (bodies) shall be granted the necessary independence to ensure that they (their activities) are carried out unimpeded and without undue and improper influence.

(Global) international instruments are routinely based on a broad consensus and thus have to follow a pattern of common denominators. At the same time, they have to observe, inter alia, issues of socio-cultural diversity, national sovereignty, (hidden) (national and international) political agendas as well as different legal systems and backgrounds. It is also for these reasons that they regularly refrain from engaging into in-depth definitional issues<sup>11</sup> or from “legal micro-managing”. They rather leave it to the Parties of the instrument how to comply with the more general or “macro-”expectations, requirements and provisions of such (legal) frameworks.

It is, therefore, no wonder that while on the one hand the notion and requirement of independence for anti-corruption bodies and institutions prima facie goes widely undisputed, it is on the other hand hardly ever discussed in detail or translated into daily life. As a matter of fact, only very few of the national (and international) ACAs can be regarded as comprehensively independent by the end of the day. In practice, it is rather a broad range of institutional, organisational, legal, political and factual set-ups for ACAs that we are dealing with. From a global perspective, this spectrum basically goes from the extreme of nomenklatura-controlled agencies for political oppression via window dressing institutions functioning as “governmental anti-corruption discourse mechanisms”<sup>12</sup> to vociferous, blatant and scandal-mongering interest groups on the other end of the spectrum (the latter often featuring an end in themselves rather than a solution to a problem).

As an overall consequence, it is the intention to come forward with and propose 10 guiding principles and parameters that can be used as thresholds and indicators in regard to the subject matter of independence. They may serve as compasses and torches in murky water; however, for obvious reasons they do not and cannot act as easy-fixes or silver bullets. At the same time, it is also clearly understood that as these guiding principles and parameters are complex and interacting, they have to be contextualised in the cultural and socio-historical framework of a given Gemeinschaft (community) or Gesellschaft (society)<sup>13</sup>. It goes without saying that the outlined 10 guiding principles are to be seen in accordance with the fundamental principles of the legal system of a country (State Party)<sup>14</sup> as well as with other national and international legal obligations.<sup>15</sup>

All that said, let us plunge in medias res. To be technically (and rightfully) called independent and to meet the ratio legis, the legislative rationale, of “necessary independence”, as laid down, e.g., in Art. 20 on Specialised authorities of the CoE’s CrimLCoC, as well as in Art. 6 on Preventive anti-corruption body or bodies and Art. 36 on Specialized authorities of the UNCAC, anti-corruption agencies, ACAs, shall be granted<sup>16</sup>:

### **1. The backbone of an appropriate, comprehensive and stable statutory/constitutional legal framework.**

Modern societies – and their relations to other entities – are (normally) based upon the rule of law. Also following the more formal constitutional principle of legality<sup>17</sup>, the legislative power sets up the (legal) frameworks and, concomitantly, the basis of the public sector’s institutions (including rights and obligations, powers and mandates, etc.). In doing so, constitutional legislation requires higher (parliamentary) majorities<sup>18</sup> and quora than ordinary laws. It is thus important to establish and maintain an ACA on the basis of comprehensive constitutional legislation.<sup>19</sup> This will help to keep the ACA out of day-to-day politics and (politically motivated) ad hoc legislation. Furthermore, it will strengthen the ACA’s legal and factual validity and thus substantially extend its (political) “half-life”.<sup>20</sup> To put it in the words of the President of GRECO<sup>21</sup>, Drago Kos, reflecting on political turbulences of the ACAs in some European countries in 2008: “Some European agencies have an outstanding international reputation and therefore they have difficulties in their own countries. They share the same fate as many (other) anti-corruption agencies which, for some people, are becoming too successful internally.”

### **2. Appropriate allocation of highly qualified personnel, sufficient (public) funds and resources (including remunerations and incentives), effective and efficient institutional and organisational frameworks free from any**

**inappropriate and undue influence, as well as appropriate professional training possibilities; in addition to that, the ability to decide upon these resources (including personnel) and to use these capabilities at their own discretion without prior consultation or approval.**

To function properly, i.e. to fulfil its mandate effectively and efficiently, an ACA needs agents and means. It should thus be reasonably staffed and given adequate remuneration and incentive systems<sup>22</sup>. These systems<sup>23</sup> should be competitive to other similar institutions, take into account the level of economic development of a country<sup>24</sup>, allow for decent living conditions and thus help avoid a potential brain drain from the ACA.

Corruption is a cross-cutting issue involving numerous and multifaceted aspects and phenomena of social interaction. As a consequence, corruption needs to be addressed and tackled holistically and comprehensively.<sup>25</sup> In addition, “in investigating corruption allegations you regularly have to stir in murky waters, you have to deal with the intelligent, the most resourceful and the real powerful. The burden of proof lies with the investigators, and the investigational and judicial chain is only as strong as its weakest link. Even if the chain stays solid, your day may end still missing the final but necessary piece of evidence in the obvious corruptive mosaic. Subsequently, you are nolens volens instrumentalized in supposedly proving the “innocence” of the corrupt.”<sup>26</sup> For all the outlined reasons, constant and consistent, inter-disciplinary and inter-sectoral training – based upon practical experience and academic research alike – is considered crucial for personnel in the anti-corruption arena.<sup>27</sup>

Finances and general resources need to be adequate to enable an ACA to fulfil its mandate<sup>28</sup>. As the prevention of and the fight against corruption are ultimately to be seen as safeguards for social and economic prosperity and the rule of law, they also constitute core tasks of the state as such.<sup>29</sup> It is therefore reasonably fair to argue that funding and resources should come from public sources<sup>30</sup>.

Institutional and organisational frameworks should permit and ensure effective and efficient work and be free from any – even potential – inappropriate and undue influence. This would, e.g., include multi-year budget planning and allocation<sup>31</sup>, long-term rental agreements for facilities, the absence of political party based/focused works councils and employee representation<sup>32</sup>, etc.

Having resources at hand is one side of the coin, being allowed to use them effectively and efficiently is the other. It is imperative, therefore, that ACAs be given the mandate to decide upon these resources (including personnel)<sup>33</sup> and to use these capabilities at their own discretion without prior consultation or

approval. It goes without saying, though, that in doing so, ACAs shall follow the principles of transparency and accountability<sup>34</sup> and obey clear rules of procedure within the fundamental principles of a given legal system.

**3. Transparent and objective recruitment (dismissal)<sup>35</sup> procedures/mechanisms for the head of the ACA and all other personnel, which are based on principles of efficiency and transparency and objective criteria, and which focus on a proven record of the individual's integrity, skills, education and training, experience and professionalism only; including provisions and factual safeguards against appointments (dismissals)<sup>36</sup> motivated by undue considerations.**

The UNCAC, in its Art. 7, highlights the importance of a public sector recruitment, hiring, retention, promotion and retirement system that is, inter alia, based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude. This holds true even more so for the sensitive area of recruitment (and management) of human resources for an ACA.<sup>37</sup> There is no such thing as a broadly recognised best practice example or standard model, but there are a variety of different approaches and procedures. Observing the principle of checks and balances, a combination of different proceedings, mechanisms and safeguards may ultimately suffice for the outlined requirements. Such procedures and instruments may include: clear and transparent job descriptions; a clear and transparent set of objective criteria in regard to a person's qualifications and requirements, at the same time allowing for less measurable criteria such as social competence and empathy, leadership skills, etc. as long as they are addressed and debated in a transparent and comprehensible way; an open, transparent and reasonably timed advertising process without loopholes; independent recruitment commissions; recruitment in accordance with a procedure affording all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society)<sup>38</sup>; additional (obligatory/non-obligatory) advisory/consultancy boards<sup>39</sup> with the right to remand or veto a decision; systems of internationally recognised benchmarks<sup>40</sup>; systems of complaints, appeals and remedies; systems of legal<sup>41</sup> and political liability in case of non-compliance.

