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Project:
**“Russian Federation – Development of legislative and other measures
for the prevention of corruption” (RUCOLA 2)**

FINAL REPORT

Appendices Volume 1:
Reports made by international and national experts
in the framework of the project

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Experience of European countries in the sphere of development and functioning of national anti-corruption strategies

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The need for prevention

No country is free from corruption – everyone, politicians, government officials, business leaders, journalists and neighbours are affected by this social disease. Beside economic¹ corruption, it also has social² and political³ consequences, which all together hinder or at least slow down economic and social development of the countries burdened by it. The negative effects were not so much recognised until 1994, when a large increase of governments' and international organisations' efforts to raise awareness about the negative impacts became very visible. Foremost, governments and international organisations have to realise that corruption is a very dangerous phenomenon. Only afterwards, the interests and the needs for effective national and international anti-corruption legislation, policies and measures start to develop.

For years, the only way to fight corruption was its suppression by law enforcement and judiciary. Criminal offences were established by different criminal codes; their perpetrators were investigated by

police officers, prosecuted by prosecutors and judged by judges. This was sufficient for decades, and then two findings arose:

- corruption is much more than a simple sum of so-called corruption offences listed in the national criminal legislation; there are some forms of this phenomenon, which cannot be criminalised very simple (i.e. favouritism, nepotism ...);
- corruption as a type of social illness, which cannot be repressed by a simple criminal prohibition; it requires a diversified programme of mechanisms for combating it.

It also became very clear that corruption is not simply a matter of a domestic policy – it is now matter of survival in the international arena, since its level has become an index for national competitiveness and international organisations started to strengthen regulations on corrupt countries. Therefore, the need for comprehensive and balanced approach in the fight against corruption slowly emerged as an internationally recognised standard. At the beginning, there were only some areas that appeared very promising in the fight against corruption. Experts were usually citing the need for integrity, long-term engagement and consistency, involvement of all parts of society, improvement and enforcement of anti-cor-

ruption legislation, etc. However, taking into account all knowing features of corruption, the recognition emerged that this phenomenon cannot be fought without serious and planned *prevention*. It took some years when this idea was brought into life in certain countries by introducing so-called national anti-corruption policies in order to achieve the final goal of the fight against corruption: to systematically and consciously reshape a country's national integrity.

Only recently did adoption and implementation of anti-corruption policies become an obligation for countries; therefore, a lot of them still lack a co-ordinated and comprehensively satisfying anti-corruption strategies due to still insufficient awareness of the corruption problem, not understandable self-confidence, resignation or even tolerance of corruption, absence of empirical data and scientific studies, etc. But, when 15 most developed European and non-European countries were asked⁴ what they consider to be most effective tools in the fight against corruption, they have given the following answers:

- law enforcement and independent investigation techniques,

4. In 1999 by the OECD.

1. Lowering tax revenue, inflating costs of social services, distorting allocation of resources in the private sector.

2. Humiliating ordinary citizen and undermining social stability.

3. Eroding public trust in the government and weakening the state.

- preventive management methods and financial controls,
- transparency (declaration of assets, open administration, public exposure),
- raising the awareness and skills of the officials,
- remuneration of public officials.

Basically, that means that countries started to look systematically in which ways the systems and circumstances might provide conditions that restrain the growth of corruption. There is only one way in

which this task can be comprehensively achieved, especially in the form of one document, through overarching anti-corruption strategies.

United Nations Convention against Corruption and preventive anti-corruption policies

For a long time, international legal instruments did not mention introduction of those policies, or just some of their elements were mentioned. Only after many years was this method mentioned and described in an international mandatory legal instrument – in Article 5 of the United Nations Convention against Corruption (UNCAC), it was opened for signature in 2003.

Article 5 of the UNCAC states:

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, co-ordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practises aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a

view to determining their adequacy to prevent and fight corruption.

4. State Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organisations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

Leaving aside legalistic expressions this article is mandatory asking State Parties of the Convention to do the following, and in accordance with the fundamental principles of their legal system:

- to ensure not only the adoption but also the implementation of preventive anti-corruption policies;
- policies have to be effective and co-ordinated – in their adoption and implementation,
- in these policies the whole society must be recognised as very important element for their implementation,

- main principles of these policies are asking for their adoption and implementation in the way, which will follow and support the rule of law, demand from governments to manage public affairs in a transparent, ethical and honest way, take care about public ownership in an open, responsible and fair manner and to promote general integrity, transparency and accountability,
- there are not only policies, which are important but also practises, which effectively prevent corruption,
- anti-corruption measures have to be periodically assessed to determine the level of their usefulness,
- international co-operation is very important element in the prevention of corruption.