**4. Terms of office of a minimum of two (parliamentary) legislative periods<sup>42</sup> plus one year each (i.e. in total preferably twelve years or more) for the head of the ACA and all other (key) personnel, without the possibility to be reappointed for a second term of office, and including a transparent system of reasonable and just follow-up careers for those who leave the ACA.**

In some countries and regions it has become a routine pattern after elections (or major investigations) to dismiss personnel of ACAs. This serves various goals: to get rid of (politically) inconvenient and/or (too) successful individuals, to set the political agenda anew and, in some cases, to serve clientelism and favouritism by installing (in some cases less qualified) political appointees with dependent loyalties<sup>43</sup>. It is basically for these obvious reasons that the (key) personnel of an ACA shall be granted terms of office extending beyond legislative periods, preferably beyond two of these. For each legislative period one additional year should be added to cover times of interregnum, i.e. of party negotiations and government building. As in most countries legislative periods last four or five years, respectively, a total term of office of twelve years for (key) personnel subsequently seems appropriate and recommendable. Second terms of office should not be provided for as they would likely heighten the following risks concerning a possible reappointment: pressure and undue influence on the office holder by the decision-makers on the one hand, and unprofessional and improper adaptiveness by the office holder towards the decision-makers on the other hand.

ACA employment is rarely a lifetime service. Additional safeguards are thus needed to provide transparent, reasonable and just follow-up careers for those who leave the ACA. These may include, inter alia: systems and instruments of job guarantee to return to former jobs (without any disadvantages on [scales of] promotion, remuneration and other incentives), of broad professional recognition of terms of service in and promotions while serving in the ACA, clear and comparable systems of permeability (compared) to equivalent posts, systems of protection against (undue) dismissal and (undue) relocation, et altera.

**5. Terms of office/employment of ACA personnel on a voluntary basis by the respective individual.**

Employment in an ACA *nolens volens* often goes along with high levels of visibility, internal and external exposure and sometimes even broad and direct hostility.<sup>44</sup> At the same time, it requires above-average levels of personal honesty, integrity, resilience, stamina, steadfastness, as well as professional commitment and dedication. Fighting corruption without heart and mind will not work. It is therefore only fair enough and appropriate that such employment is rather based upon voluntary assignment than – in the worst case – a perception of being conscripted into a *Strafkompanie* (punishment battalion).

**6. The ability (of the ACA) to engage in its activities and carry out its functions – especially to investigate and/or prosecute concrete allegations – effectively and efficiently and without undue influence or undue preliminary**

**or otherwise inappropriate reporting obligations at its own discretion without prior consultation or approval.**

The freedom of decision-making and the freedom of action are imperative for an ACA. This holds true especially for investigating and prosecuting concrete cases of corruption. It ensures – if and where necessary - the applicability of an element of surprise and the sustainability of the momentum of action and, ultimately, of success. This is also why it is self-explanatory that any premature, untimely, undue, excessive, unjustified and illegitimate reporting and/or consultation obligation by the ACA is technically counterproductive and perceptually spoils its independence and, consequently, its legitimacy and credibility. Similarly, it is obvious and does not need to be repeated that the principle of separation of powers needs to be strictly and accurately observed in this context. Especially the political sphere is prone to a tendency to interfere – under whatever labels, titles, arguments and excuses<sup>45</sup> - in the activities of an ACA, in particular once the performance of the ACA gets (too) successful.

As regards the engagement in its activities without undue influence, the ACA and its staff should be protected from civil law litigation for actions performed within their mandate as long as those actions have been carried out under the authority of the agency and bona fide, in good faith. For obvious reasons, this protection should not inhibit proper judicial review.<sup>46</sup>

As has already been clearly outlined, it is manifest that ACAs in all their activities shall follow the principles of transparency and accountability<sup>47</sup>, shall operate in a clear and transparent governance system, and shall obey comprehensible rules of procedure within the fundamental principles of a given legal system.

**7. Unrestricted access to all necessary information, at the same time mechanisms and means to protect persons helping the ACA (whistleblowers, witnesses, etc.) in preventing and combating corruption and also those preserving the confidentiality of investigations.**

ACAs need to have unrestricted access to necessary information subject only to limitations or restrictions which are necessary in a democratic society<sup>48, 49</sup>. It is self-evident that such access to and processing of information shall follow clear rules of procedure and shall be in accordance with the fundamental principles of a given legal system.

Yet, there is also a common understanding in the AC community that people are often hesitant to openly inform competent bodies on their knowledge of corrupt activities. It is for this very reason that national and international legislation and

guidelines call for the protection of witnesses, experts, victims and reporting persons.<sup>50</sup> States the Legislative Guide for the Implementation of the United Nations Convention against Corruption by UNODC: “Unless people feel free to testify and communicate their expertise, experience or knowledge to the authorities, all objectives [of the UNCAC] could be undermined. Consequently, States Parties are mandated to take appropriate measures [...] against potential retaliation or intimidation of witnesses, victims and experts. States are also encouraged to provide procedural and evidentiary rules strengthening those protections as well as extending some protections to persons reporting in good faith to competent authorities about corrupt acts.”<sup>51</sup> Means and mechanisms for the protection of witnesses, experts, victims and reporting persons – including public servants and private citizens<sup>52</sup> as well as employees<sup>53</sup> - may include whistleblower protection and witness protection legislation<sup>54</sup>, effective regret instruments, leniency programmes, offering anonymous channels of communication<sup>55</sup>, data protection regulations et alera.<sup>56</sup>

**8. The ability and responsibility to cooperate with and address civil society, the media, academia and other stakeholders in society at all times at its own discretion without prior consultation or approval, and to be addressed by those, all to safeguard the ACA’s overall transparency, accountability and legitimacy; in a similar vein, the accessibility by the general public at all times, including by offering channels of anonymous communication.**

Corruption as a cross-cutting issue is embedded in the matrix of society’s institutions<sup>57</sup> and involves both actively as well as passively all sectors of the res publica. Hence, it is rather a sociological than a purely criminological phenomenon.<sup>58</sup> Furthermore, it is obvious and irrefutable that approaches to address and tackle corruption need to be holistic and comprehensive. Concomitantly, all actors, players and stakeholders, including those of civil society, the media, academia and others, need to be approached and involved.<sup>59</sup> Such direct dialogue and communication helps to build a critical mass, form alliances and gain synergies, but also safeguards the ACA’s overall transparency, accountability and legitimacy by, eventually, means of public scrutiny.<sup>60</sup> On the part of the ACA, this discourse requires direct accessibility by the general public, including by offering channels of anonymous communication<sup>61</sup> for the reporting of any incident that may be considered to constitute a corruption offence. It is – again - self-explanatory that the processing of information shall follow clear rules of procedure and shall be in accordance with the fundamental principles of a given legal system and subject only to limitations or restrictions which are necessary in a democratic society. The dissemination of such information also must not adversely affect investigations and the right to a fair trial.<sup>62, 63</sup>



The media are often referred to as the fourth branch – beside the legislative, the executive and the judiciary – in the set-up of a modern state. According to the European Court of Human Rights in Strasbourg, the media in a democratic society shall act as a “public watchdog”. It goes without saying that in fulfilling this role, the media need to be free and independent from those they report on and shall broadly receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society<sup>64</sup>. It is perfectly true as well that the media in the past, at present and (hopefully) also in the future play a crucial and important role in acting as this watchdog and, thus, in fighting corruption. However, as there are always two sides of a coin and we are not living in an ideal world, it must not go unnoticed that (some of) the media in some countries have become part of the problem rather than of the solution. In this context, research of the journalism department of Cardiff University on the basis of four quality daily newspapers in the UK (The Times, The Guardian, The Independent and The Daily Telegraph) found out: “Taken together, these data portray a picture of journalism in which meaningful independent journalistic activity by the press is the exception rather than the rule. We are not talking about investigative journalism here, but the everyday practices of news judgement, fact-finding, balance, criticising and interrogating sources, etc., that are, in theory, central to routine, day-to-day journalism.”<sup>65</sup> John Wilson, former controller of editorial policy at the BBC, is quoted even more bluntly in stating: “News is a way of making money. No one believes that news and journalism are simply a service to democracy.”<sup>66</sup> The amalgamation into personal unity of key political decision-makers or powerful business entrepreneurs and media moguls, respectively, in some societies tends to reduce the notion of checks and balances and the role of the neutral watchdog to absurdity.<sup>67</sup>

In a nutshell, ACAs may perceive the media as a valuable “brother in arms” in the fight against corruption and in safeguarding the ACAs’ independence, but at the same time, and for no good/factual reason, may find themselves easily and too often at the receiving end of a dreadful media campaign.

**9. The ability and obligation to cooperate and liaise with similar organisations, networks and other stakeholders, nationally, trans-nationally as well as internationally, at their own discretion without prior consultation or approval.**

It has already been outlined that (national and international) cooperation needs to be addressed and promoted as the fourth pillar in a holistic and comprehensive notion of tackling corruption. The UNCAC and the Council of Europe’s Criminal Law Convention on Corruption devote an entire chapter each to this requirement; other international instruments call on parties to work along the same lines.<sup>68, 69</sup>

States (Parties) shall thus cooperate in criminal law and shall consider assisting each other in investigations of and proceedings in civil and administrative matters.<sup>70</sup> Areas of cooperation may include extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement cooperation, joint investigations, and special investigative techniques<sup>71</sup>; they may also comprise instruments of spontaneous information and direct communication<sup>72</sup>, enforcement of sentences<sup>73</sup> as well as asset recovery<sup>74</sup>.

However, this call for cooperation is not only about working together in the context of criminal and other law matters, about exchanging staff, best practices and standards, about sharing knowledge and expertise or working together in joint investigation teams, but it is also about building alliances and coalitions of like-minded experts and professionals. As the saying “Nemo propheta in patria”, “A prophet has no honour in his own country”, is matter-of-factly true for ACAs in particular, cooperating and liaising is especially about offering and safeguarding international visibility and professional backup in times of national turmoil, crisis and undue criticism. Consequently, it is about contributing to maintaining operational autonomy and independence.<sup>75</sup>

**10. An independent advisory/oversight instrument or mechanism to monitor and provide “air cover”, to investigate alleged misconduct of the authority, to further proceed against it or those responsible via appropriate channels if reasonably grounded, and – on the other hand – to provide credible and swift exoneration in cases of unjustified accusations against the authority and/or its employees by politics, those under investigation, the media or others.**

Justice Barry O’Keefe (ret.), Commissioner of the Independent Commission Against Corruption in Australia from 1994 to 1999, rightfully stated at an international conference: “The biggest problem for an anti-corruption body is its success”. And Franz-Hermann Brüner, Director General of the Office européen de lutte anti-fraude, the Anti-Fraud Office (OLAF) of the European Union from 2000 to 2010, added: “As a corruption fighter, you are regularly on the brink of a personal and institutional trap. And you have to continuously and constantly defend yourself for doing what you are supposed to do from the start.”<sup>76</sup>

A most common way of attacking an ACA and thus paralysing it or spoiling its reputation is to accuse the body and/or its (key) personnel and functionaries of wrongdoings. However absurd, fictitious, farcical, unrelated or insignificant they are, they often serve the purpose by deflecting general attention from the real thing, i.e. a corruption offence at stake and under investigation. Frequent discussions and case samples<sup>77</sup> exemplify this unfortunate but global “wag-the-dog phenomenon”.

Conversely, one may also ask: „Quis custodiet ipsos custodes? Who will guard the guards themselves?“ So there is ample argumentation for the establishment of an independent instrument, preferably an independent commission, to advise, oversee and, subsequently, provide “air cover” for the ACA. This instrument/mechanism may be composed of highly reputed and independent personalities such as, e.g., retired supreme judges, senior academics, etc. Its mandate and rules of procedure should be clear and transparent and should not ipso facto substitute regular disciplinary or criminal procedures, but rather provide a first line of evaluation and – if and where justifiable and applicable – defence. Consequently, it may also serve as an instrument of accountability and legitimacy.

It is frequently argued that such advisory/oversight function should be executed by Parliament, a (special) board of parliamentarians, members of government or other (boards of) politicians. This approach must be strongly opposed as such a setting – without pushing the foray into too deep an epistemological water – would nolens volens come along with at least three caveats/contradicting factors<sup>78</sup>: (1) There is regularly a clear conflict of interest for politics, at least as (widespread) political corruption is concerned; (2) investigations into corrupt practices are – ultimately – of law enforcement and judicial nature. Observing the important principle of separation of powers, one branch overseeing and monitoring the other – in our case the legislative or executive keeping a check on the judiciary – would significantly violate this key principle and building block of the concept of the modern state; (3) anti-corruption measures and individual corruption cases would unavoidably and inescapably be instrumentalised for day-to-day political scandal-mongering and for specific party-political ends.<sup>79</sup> In a similar vein, it has proven unrealistic that sensitive data and (other) details of investigations can be kept in confidence once they reach the political arena.<sup>80</sup>

The outlined ten guiding principles and parameters on the notion of independence of AC bodies are far from claiming exclusiveness for all circumstances in all jurisdictions. They shall rather serve as food for thought and as directives for the realisation of one of the key principles and prerequisites for thriving ACAs. Yet, by the end of the day and as the fight against corruption will remain an uphill battle, ACAs will primarily be driven by political will, by straightforward leadership and by lasting public support. In addition, true independence will give the necessary framework for success.

## ENDNOTES

<sup>1</sup> For more elaborations on this Standard, consult the Annex, 10 Guiding Principles and Parameters on the Notion of Independence

<sup>2</sup> This draft is based on a paper presented at the IACSS 2009 [© 2009]

<sup>3</sup> The UNCAC uses the term anti-corruption (AC) “body or bodies”. Consequently, the terms “AC authority”, “AC agency”, “AC organisation” and “AC institution” will be used **synonymously**.