The above-mentioned conditions have to be fulfilled by any existing or a new anti-corruption strategy in order to ensure compliance with the UNCAC, and should serve as guidance in the preparation of new policies or in enhancing the older ones.

Anti-corruption policies in theory and practice

Policy papers (strategies) usually have specific forms, which are the same if they are drafted in the same country. Those forms have been developed through decades of drafting and implementing of different policy papers, and depend on the aims of those papers. Sometimes they are just lists of intents¹ of the country in a specific area, the other times they are very strong and more concrete documents with an easily recognisable goal to really change circumstances and conditions in the area, which they are dealing with. “Lists of intents” usually do not bring any practical results in

the area they are dealing with – they serve more to political purposes in a way that politicians are trying to convince their voters. This is always a very short-term exercise, and in the end, real and strong policies are not adopted and the previous lists of good wishes abandoned². Policies are most often followed by action plans, which are usually using the structure generally following the structures of the policies in order to ensure their implementation.

There are some more features according to which one anti-corruption policy can differ from the other in many different points, mainly regarding:

- the institution responsible for drafting and/or changing of the text of the policy (in some countries policies are drafted by NGO’s, or by a group of experts of one branch of power – usually the executive one, by multidisciplinary group of experts from the public and/or non-governmental sector, or by representatives of politics),
- the institution responsible for the adoption of the policy (government or the parliament),

1. They are also called “lists of good wishes”.

2. For example, that was a case with Croatia, which first adopted an “empty” and general anti-corruption strategy, which was replaced by a very solid document in 2006

- the institution(s) responsible for the implementation of the policy and its – their powers (just co-ordination or also sanctioning),
- basic goals of the policy (only law enforcement ones, preventive ones, combined),
- areas of the policy (law enforcement, prevention, education, raising of awareness, combinations),
- sectors in which the policy should be implemented (public sector only, some or all sectors of society),
- the level of inclusion of civil society in the preparation and implementation of the policy, etc.

Despite the fact that the decision on the structure of strategies is with their respective authors, serious policy papers would have to have at least the following elements and characteristics:

- the most important part of the strategies should be their goals given in an abstract form and actions (needed to achieve these goals) in a concrete form. The rest – introduction, principles, description of the situation, its reasons and consequences, description of the

legal documents, etc. – can be given in a very short and concise manner.

- the following crucial points of the strategies must also not be forgotten; it has to be clearly indicated, which authority adopts them, under which procedure, which authority is authorised for their implementation, what is the procedure that will ensure their implementation, and what are the liabilities for no implementation or bad implementation of the strategies. General time span for their implementation and necessary revision should also be given.

European countries and anti-corruption policies

European countries have started to work on their anti-corruption policies years before the adoption of UNCAC. Due to this fact policies had a different content and quality, but at least they served as an incentive for some activities in the area of corruption prevention. In a short period of time, after the adoption of UNCAC in August 2006, at least 22 European countries had their own anti-corruption policy of a very different quality again. It is also worth mentioning that in some countries the strongest initiative for the drafting of anti-corruption policies came from the civil society. In Bulgaria the first¹ ever strategy was prepared by the NGO. Council of Europe's Group of States against Corruption – GRECO as the strongest monitoring body in Europe in the area of anti-corruption found out in its first evaluation round² that countries like Bulgaria, Finland, Greece, the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Sweden and USA still lack a co-ordinated and comprehensively satisfying state programme of anti-corruption strategies. Only a year or two after the evaluation at least Bulgaria, Poland and Slovenia adopted their strategies and fulfilled their international obligations. Even countries with existing strategies GRECO has recommended several improvements in order to achieve the highest possible level of compliance with international standards and practice.

Some examples of anti-corruption policies

Lithuania

Lithuanian national anti-corruption policy was adopted by the Lithuanian parliament in 2002 for a long term period of 7 to 10 years. General objective of the strategy was defined as "reducing the level of corruption to the point where it no longer undermines social, economic and democratic development".

There are three main and equally important elements of the strategy in terms of prevention, law enforcement and public education, and with the additional ones in a form of increase in the effectiveness of corruption investigations, involvement of the society, development of the anti-corruption teaching programmes.

The strategy calls for increased transparency in the funding of political parties, for improvement of the current system of land acquisition, and provides measures to curb corruption in the politics and in the public administration (with special concern to tax, customs, public procurement, privatisation, healthcare and law enforcement).

Public institutions have to report on the implementation of the strategy to the parliament, which may oblige executive branch of power to implement specific anti-corruption measures. The strategy is seen as a dynamic document and may be reviewed, at least, every two years.