<sup>4</sup> The abbreviation “ACA” stands for “AC body”, “AC authority”, “AC agency”, “AC organisation” or “AC institution”, respectively.

<sup>5</sup> The Convention entered into force on 1 July 2002.

<sup>6</sup> The Resolution was adopted by the Committee of the Council of Europe on 6 November 1997.

<sup>7</sup> By General Assembly Resolution 58/4 of October 2003.

<sup>8</sup> The UNCAC was signed at the High-level Political Conference for the Purpose of Signing the United Nations Convention against Corruption, organised by the United Nations Office on Drugs and Crime (UNODC) in Mérida, Mexico, from 9 to 11 December 2003, and entered into force on 14 December 2005. As of 9 November 2009, the UNCAC has 140 signatories and 141 Parties.

<sup>9</sup> Art. 36 UNCAC.

<sup>10</sup> United Nations Office on Drugs and Crime (2006), Legislative Guide for the Implementation of the United Nations Convention against Corruption, New York: United Nations, 21, 22.

<sup>11</sup> The most prominent example in this regard is the high number of international conventions and instruments on terrorism. Not a single one took over the responsibility to strive defining the conception of “terrorism”, taking account of the common notion of “One man’s freedom fighter is another man’s terrorist.”

<sup>12</sup> Robert Schuman Centre for Advanced Studies (2009), Anti-Corruption Agencies: Between Empowerment and Irrelevance, San Domenico di Fiesole, Italy: European University Institute, 7.

<sup>13</sup> Compare, e.g., Arts. 5/1, 13 UNCAC, Art. 3 of the African Union Convention on Preventing and Combating Corruption.

<sup>14</sup> Compare Arts. 4, 6, 36 UNCAC.

<sup>15</sup> E.g. the Charter of Human Rights, data protection legislation, et cetera.

<sup>16</sup> Comments and explanations to the individual guiding principles and parameters will be kept concise and brief, as most of them are self-explanatory.

<sup>17</sup> The general constitutional principle of legality is broader than the synonymous criminal justice principle in the common law system. In a nutshell, the former requires all (three) powers in the modern state to base their actions (and omissions) strictly on the rule of law.

<sup>18</sup> In most countries 2/3 majority votes versus simple majority votes for ordinary laws.

<sup>19</sup> Legislation will also be required to, inter alia, set up rules of procedure and provide for implementation, enforcement, sanction, communication and coordination mechanisms as well as advisory/supervisory/auditing mechanisms. At the same time, it is understood that not all such regulations necessarily need to be of a constitutional nature.

<sup>20</sup> Interestingly, ACAs get regularly “evaluated and improved” after elections and political change. In more candid language, and avoiding such euphemisms, one may also say they get adjusted to a new set of political realities and expectations.

<sup>21</sup> Le Groupe d’Etats contre la Corruption of the Council of Europe. As of October 2009, GRECO comprises 46 Member States (45 European states and the United States of America).

<sup>22</sup> In an environment where corruption becomes a matter of survival or overwhelming temptation (for whatever reason), personnel of an ACA will hardly be the exemption of such de-facto rules or usus.

<sup>23</sup> Compare Art. 7/1/c UNCAC.

<sup>24</sup> Art. 7/1/c UNCAC.

<sup>25</sup> A four-pronged approach to combat corruption, strongly promoted by EPAC, has become common standard: (1) prevention, (2) education [awareness raising], (3) law enforcement (i.e. investigation/prosecution etc.), and (4) (international) cooperation.

<sup>26</sup> Kreutner, M. (ed.) (2006), The Corruption Monster – Ethik, Politik und Korruption, Vienna: Czernin Verlag.

<sup>27</sup> Compare Arts. 6/2, 7/1, 36 UNCAC; Art. 20 CoE’s CrimLCoC; and Art. 20/5 of the African Union Convention on Preventing and Combating Corruption.

<sup>28</sup> Compare Arts. 6/2, 36 UNCAC; Art. 20 CoE’s CrimLCoC; and Principles relating to the Status of National Institutions for Protection and Promotion of Human Rights (The Paris Principles), Office of the United Nations High Commissioner for Human Rights.

<sup>29</sup> Compare, e.g., Fukuyama, F. (2004), State Building – Governance and World Order in the Twenty-First Century, London: Profile Books Ltd., 9, 13, 20, 25, 163; Lambsdorff, J.G. (2007), The Institutional

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Economics of Corruption and Reform, Cambridge: University Press, 39ff.

<sup>30</sup> Compare Opinion of the Commissioner for Human Rights [of the Council of Europe] Concerning Independent and Effective Determination of Complaints against the Police as of 12 March 2009.

<sup>31</sup> Compare United Nations Office on Drugs and Crime (2009), Technical Guide to the United Nations Convention against Corruption, New York: United Nations, 12, 116.

<sup>32</sup> E.g. the law for the new Austrian ACA (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK) in its Art. 10 stipulates that legitimate matters of employee representation are entirely dealt with by the central works council of the Ministry of the Interior, thus safeguarding that, on the one hand, constitutional requirements of such representation are observed and provided for but, on the other hand, the ACA is kept free from political party driven presence in its own frameworks.

<sup>33</sup> In practice, this may include, for instance, the right of the (head figure of an) ACA to recruit personnel or to veto the allocation of personnel from outside sources. It definitely includes disciplinary powers.

<sup>34</sup> This may comprise, e.g., ex post auditing and controlling. Ultimately, the ACA is to be held accountable for the proper and adequate handling of its resources (including personnel).

<sup>35</sup> Also included are hiring, retention, promotion and retirement activities.

<sup>36</sup> Also included are hiring, retention, promotion and retirement activities.

<sup>37</sup> Also compare Art. 11 UNCAC.

<sup>38</sup> Principles relating to the Status of National Institutions for Protection and Promotion of Human Rights (The Paris Principles), Office of the United Nations High Commissioner for Human Rights.

<sup>39</sup> Composed of, e.g., (a combination of) (retired) heads of supreme courts, supreme judges, international experts, senior academics, (other) highly reputed dignitaries, etc.

<sup>40</sup> Compare, e.g., the so-called Bologna process regarding the recognition of academic qualifications and accreditation.

<sup>41</sup> Including criminal liability and liability for compensation.

<sup>42</sup> Legislative periods in most countries last four or five years, respectively.

<sup>43</sup> Legend has it that such scenarios only take place in non-democratic countries. Reality has it, though, that they are matter-of-factly routine practice in quite some countries all over the globe, including countries of the CoE and the EU.

<sup>44</sup> Unfortunately, such phenomena are likely to remain an integral part in the life of AC fighters. Their spectrum is extensive and broad, ranging from "offering good advice" to intimidation and outright threat, from physical harm to calumny and reputational slander.

<sup>45</sup> An example would be the prominent BAE scandal where the UK government for "reasons of national security" had the Serious Fraud Office halt investigations into claims that BAE, Britain's biggest arms company, bribed Saudi royals to secure contracts worth billions of pounds. Similar tendencies of the executive power trying to directly intervene into the judiciary's area of responsibility were recently observed, inter alia, in Austria, Italy, Slovenia, etc.

<sup>46</sup> Compare United Nations Office on Drugs and Crime (2009), Technical Guide to the United Nations Convention against Corruption, New York: United Nations, 11, 116.

<sup>47</sup> This may include, e.g., ex post auditing and controlling. Ultimately, the ACA is to be held accountable for its actions (and omissions).

<sup>48</sup> Principle 16 of the CoE's 20 GPs.

<sup>49</sup> Compare Art. 9 of the African Union Convention on Preventing and Combating Corruption.

<sup>50</sup> Compare Arts. 32, 33, 35, 37 UNCAC.

<sup>51</sup> United Nations Office on Drugs and Crime (2006), Legislative Guide for the Implementation of the United Nations Convention against Corruption, New York: United Nations, 141.

<sup>52</sup> Compare Art. III/8 of the Organization of American States' Inter-American Convention against Corruption.

<sup>53</sup> Compare Art. 9 CoE's CivLCoC.

<sup>54</sup> In all relevant laws such as, e.g., administrative law, criminal procedure code, employment law.

<sup>55</sup> Also see Art. 13/2 UNCAC.

<sup>56</sup> Also see Arts. 8, 9 of the Economic Community of West African States Protocol on the Fight against Corruption.

<sup>57</sup> Alam, M.S. (2002), 'A Theory on Limits on Corruption and Some Applications' in: Heidenheimer, A.J. & Johnston, M. (eds) (2002), Political Corruption – Concepts & Contexts, New Brunswick [U.S.A.] & London [U.K.]: Transaction Publishers, 819-834.

<sup>58</sup> See, e.g., Höffling, Ch. (2002), Korruption als soziale Beziehung, Opladen/Germany: Leske + Budrich.

<sup>59</sup> Compare Arts. 5/1, 13 UNCAC.

<sup>60</sup> Compare Art. 10 UNCAC; also see United Nations Office on Drugs and Crime (2009), Technical Guide to the United Nations Convention against Corruption, New York: United Nations, 12, 116.

<sup>61</sup> Also see Art. 13/2 UNCAC.

<sup>62</sup> See, e.g., Art. 6 of the European Convention on Human Rights.

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<sup>63</sup> Compare Art. 12/4 of the African Union Convention on Preventing and Combating Corruption.

<sup>64</sup> Principle 16 of the CoE's 20 GPs.

<sup>65</sup> Quoted in Davies, N. (2008), Flat Earth News – An Award-winning Reporter exposes Falsehood, Distortion and Propaganda in the Global Media, London: Vintage Books, 53.

<sup>66</sup> Davies, N. (2008) Flat Earth News – An Award-winning Reporter exposes Falsehood, Distortion and Propaganda in the Global Media London: Vintage Books, 135.

<sup>67</sup> Compare Kreutner, M. (ed.) (2006), The Corruption Monster – Ethik, Politik und Korruption, Vienna: Czernin Verlag, 216.

<sup>68</sup> Also see Arts. 5/4, 37, 38, 39, 54 UNCAC; Art. 13 CoE's CivLCoC; Art. 21 CoE's CrimLCoC; Principle 20 of the CoE's 20 GPs; Arts. 9, 10 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Arts. 18, 19 of the African Union Convention on Preventing and Combating Corruption; Art. 9 Council of the European Union: Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union; Art. XIV of the Organization of American States' Inter-American Convention against Corruption.

<sup>69</sup> The importance of international cooperation was also stressed by numerous conferences such as, e.g., the EPAC Conferences 2004-2009 or the Sixth Global Forum on Fighting Corruption and Safeguarding Integrity, Doha/Qatar, 07-08 November 2009, in its Doha Statement, "Strength in Unity: Public-Private Partnerships to Fight Corruption" et altera.

<sup>70</sup> Art. 43 UNCAC.

<sup>71</sup> Arts. 44-50 UNCAC.

<sup>72</sup> Arts. 28, 30 CoE's CrimLCoC.

<sup>73</sup> Art. 6/1 Council of the European Union: Convention on the Protection of the European Communities' Financial Interests.

<sup>74</sup> Chapter V of the UNCAC.

<sup>75</sup> What has been said in other paragraphs on matters of accountability and transparency applies mutatis mutandis.

<sup>76</sup> Stated at the 1st Conference of the States Parties to the UNCAC, Jordan, 10-14 December 2006.

<sup>77</sup> Recently so, e.g., in Rumania, Slovenia, Austria, Italy, Latvia and other countries.

<sup>78</sup> Different opinion: United Nations Office on Drugs and Crime (2009), Technical Guide to the United Nations Convention against Corruption, New York: United Nations, 11, 12, 116.

<sup>79</sup> States Blankenburg, E. (2002), 'From Political Clientelism to Outright Corruption – The Rise of the Scandal Industry', in: Kotkin, St. & Sajó, A., Political Corruption in Transition – A Sceptic's Handbook, Budapest - New York: Central European University Press: 149-166: "If ever you want to damage a competitor in politics, if you think that a generation of politicians has been in office too long, or if you want to set the agenda for politics anew, look for corruption as an instrument of political scandal."

<sup>80</sup> For general deliberations on corruption and politics see, e.g., Heidenheimer, A.J. & Johnston, M. (eds) (2002), Political Corruption – Concepts & Contexts, New Brunswick [U.S.A.] & London [U.K.]: Transaction Publishers; Rose-Ackerman, S. (1999), Corruption and Government – Causes, Consequences, and Reform Cambridge: University Press; Lambsdorff, J.G. (2007), The Institutional Economics of Corruption and Reform, Cambridge: University Press.



EPAC/EACN

## POLICE OVERSIGHT PRINCIPLES

These principles and standards are intended to be aspirational rather than legally binding on organisations. They recognise that there are many different approaches across the world and are thus intended to be responsive to the legal and policy frameworks in place in individual countries and organisations. At the same time, they are based upon our common understanding and our recommendation that these principles and standards may ultimately be supported by our legal systems.

3

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## 1. BACKGROUND

### 1.1 Vision for the Principles

**1.1.1 The European Police Oversight Principles have been developed to provide a model of effective police oversight that organisations and governments working in Europe can aspire to.**

The principles build on good practice from police oversight bodies already working in Europe, judgments from the European Court of Human Rights, and thinking from the Council of Europe Commissioner on Human Rights, and echo the sentiment of the Commissioners' latest opinion published in March 2009 'concerning independent and effective determination of complaints against the police'.

The Working Group is fully aware and would like to stress the fact that these principles are based on the status quo of jurisprudence and cannot cover future developments.

In this opinion, the Commissioner, Thomas Hammarberg notes that: "An independent and effective police complaints system is of fundamental importance for the operation of a democratic and accountable police service. Independent and effective determination of complaints enhances public trust and confidence in the police and ensures that there is no impunity for misconduct or ill-treatment. A police complaints system should be understandable, open and accessible, and have positive regard to and understanding of issues of gender, race, ethnicity, religion, belief, sexual orientation, gender identity, disability and age. It should be efficient and properly resourced, and contribute to the development of a caring culture in the delivery of policing services."