Romania

Romania's last³ national anti-corruption policy was adopted by the Romanian gov-

ernment in 2005 for the period 2005-2007. General objective of the strategy is defined as "to prevent and counter corruption by refining and rigorously implementing the legal framework, through legislative coherence and stability, and by institutional strengthening of the entities with important tasks in the field".

National strategy was completed by the adoption of a detailed action plan for the implementation of the strategy.

There are three priority areas of the strategy:

- prevention, transparency, education,
- combating corruption (by means of law enforcement and judiciary) and
- internal co-operation and international co-ordination.

Implementation of the strategy is monitored by the "Council for the co-ordination of the implementation of National anti-corruption Strategy 2005-2007" organised under the authority of the Prime Minister and co-ordinated by the Minister of Justice. The assessment of the implementation takes place every year in November according to the indicators listed by the action plan. Every second year Romania is also informing the European Commission on the progress recorded in the implementation of the strategy.

Slovenia

Slovenian anti-corruption policy was adopted by the parliament in 2004 for an indefinite period. The policy mentions several general objectives:

1. A very comprehensive and qualitative one.
2. In the period between 2000 and 2003.

3. The previous one was in force for the period 2001-2004

- the establishment of appropriate ethical standards,
- the long-term and permanent elimination of conditions and circumstances conducive to the emergence and development of corruption,
- the establishment of a suitable legal and institutional environment for the prevention of corruption,
- the consistent assignation of responsibility for unlawful acts,
- the creation of a ubiquitous system of zero-tolerance towards all acts of corruption.

General objectives are completed by the list of strategic social developments, which were expected to follow as the result of implementation of the strategy.

Policy provides for more than 170 measures for curbing corruption in the following areas: politics, public administration (with special concern to public finances, health sector and public procurement), law enforcement and judiciary,

economy, civil society, media and general public. Measures are divided into legislative, institutional and practical ones.

Policy provides for the establishment of the specialised anti-corruption commission and for the adoption of an action plan for its implementation. All public institutions have to report on the implementation of the strategy to the commission, which has to report to the parliament.

The strategy is seen as a dynamic document and maybe reviewed at least every three years, in urgent cases any time.

Common elements of existing anti-corruption policies

Thorough analysis of the above mentioned and other anti-corruption strategies, it reveals a very simple fact; basically, they have the same structure and the same substantial consisting parts. There are only two differences amongst them; in the number of those parts (some of them have all, some only few), and in the level of abstraction in which those parts are given. The parts are the following ones:

- *Introduction*: it usually gives a very short description of reasons why the anti-corruption policy has to be adopted and of its goals. What is important is that sometimes the definition of corruption is also given in this part. Countries which do not have the definition of this phenomenon in their legal acts, are usually using this opportunity to define it. Having in mind that there is only one international legal instrument, which defines corruption – the Council of Europe Civil Law Convention on Corruption – and does it as this would be the same as a common bribery; this is not a very easy task. Sociological definitions of corruption are quite common but not the legal ones. If the policy against "corruption" is to be adopted, people will have to know what they are talking about.
- *Basic principles*: They are simply the list of the most important features needed, and then followed by the policy given in a short manner. This part is important since it glances over the main characteristics of the policy. Some of the principles usually cited are respect of human rights, political will, co-operation of all sectors of society in its adoption and implementation, long-term orientation, prevention before repres-

sion, graduality, transparency of the project, planned monitoring of the implementation, possibility of changes, etc.

- *Goals*: they can be given in a very abstract form and in such a way that they don't need any additional explanation. Sometimes the list of goals is given which is split into two parts – the main ones (i.e.: the establishment of appropriate ethical standards, the long-term and permanent elimination of conditions and circumstances conducive to the emergence and development of corruption, the establishment of a suitable legal and institutional environment for the prevention of corruption) and the additional ones (i.e. identification of the sectors most susceptible to corruption, the transparent and legal funding of political parties, successful reform of the state administration, overcoming conflicts of interest in public office, guaranteeing the legal, professional and responsible adoption of decisions, establishment of appropriate mechanisms for reporting suspected acts of corruption).
- *Data on the existence of corruption in the country*: in order to underline reasons for the adoption of the policies, some of them are giving statistical and other (from different domestic and/or international surveys) data on the extent of corruption and on the areas heavily stricken by it.
- *Reasons for corruption in the country*: if corruption needs to be suppressed, the reasons for its emergence and development have to be known. Here, countries, which include this part, usually mention economic, social, historical,

political, legal, etc., reasons. Countries which do not include this part, find excuses for that decision in a political highly sensitive substance, which has to be given here.

- *Consequences of corruption*: if they are given in an abstract way, they usually do not cause any problems. Nevertheless, if the concrete consequences in a certain country are described, some serious problems in adoption of such document might appear.¹
- *Actions (measures) for the prevention and suppression of corruption*: this is usually the longest and the most important part of any policy. Some countries divide preventive and repressive measures, others give the list of actions to be implemented in accordance with the area of implementation. Sometimes these measures are divided into legislative, institutional and practical ones. The areas often mentioned are usually the following ones:
 - *politics* (measures in the area of financing of political parties, limitations and regulations on conflicts of interest for functionaries, lobbying, reporting of financial assets of functionaries, codes of ethics for functionaries, limitations on acceptance of gifts by the functionaries ...);
 - *public administration* (actions in the area of the system of civil servants,² limitations and regulations on conflicts of interest for civil servants, limitations on acceptance of gifts by civil servants,

1. Representatives of the politics might feel embarrassed by the list of consequences, which can easily be related to their actions and/or omissions.

2. Recruitment, promotions, impartiality, integrity, responsibility, monitoring, etc.

- introduction of different tools for improvement of ethics in the public sector;¹ different systems of licensing, accessibility to information of public nature, public finances, anti-corruption measures in different parts of public sector;² whistle-blowing and whistle-blowers' protection, camouflage, secrecy of official document;
- *law enforcement* (actions in the area of proper resources, proper staffing, independence, impartiality, proper payment, reporting duties, introduction of multidisciplinary investigations, proper investigative powers, responsibility of law enforcement officers ...);
 - *judiciary* (actions in the area of proper resources, proper staffing, independence, impartiality, proper payment, criminal procedure, witness protection, burden of proof ...);

- *economy* (actions in the area of introduction of responsibility of legal persons for criminal offences and limitations for persons convicted for corruption offences, introduction of anti-corruption clauses in the contracts, codes of ethics for private sector, stock-exchange market, insurance sector, gambling sector, self-engagement of private companies in the fight against corruption ...);
- *civil society* (actions in the area of inclusion of civil society in the decision-making processes, systems of concessions for non-governmental sector, regulations on public financing of civil society, transparency of financing in the civil society, self-engagement of the NGOs in the fight against corruption ...);
- *media* (actions in the area of independence, transparency of media ownership, codes of ethics for journalists, separation of different³ roles of media, judicial assistance in acquiring information of a public nature, annual

awards for best anti-corruption articles ...);

- *public awareness* (actions in the area of permanent anti-corruption campaign, anti-corruption handbooks for different categories of citizens, introduction of anti-corruption contents in the school curricula, ...).
- *International co-operation in the area of anti-corruption*: includes acceptance and implementation of international legal instruments, co-operation in regional and global anti-corruption initiatives and organisations, etc.
- *Implementation of the policy*: in this part, responsible institutions, their roles and powers have to be mentioned and basic procedures for the assurance of the implementation given, also general sanctions for non-implementation or weak implementation must be provided.

1. Such as: codes of conduct and/or integrity plans.
2. Such as: public procurement, healthcare, taxes, customs, state subsidies, etc.

3. Providing of information versus commercial activities.

Conclusion

As previously said, it is always the decision of a certain country and its experts that impacts how the national anti-corruption policy will look like. After the adoption of UNCAC, at least basic features of it have to be respected. Since even these features can be respected in very different ways, it is clear that there are no fixed rules on the goals, format, structure and content of such policies. It is also normal that features (geographical area, number of population, the form and level of federalism) of the country will influence any policy, including the anti-corruption one. Every country has to find answers to these crucial questions (on the goals, format and structure of the strategy and on the areas, which need to be covered) even before making an effort to draft, adopt and implement any strategy. Anti-corruption policies are a very sensitive issue since they are always connected with large expectations of the population, which is always very annoyed by the exist-

ence and forms of corruption. Adoption of a national anti-corruption policy is a final proof in their eyes that somebody, usually the government, has decided to fight this phenomenon vigorously. And, if after some years there are no tangible results, the disappointment will be even bigger than before the adoption of the policy, the trust into the leading authorities will fall, and sometimes a vicious circle of social changes will start.

Therefore, there is only one basic and fixed rule in the area of anti-corruption strategies; if the government's intention on adoption and implementation of the substantially best possible anti-corruption policy are not real and sincere, it is better to abandon all efforts at the beginning already.