Over the last thirty years there has been a significant increase in the powers given to police officers and other law enforcement officials both to combat organized crime, corruption and terrorism. As police powers have increased so too has the expectation that police services will conform to principles of democracy, accountability and respect for human rights; namely, as written in the Preamble to the United Nations Code of Conduct for Law Enforcement Officials - 'every law enforcement agency should be representative of and responsive and accountable to the community as a whole'.

These principles are intended to be applied by bodies performing a police oversight role. The principles are not intended to apply to members of the judiciary, carrying out judicial functions.

## Police Oversight Principles

These principles are intended to be aspirational rather than legally binding on organisations. The principles recognise that there are many different approaches to police oversight across the world and are intended to be responsive to the legal and policy frameworks in place in individual countries and organisations.

### 1.1.2 The principles should in turn promote:

- ▶ the highest standards in policing;
- ▶ respect for the rule of law and human rights in all policing activities;
- ▶ greater public confidence in policing;
- ▶ proper systems of accountability for police officers and other law enforcement officials;
- ▶ effective redress for those who are victims of police misconduct;
- ▶ greater openness and understanding of policing by citizens;
- ▶ systems to ensure that lessons are learnt from incidents and errors;
- ▶ greater respect for the law, policing and as a consequence reductions in criminality and disorder.

## 1.2 Membership of the Working Group

At the sixth EPAC Annual Conference in Budapest, Hungary in 2006 a working group was set up to develop minimum standards for public organisations involved in the independent oversight of policing. This work then led to the creation of what are now known as the European Police Oversight Principles.

### 1.2.1 The working group is chaired by:

- ▶ Independent Police Complaints Commission (IPCC), ENGLAND AND WALES

### 1.2.2 The current membership of the working group includes:

- ▶ Federal Bureau for Internal Affairs (BIA), predecessor organization of the Federal Bureau of Anti-Corruption (BAK), AUSTRIA
- ▶ Standing Police Monitoring Committee (Comite P), BELGIUM
- ▶ Garda Síochána Ombudsman Commission (GSOC), REPUBLIC OF IRELAND
- ▶ Norwegian Bureau for the Investigation of Police Affairs, NORWAY
- ▶ Inspectorate General of the Internal Administration (IGAI), PORTUGAL
- ▶ Police Complaints Commissioner for Scotland (PCCS), SCOTLAND
- ▶ Inspectorate of Personnel and Security Services, SPAIN
- ▶ National Police Board, Division for Inspections, SWEDEN

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## 1.3 Definitions

### 1.3.1 Police / Policing

This term includes law enforcement officials. The Commentary to Article 1 of the United Nations' Code of Conduct for Law Enforcement Officials defines this term to include all officers of the law, who exercise police powers, especially the powers of arrest or detention. Note also that "The definition of "law enforcement officials" shall be given the widest possible interpretation", Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN resolution 1989/61, May 24<sup>th</sup>.

These principles do not intend 'law enforcement officials' to include members of the judiciary carrying out judicial functions.

### 1.3.2 Police Oversight Body

An organisation with a defined statutory responsibility for oversight of aspects of policing. There is no standard form for any such organisation but it should have the necessary independence to carry out its duties and should aspire to have the characteristics described in the principles.

### 1.3.3 Policing powers

Powers which could include the power to use force, to search, arrest, detain, maintain public order or initiate criminal proceedings.

### 1.3.4 Oversight

The expressions "oversee" and "oversight" are used to summarise the proper activities of public organisations subject to these principles.

### 1.3.5 Misconduct

Used in the Principles to include behaviour which breaches codes of conduct and which may be subject to disciplinary action and or behaviour that breaches the criminal law and may lead to prosecution in a criminal court.

## 1.4 Further Information

The working group secretariat, hosted by the Independent Police Complaints Commission, can be contacted by emailing [international.liaison@ipcc.gsi.gov.uk](mailto:international.liaison@ipcc.gsi.gov.uk).

## 2. OPERATION OF A POLICE OVERSIGHT BODY

### 2.1 A Complaints System / Police Oversight Body

#### 2.1.1 The main aims of a police complaints system are to:

- i. address the grievances of complainants;
- ii. identify police misconduct and, where appropriate, provide evidence in support of criminal proceedings, disciplinary proceedings, or other management measures;
- iii. provide the police with feedback from members of the public who have direct experience of police practice;
- iv. facilitate access to the right to an effective remedy for a breach of a European Convention on Human Rights (ECHR) right as required under Article 13 of the ECHR;
- v. prevent police ill-treatment and misconduct;
- vi. in association with the police and other regulatory bodies, set, monitor and enforce policing standards;
- vii. learn lessons about police policy and practice. \*<sup>1</sup>

**2.1.2** A police oversight body should have responsibility for the investigation of complaints in which Article 2 or 3<sup>2</sup> of the ECHR is engaged; or when an issue of criminal culpability arises. In addition, the police should be able to voluntarily refer complaints to the police oversight body.\*

**2.1.3** A police oversight body should also have the power to independently investigate Article 2 matters where no formal complaint has been made.<sup>3</sup>

**2.1.4** A police oversight body should have the power to call in any matter for investigation where it is considered to be in the public interest to do so

**2.1.5** A police complaints system should operate in addition to, and not as an alternative to criminal, public and private legal remedies for police misconduct.\*

### 2.2 Organisational Independence

**2.2.1** A police oversight body should have the necessary independence to carry out its duties. At least one should ideally not form part of the executive branch of the government and should report directly to Parliament.

**2.2.2** The police oversight body should be sufficiently separated from the hierarchy of the police that are subject to its remit. (Key principle)

**2.2.3** The police oversight body should be governed and controlled by persons who are not current serving police officers. (Key principle)

**2.2.4** Each person in charge of governance and control of police oversight body should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.\*

**2.2.5** Each person in charge of governance and control of police oversight body should have security of tenure and should be initially appointed for a minimum of 5 years. The tenure should last for a maximum of 12 years.

**2.2.6** The person in charge of governance and control of police oversight body should not be dismissed for decisions or actions taken on behalf of the body.

**2.2.7** Police oversight bodies should have the freedom to employ former, current or seconded police officers or other law enforcement officials at their discretion where this does not conflict with their operational independence.

**2.2.8** A police oversight body should in general have the power and competence to, at its own discretion, address the general public and the media about aspects of its work. (Key principle)

### 2.3 Funding

**2.3.1** To perform its functions effectively a police oversight body should be provided with adequate finance and resources<sup>4</sup>, and should be funded by the state. (Key principle)

## 2.4 Competence and Responsibilities

**2.4.1** A police oversight body should be vested with or created to have the competence to oversee the work of police officers.

**2.4.2** The competence of the police oversight body might also include inspections on the performance of police forces and law enforcement agencies.

**2.4.3** If the police oversight body has other functions, such as the supervision of prisons or other places of detention, these principles are not intended to necessarily apply to these other functions.

**2.4.4** The police oversight body's mandate shall be clearly set out in a constitutional, legislative or other formal text, specifying its composition, its powers and its sphere of competence. (Key principle)

**2.4.5** The police oversight body shall ensure that police officers and other law enforcement officers subject to investigation themselves are treated fairly, objectively and that their human rights are properly respected.