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Russia's experience in developing and implementing national anti-corruption strategies

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Summary

As of autumn 2006 there is no comprehensive unified national strategy of corruption prevention in Russia. In this context corruption prevention strategy means a clear-cut work programme, officially adopted and publicly approved, aimed at decreasing level of corruption in RF through eliminating its causes, exercising adequate law enforcement measures as well as anti-corruption education. The attempts taken to develop such a strategy for Russia were

fragmentary and non-systematic. A well-defined anti-corruption strategy is still missing in Russia for the following reasons (the same reasons may become an obstacle to adopting and implementing the strategy in the future): lack of sustainable political will to carry out systematic anti-corruption reform in the country, systematic and institutional character of corruption, bureaucratic obstruction and weak democratic institutions (political competition, mass

media, civil society). Besides no comprehensive assessment of the level of corruption and its components has been undertaken in Russia. The legislative and executive authorities are faced with a necessity to develop a national anti-corruption strategy in line with Russia's international commitments and based on the general principles and approaches already defined.

Introduction

Developing, adopting and implementing national strategies of preventing corruption became an issue at the end of the 20th century due to a growing worldwide concern about a corruption level in different countries. In the last 20 years or so anti-corruption strategies were developed and implemented in over 30 countries. All of them are either countries with transition economy or developing countries.

In some cases an international organisation helping a country-initiated development of such strategy (e.g. Ghana, Uganda, Zimbabwe), sometimes the country itself did (with support of international organisations and institutions) to be in line with international anti-corruption standards (e.g. Estonia, Latvia, Romania and Bulgaria). A good number of analytical materials were written on the subject of structure,

content and effectiveness of implementing anti-corruption strategies.¹

If we sum up all the approaches to forming a national anti-corruption strategy, two main types can be clearly distinguished: *declaratory* and *practical* strategies.

Declaratory strategies are mainly aimed at formulating general tasks of combating corruption – “decreasing the level of corruption and creating the atmosphere of corruption intolerance in the society” – mentioning general principles, but not

specifying objectives or people and institutions responsible for implementation; no clear-cut monitoring system in place. Such strategies most often appear in the countries with obvious lack of political will to achieve tangible results in combating corruption. (e.g. Programme on combating corruption in the Ukraine, 1998-2005).

Practical strategies, on the contrary, are known for their technocracy – when the declaratory part is minimised. The document is more about detailed description of planned measures with specific goals, people in charge and timeframes (e.g. anti-corruption strategy of Estonia, 2003). Often it is supplemented by a detailed action plan (anti-corruption strategy of Romania, 2004). However the most comprehensive document of this kind – National anti-corruption strategy of Pakistan (2002). It is probably the most system-

1. E.g. Franklin Stevens, Alan Russo. Anti-corruption programmes in post-communist transition countries and changes in the business environment, 1999-2002. EBRD, Working Papers # 85, October 2003; Alain Doig and Stephen Riley. Corruption and anti-corruption strategies: issues and case studies from developing countries, 2002; Daniel Kaufman. Revisiting anti-corruption strategies: tilt towards incentive-driven approaches? 2002

atic document, including a thorough analysis of the structure and peculiarities of the corruption in the country; it also clearly describes the action to be taken by all the national institutions and public bodies with a view of combating corruption.

Based on the analysis of existing *practical* national strategies of combating corruption some foundational principles can be drawn and generalised. They are typical for most documents of this kind with some exceptions.

Firstly, an anti-corruption strategy should focus on causes and sources of corruption rather than its evidence; on specific action rather than diagnosing; on systematic approach to all institutions rather than scattered reforms.

Secondly, an anti-corruption strategy should be persuasively justified and meet specific country's needs; it should also be unified and global, transparent, objective, target-oriented and accountable; it should reflect country's opportunities and resources, should be developed in the country and for the country, i.e. rely maximally on the internal expertise and political will.

Thirdly, a national anti-corruption strategy normally incorporates 5 main components:

- **Prevention:** administrative and regulatory mechanisms for preventing corruption
 - Control over public service
 - Removing administrative barriers
 - Informing the public about the operation of the state system

- Raising the level of transparency in distributing state resources
- Maintaining ethical culture of public officials
- Clear standards and behaviour pattern
- Internal accountability procedures
- Identifying and solving conflict of interest
- Declaring income of public officials
- Declaring financial contribution to political parties
- Civil control
- Raising accountability level by setting up specialised bodies of combating corruption as well as with the help of civil society institutions.
- **Enforcement:** legal mechanisms to identify, investigate and bring to court corruption cases
 - Effective criminal, civil, and administrative law; independent law proceedings
 - Effective identification and investigation of specific corruption cases
 - Applying international and regional anti-corruption tools
 - Control over illegal capital flow and money laundry; participating in returning misused funds from abroad.
- **Institutional building:** strengthening all the elements of national institutional system
 - Executive power
 - Legislative power
 - Courts
 - Regional and municipal authorities
 - Specialised independent anti-corruption bodies
 - Civil society

- Private sector
- **Anti-corruption education, contribution of society**
 - Civil education and information campaigns
 - Engaging in regular dialogue and consultations with civil society institutions
 - Involving public opinion leaders
 - Representation of civil society in anti-corruption bodies.
- **Monitoring and evaluation of corruption level and effectiveness of corruption preventive strategy**
 - Measuring corruption
 - Conducting surveys
 - Applying short-, middle- and long-term methods of evaluation and indicators.

It is noteworthy that different countries gained substantial experience – both positive and negative – with each of the components. One should keep in mind that none of national anti-corruption strategies which have been adopted is anywhere near completion. Also in course of implementation individual parts of national anti-corruption strategies get modified and new priorities appear. However the part dealing with corruption prevention always remains essential. In some way it becomes a guarantee of progressive sustainable development of democratic society. It is highly important not to step back on political determination even if some progress is achieved and to ensure that an established anti-corruption system became an inseparable part of the daily life of the state and society.

Russia's experience in creating a national anti-corruption strategy

Combating corruption became a topical issue in the early years of Russian Federation – a new democratic state with a market economy. Corruption was a major factor, which slowed down Russian reforms, creeping into newly established institutions and economic life of the transition period. In the course of the modern Russian history attempts have been made (some are more active than others) to address corruption issue. Unfortunately, these attempts were deprived of a more or less systematic approach for several reasons. Here are a few:

- **Fragmentary character and lack of political will.** At some stages top polit-

ical leaders initiated anti-corruption campaigns, which at the end were used for purposes far distanced from real corruption combating. Moreover, the anti-corruption reform leaders changed often – both individuals and state institutions. Under these circumstances any kind of co-ordinated activity was out of the question.

- **Weakness of institutions and power of bureaucracy.** Russian institutional system was built from zero level actively engaging old bureaucratic human resources. Fairly quickly institutional functions of public bodies began to serve concrete bureaucratic interests.

For obvious reasons bureaucracy is not at all interested in establishing an integral anti-corruption system, which had a potential to limit its power and illicit sources of income.

- **Weak civil society.** Organised civil society is as new to post-Soviet Russia as market economy and independent media. It took a lot of time to start building it upwards. Still a good number of public organisations are in the process of positioning themselves and securing the functions, which are attributed naturally to a civil society institution in any democratic state. Up until recently expert, intellectual and

innovation capabilities of non-governmental organisations were not strong enough to initiate and advance a national anti-corruption strategy in Russia.

However, in order to have a full picture of the Russian attempts to combat corruption, it would make sense to characterise them chronologically.

Legal initiatives on combating corruption

The very first legal act on the subject of combating corruption, still remaining the only one, was the President's Decree "On priority measures of preventing corruption and budget cuts for state procurement" (#305 dated 8 April, 1997). This Decree was strictly specialised and dealt with state procurement proceedings, however it contained some statements, which were to restrain corruption in the country. Implementation could hardly be effective as according to expert and government's evaluation bribes in the state contracting remain up to 20%.

Furthermore, a series of draft anti-corruption laws is worth mentioning. None of them actually became a valid law of the Russian Federation. The first one "On Fight against Corruption" passed in the State Duma, but was later vetoed by President Yeltzin. The next draft law on Combating Corruption was presented to the State Duma in November 1997 by a group of deputies (V. Ilyukhin, P. Burdukov, V. Volkovsky, A. Gurov, N. Kovalev, A. Kulikov, A. Kulikov and V. Ostanin). It was not too much different from the previous one – they both partially addressed public service regulations – namely, avoiding a conflict of interest and declaring income of public officials, but to a much larger extent they dealt with corruption law violations and punishment. One can say that these drafts contained preconditions to form a national anti-corruption strategy, no matter how general they were and weak from the instrumental point of view. At the same time another draft law "On Administrative Procedures" was presented to the State Duma by V. Pohmelkin. It was the first attempt to regulate all aspects of administrative system and an integral concept with instruments to prevent corruption in public service. This draft law however was not supported by the deputies.