## 2.5 Investigative Powers

**2.5.1** The police oversight body's investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations, in particular the power to obtain all the information necessary to conduct an effective investigation.<sup>5</sup> (Key principle)

**2.5.2** The police oversight body shall have adequate powers to carry out its functions and where necessary should have the powers to investigate, to require an investigation or to supervise or monitor the investigation of:

- i. serious incidents resulting from the actions of police officers;
- ii. the use of lethal force by police officers or law enforcement officials and deaths in custody;
- iii. allegations that police officers or law enforcement officials have used torture or cruel, inhuman or degrading treatment or punishment; or
- iv. allegations or complaints about the misconduct of police officers or law enforcement officials.
- v. (Key principles)

## 2.6 Raising Awareness about the Police Oversight Body's Work

**2.6.1** Police oversight bodies and the police should proactively ensure that members of the general public are made aware of the role and functioning of the oversight body, and their right to make a complaint. (Key principle)

## 2.7 Stakeholder Engagement

**2.7.1** Police oversight bodies should be representative of a diverse population and make arrangements to consult with all key stakeholders. These include complainants and their representatives, police services and representative staff associations, central and local government departments with policing responsibilities, prosecutors, community organisations and NGOs with an interest in policing.\*

## 2.8 Customer Satisfaction

**2.8.1** The police oversight body should undertake regular surveys of complainant satisfaction and the individuals subject to complaints or investigations to help the body address any deficiencies in policy and practice and to help improve the experiences of those coming into contact with them.

## 2.9 Working with other Agencies Locally, Nationally or Internationally

**2.9.1** Working with oversight bodies locally, nationally, or internationally is a good way of enabling oversight bodies to capture lessons learned from other organisations undertaking similar roles which can be used to drive improvement in their own organisations.



### 3. THE COMPLAINTS SYSTEM

#### 3.1 Making a Complaint

**3.1.1 There are five principal types of complaint about the conduct of a police officer concerning allegations of:**

- i. misconduct from which issues of criminal culpability arise;
- ii. violation of a fundamental human right or freedom;
- iii. misconduct from which issues of disciplinary culpability arise
- iv. poor or inadequate work performance; and
- v. unsatisfactory service delivery or performance. This might be the result of a policy or practice rather than misconduct on the part of an individual officer.

**3.1.2** A person that falls into any of the categories below should be allowed to make a complaint direct to the police force in question or to the police oversight body:

- i. Any member of the public who alleges that police misconduct was directed at them.
- ii. Any member of the public who alleges that they have been adversely affected by police misconduct, even if it was not directed at them.
- iii. Any member of the public who claims that they witnessed misconduct by the police.
- iv. A person acting on behalf of someone who falls within any of the three categories above, for example, a member of an organisation who has been given written permission.

**3.1.3** The police oversight body should also develop mechanisms to enable police officers to report wrongdoing involving colleagues or other officers which they may witness.

**3.1.4** The police oversight body should also develop a mechanism to allow for a complaint not to be investigated where it is repetitious or vexatious. The police oversight body should retain oversight of the police or law enforcement agency's application of this mechanism.

#### 3.2 Access to the Complaints System

**3.2.1** A police oversight body should ensure that it takes all reasonable steps to make the general public aware of its role<sup>6</sup>. Promotional material should be made available at places where potential complainants are likely to gather or seek information.

**3.2.2** Information for the public should be used to explain how the police oversight body works; how members of the public can complain; and to explain the outcomes they can expect. All publications must be easy to obtain, and written in plain language.

**3.2.3** Whilst accessibility to the complaints system will vary depending on the size, location and remit of the police oversight body, complainants must be given as many ways of making their complaints as is practically possible within the confines of the law. A police oversight body at all times should have access to records of complaints held by police.

**3.2.4** Access to the police complaints system, either by the complainant or his or her nominated representative, may be by a number of methods, including\*:

- i. in person at police premises, either on the occasion that gave rise to the complaint or subsequently;
- ii. by telephone call to the police or the police oversight body;
- iii. by facsimile to the police or the police oversight body;
- iv. by letter to the police or the police oversight body; or
- v. electronically, by email or the World Wide Web, to the police or the police oversight body.

**3.2.5** Complainants should be able to nominate a legal representative, or third party of their choice to act on their behalf in all aspects of their complaint.

**3.2.6** The police oversight body should provide the complainant with any additional support that they may require to make their complaint or be involved in the complaints process (including for example the use of a foreign language interpreter or advocate if this is required).

**3.2.7** Complainants should be given a clear explanation of the criteria for accepting complaints and a step-by-step guide detailing how they will be addressed, and the standard of service and outcomes they might receive. (Key principle)

### 3.3 Communication with the Complainant

**3.3.1** Police oversight bodies should develop standard methods of responding to complainants, which will be appropriate in most situations and encourage consistency. The complainant should be consulted and kept informed of developments throughout the handling of his or her complaint.<sup>7</sup>

**3.3.2** The complainant should be informed of the resolution of his or her complaint. (Key principle)

**3.3.3** Oversight bodies should regularly check how easy complainants find it to access their services, for example, by issuing customer satisfaction surveys and by consulting focus groups.

### 3.4 Proportionality in Handling

**3.4.1** All complaints provide police services with opportunities to learn lessons which serve as important indicators of police performance and accountability to the community.\*

**3.4.2** Throughout the complaint-handling process, there should be enough flexibility to allow each complainant to feel that they are being treated as an individual and that the complaint will be dealt with on its own merits.

**3.4.3** It represents a better outcome for a complainant and the organisation overseen if issues that arise can be resolved as quickly as possible. Where it is not appropriate for the complaint or matter to be referred back to the organisation for local resolution, the methods used by the oversight body to examine or investigate a complaint should be suited to the nature of the issue arising.

**3.4.4** Where a relatively uncomplicated misunderstanding or breakdown in communication between a police officer and member of the public gives rise to a complaint it may not be necessary for the police or police oversight body to undertake a lengthy and expensive investigation. Moreover, investigation is unlikely to meet the complainant's expectation that their uncomplicated complaint will be quickly resolved in a simple and straightforward manner. The oversight body should make provision for such complaints to be resolved through mediation or a less formal mechanism.\*

**3.4.5** Examples of how a complaint may be satisfactorily resolved in a timely fashion with the agreement of the complainant include:

- i. by letter to the complainant by a senior police officer providing an account for the action complained of and, if appropriate, an apology;
- ii. by meeting between the complainant, with nominated representative present, and a senior police officer;
- iii. by offer of an ex gratia payment; or
- iv. by arrangement of a meeting between the complainant and the officer complained against, with representatives present if requested, convened by a senior police officer or an independent mediator.