In June of the same year (2001) a group of deputies headed by A. Aslahanov intro-

duced to the State Duma the draft federal law "On Fundamentals of anti-corruption Policy". This document was probably the closest to lay the foundation for a comprehensive national anti-corruption strategy. Despite vague definitions, some confusion and tilt towards "expert opinion", it incorporated all the basic classical elements of such a strategy: prevention, law-enforcement measures, international co-operation, etc. However, in November 2002 the State Duma did not vote for it, while voting in the first reading for another draft law "On Fighting Corruption", which was introduced in November 2001 by deputies A. Baskayev, A. Kulikov and A. Gurov and which was not much different from similar draft laws of 1997 and 2001. However it did not go further than the first reading and it remains unclear what happened to it later. After 2002 there were no more attempts to present to the State Duma any drafts of a comprehensive anti-corruption law.

One more thing is worth mentioning here. At present there actually is a valid law of Russian Federation "On Fighting Corruption" (adopted by a Decree of the Supreme Soviet of Bashkortostan Republic #25/36 dated 13 October 1994 (Laws of Bashkortostan Republic #23-3, dated 5 August, 1999)). It is very similar to the draft law of 1997. Moreover "A Strategy of anti-corruption Policy" is valid on the territory of Russia (Decree by the President of Tatarstan Republic No. YPI-127 dated 8 April 2005). This strategy and the draft federal law on Fundamentals of anti-corruption Policy (2001) are very much alike. It would not be proper to enlarge on the impact these pieces of legislation produced on the corruption situation in these republics. Firstly, it is difficult to imagine having "pro-bity islands" on the territory of the country with vertical system of political and state management. Secondly, no attempts were ever taken in these republics to measure level of corruption or the impact of the local anti-corruption efforts.

Thus we can conclude that numerous attempts to create draft laws which could lay the foundation for a national anti-corruption strategy have led nowhere.

However a recent corruption-combatting strategy that was chosen by the Commission of the State Duma seems by all means noteworthy. Their approach was not to develop another anti-corruption paper, but to steadily move towards ratifying international anti-corruption documents, which Russia started signing in late 90s. The idea behind it, as we see it, is to

apply internationally recognised approaches to the Russian context and to plant them in the Russian soil before preparing national anti-corruption legislation.

As a result, the State Duma passed the laws "On Ratifying the United Nations Convention against Corruption" (February 2006) and "On Ratifying the Council of Europe Criminal Law Convention on Corruption" (July 2006); they were later signed by the President and came into force. It is planned to ratify another Council of Europe Convention also signed by Russia – "On Civil and Legal Liability for Corruption".

There are reasons to believe that the chosen approach – bringing Russian legislation gradually in line with international anti-corruption standards, simultaneously preparing a comprehensive document as foundation for a national anti-corruption strategy – will prove to be more fruitful than the approaches ignoring international practice.

Role of executive authority in fighting corruption

Speaking about the role of executive power in fighting corruption, it would be right to distinguish between the activity of the President and the Government of the Russian Federation. Here it only has contextual implications and has nothing to do with the institutions themselves.

The President of Russia (it would make sense to speak about the existing President Vladimir Putin) has addressed corruption combating on a number of occasions. He mentioned this issue in practically each of his annual speeches to the Federal Assembly of the Russian Federation.¹ The President's statement that corruption remains a serious obstacle to the country's development (May 2006) is of the utmost importance. Hopefully it becomes more than a statement and the President will take consistent action against corruption. This action would be logical in light of the declaration "On fighting high-level corruption" signed by President Putin and other participants of G8 Summit in St. Petersburg. The declaration motivates the signing countries to take action against corruption in the governing bodies.

The Council of the President of the Russian Federation to Fight Corruption was established by Decree #1384 of 24 November 2003. The Decree provided for the establishment of two Commissions – an anti-corruption Commission and a Com-

mission on the Conflict of Interest. The Decree described areas of competence and objectives of the two Commissions, which fit very well with a classical scheme "prevention plus enforcement measures" and could have been a foundation for an independent anti-corruption body within a national anti-corruption strategy, if one was ever created. The problem is that the Council ceased to exist after the very first meeting in February 2004.

As for anti-corruption activity of the Government, it is extensive and scattered. Practically all the anti-corruption initia-

1. "One must admit – the state in many ways promoted the dictate of grey economy and grey schemes as well as the outburst of corruption and outflow of capital abroad. Promoted by vague rules and unjustified limitations. A corrupted state with unclear division of competence will not free the businessmen from the arbitrary rule and criminal world ... When the officials act at their own discretion and are free to interpret laws both centrally and locally, it is destructive for entrepreneurs and creates favourable environment for corruption. We must have directly applicable laws and minimise internal instructions, not allowing for duality in law interpretation ... We need professionals in public service who would have law as the only criterion. Otherwise the state gives way to corruption. At some point it may degenerate and stop being democratic." (2000)