**3.4.6** A complainant should have the right to challenge the way in which his or her complaint was handled or resolved through a right of appeal to the police oversight body. (Key principle)

## 4. EFFECTIVE INVESTIGATION

### 4.1 Adequacy of the Investigation

**4.1.1** For the investigation into death<sup>8</sup> or possible ill-treatment to be effective, it is considered important that the persons responsible for carrying it out would be independent from those implicated in the events. It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent from the agency implicated.<sup>9</sup> \* (Key principle)

#### 4.1.2 Requirements of a thorough and comprehensive police complaints investigation include\*:

- i. undertaking a prompt investigation<sup>10</sup> to avoid loss of crucial evidence which could undermine the process<sup>11</sup> and pose a threat to public confidence.
- ii. taking a full and accurate statement from the complainant covering all of the circumstances of their complaint<sup>12</sup>;
- iii. making reasonable efforts to trace witnesses, including members of the public<sup>13</sup> and police officers<sup>14</sup>, for the purpose of obtaining full and accurate statements<sup>15</sup>;
- iv. where issues of criminal culpability may arise, interviewing police officers accused or suspected of wrongdoing as a suspect entitled to due process safeguards<sup>16</sup>, and not allowing them to confer with colleagues before providing an account;

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- v. making reasonable efforts to secure, gather and analyse all of the forensic<sup>17</sup> and medical evidence<sup>18</sup>;
- vi. pursuing lines of inquiry on grounds of reasonable suspicion and not disregarding evidence in support of a complaint<sup>19</sup> or uncritically accepting evidence, particularly police testimonies<sup>20</sup>, against a complaint<sup>21</sup>;
- vii. investigating complaints of police discrimination or police misconduct on grounds of race<sup>22</sup>, ethnicity, religion, belief, gender, gender identity, sexual orientation, disability, age or any other grounds; and in recognition of the difficulties involved in proving discrimination investigators have an additional duty to thoroughly examine all of the facts to uncover any possible discriminatory motives<sup>23</sup>.

**4.1.3** In the five principles of effective complaints investigation, drawn from European Convention on Human Rights case law: “the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible.”

**4.1.4** The police oversight body must ensure that a complainant, member of the public adversely affected or the relative of someone who has died following contact with police officers or law enforcement officials is involved in the process to the extent necessary to safeguard his or her legitimate interests<sup>24</sup>. (Key principle)

**4.1.5** Adherence to the rule of law requires that a complaints investigation into the conduct of an officer must be carried out in accordance with the same procedures, including safeguards for the officer complained against, that apply for a member of the public suspected of wrongdoing.\*

### 4.2 Discipline

**4.2.1** Where appropriate the police oversight body should have the power to refer or to recommend referral of allegations of misconduct by police officers or law enforcement officials to the body or bodies with the competence to take disciplinary action or to take those steps itself. (Key principle)

### 4.3 Prosecution

**4.3.1** Where appropriate the police oversight body should have the power to refer or to recommend referral of allegations of misconduct by police officers or law enforcement officials to the body with the competence to prosecute criminal offences or the power to carry out that prosecution itself. (Key principle)

## Police Oversight Principles

### 4.4 Recommendations

**4.4.1** The police oversight body should have the power to submit to the government, parliament and/or other competent body, opinions, recommendations, proposals and reports on matters within its competence and to make recommendations designed to improve policing or other law enforcement activities and to try to ensure that any wider lessons are learnt from investigations of alleged misconduct by police officers and law enforcement officials. (Key principle)

**4.4.2** The police oversight body should have the power to make recommendations designed to improve the processes, procedures and laws for the investigation of alleged misconduct by police officers and law enforcement officials. (Key principle)

**4.4.3** Where the police oversight body makes recommendations, a mechanism should be in place to ensure that these recommendations are implemented effectively. (Key principle)

**4.4.4** Whenever recommendations are made to an organisation, the organisation’s response should be recorded and the implementation of any recommendations monitored.

### 4.5 Openness

**4.5.1** A final letter or report should provide a summary of the facts taken into account, describe the result of the investigation or review undertaken, and where appropriate the reasons for the decisions that have been reached. This material should be sent to the complainant at the completion of the investigation and should also detail what the complainant can do if they are unsatisfied with the outcome. This may also assist them in the private prosecution of their case, thus providing them with an alternative avenue for redress.<sup>25</sup> (Key principle)

**4.5.2** The police oversight body should have the power to publicise the results of any inquiry or investigation undertaken, where appropriate to do so, together with details of any recommendations made and progress on implementing them. Where this material is published it should be easily accessible to the public. (Key principle)

**4.5.3** Where information cannot be made public, for example where there is an impact on national security, where anonymity needs to be preserved, or where publication works against the public interest, the oversight body needs to be able to justify non-publication in order to maintain public confidence.<sup>26</sup>

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Opinion of the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, concerning independent and effective determination of complaints against the police (published 12 March 2009)

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## ENDNOTES

<sup>1</sup> Sections marked with a \* mirror in full or in part, the opinion expressed by Council of Europe Commissioner for Human Rights, Thomas Hammarberg, concerning independent and effective determination of complaints against the police (published 12 March 2009).

<sup>2</sup> The Working Group notes that in this context, not enough jurisprudence can be assumed with regard to Article 3 ECHR.

<sup>3</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

<sup>4</sup> Paragraph 3(a) of the UN "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

<sup>5</sup> Paragraph 3(a) of the UN "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

<sup>6</sup> See also the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials, UN resolution 1989/61, May 24th, paragraph B3.

<sup>7</sup> *Edwards v UK* (Application no. 46477/99), 14 March 2002.

<sup>8</sup> *Ramsahai v The Netherlands*, Grand Chamber, 15th May 2007.

<sup>9</sup> See paragraph 41 of the Preface of "The CPT Standards" CPT/Inf/E (2002) Rev. 2006.

<sup>10</sup> *Ognyanova v Bulgaria* (Application no. 46317/99), Judgement 23 February 2006.

<sup>11</sup> *Aydin v Turkey* (Application no. 57/1996/676/866), Judgement 25 September 1997.

<sup>12</sup> *Cobzaru v Romania* (Application no. 46317/99), Judgement 26 July 2007.

<sup>13</sup> *Ognyanova v Bulgaria* (Application no. 46317/99), Judgement 23 February 2006.

<sup>14</sup> *Velikova v Bulgaria* (Application no. 41488/98), Judgement 18 May 2000.

<sup>15</sup> *Assenov v Bulgaria* (90/1997/874/1086), Judgement 28 October 1998.

<sup>16</sup> *Ramsahai v the Netherlands* (Application no. 52391/99), Judgement 15 May 2007.

<sup>17</sup> *Ramsahai v the Netherlands* (Application no. 52391/99), Judgement 15 May 2007.

<sup>18</sup> *Aksoy v Turkey* (100/1995/606/694), Judgement 18 December 1996.

<sup>19</sup> *Aydin v Turkey* (57/1996/676/866), Judgement 25 September 1997.

<sup>20</sup> *Kaya v Turkey* (158/1996/777/978), Judgement 19 February 1998.

<sup>21</sup> *Cobzaru v Romania* (Application no. 48254/99), Judgement 26 July 2007.

<sup>22</sup> *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgement 6 July 2005.

<sup>23</sup> *Nachova v Bulgaria* (Application nos. 43577/98 and 43579/98), Judgement 6 July 2005.

<sup>24</sup> See paragraph 36 of Chapter IX, Combating Impunity, of "The CPT Standards" CPT/Inf/E (2002) Rev. 2006. See also the ECHR case of *Jordon v UK*, paragraph 109 and *Edwards v UK* (2002) 35 EHRR 487 at paragraph 84.

<sup>25</sup> See also UN Committee Against Torture case of *Dzemajl v Yugoslavia* CAT 161/00.

<sup>26</sup> See paragraph 35 and 36 of Chapter IX, Combating Impunity, of "The CPT Standards" CPT/Inf/E (2002) Rev. 2006.

# EPAC/EACN Members



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