"It is obvious that using law like this opens potential for misapplication in the area of civil right and creates favourable environment for corruption in public service. The root of these problems is ineffective instruments of law enforcement as well as our legislation structure itself." (2001)

"... Unfortunately, the current way of public service operation promotes corruption. Corruption is not caused by inadequate sanctions; I would like to emphasise it – it's a direct consequence of limiting economic freedom. Any administrative barriers come down with a bribe. The higher the barrier is, the more bribes are needed and the more officials taking them. And we should not wait until achieved freedom will turn into administrative stagnation. To a large extent – it may happen due to insufficient transparency in public service operation. It remains "a black box" for many citizens. We should state clearly what information must be open for the public and affirm it by law. It is needed for developing civil society as well as creating civilised business environment ..." (2002)

"We must also set up an effective system of using natural resources. We need transparent and uncorrupted ways of accessing them, e.g. by auction. We must move from administrative decisions to legitimate contracts with clear definitions of rights and responsibilities of both state and business. We must ensure that these relations are predictable and stable." (2004)

"Now that preconditions for serious and large-scale work are created, the state may give in to temptation and make some easy decisions. If so, the bureaucracy will prevail and we may find ourselves in stagnation rather than a breakthrough. The civil society potential will remain unclaimed, whereas corruption, irresponsibility and unprofessionalism will blossom, causing economic and intellectual deterioration, a larger gap between state and society as well as unwillingness of public servants to respond to people's needs." (2005)

"... Despite the measures taken we have failed to eliminate one of the most serious obstacles to our development – corruption." (2006)

tives are generated in the Ministry of economic development and trade of RF. These initiatives primarily have to do with administration reform and reform of the public service. Among them are measures for regulating public service and removing administrative barriers as well as significant efforts to reform the system of service provision to the population, etc. The measures that the Ministry suggests are effective in themselves and could produce a serious anti-corruption impact. But since they are not in any way built into a unified system of fighting corruption, their impact is not seen and they are implemented slower than the situation requires.

Thus one cannot say that the executive power of the Russian Federation does nothing to combat corruption. However, their activity – firstly – is not based on a complex approach and is of selective and technical character; and – secondly – it lacks a reference document, even if it is a very general strategy on combating corruption in the country.

Other anti-corruption initiatives

Pre-requisites are in place and a lot of initial material has been accumulated in order to prepare such a strategy for the country. A substantial layer of expert literature deals with the principles and approaches to developing an anti-corruption programme for Russia.¹ Besides one should mention two approaches formulated by the specialists of research and public institutions.

Firstly, the document "Main trends of anti-corruption policy in Russia" is of great interest. It was developed by the National anti-corruption Committee in 2000. This document is out of date in many ways, but the principle of systematic approach to forming an anti-corruption strategy is noteworthy. Besides some other aspects of this programme could be singled out: limiting access for the criminal elements to executive power and their ability to influence law-making procedures; making provisions for the executive bodies to become more structured, transparent and accountable; limiting ability of the officials and executive power bodies to act at their own discretion; effective control over using the budget funds; strengthening court system; providing access to effective justice; adopting the law against legalising criminal revenue; clear legal regulations on how to exercise control over dynamics of deputies'

and officials' material status; setting up a federal body on corruption prevention; involving civil society institutions into fighting corruption; ensuring transparency, openness, integrity in state governance, etc.

Secondly, it seems highly important to consider the statements of the Strategic Development Centre while formulating approaches to national anti-corruption strategy.² It is envisaged that the most successful corruption prevention strategies are complex ones, which rely on the democratic and anti-corruption institutions being developed in parallel to each other. They incorporate the following elements:

- promoting transparency
- expanding the role of civil society
- creating specialised mechanisms for anti-corruption investigations
- economic de-regulating
- minimising personal involvement of public officials with citizens and organisations e.g. with the help of one stop shop model and electronic form of communication
- detailed regulation of interrelations with service users (both state and municipal services); limiting, if necessary, contact of an official with service users
- breaking down the administrative procedures into smaller stages, placing responsibility on the people, who are not

1. See e.g.: Opportunities and limits of anti-corruption reforms in Russia by A. Bystrova, M., 2005; anti-corruption policy in Russia: where to begin? by O. Vedernikova, Social sciences and modern life No. 3, 2005; Russia and corruption: who wins? by G. Satarov, M. Levine, M. Zirik, Rossiyskaya gazeta No. 32-33, 19 February 1998; Corruption: theory and reality by Y. Gilinsky, Materials of Russia-USA seminar, St. Petersburg, 23-24 September 1999; Definition of corruption and legislation to fight it by A. Dolgova, Corruption and how to fight it/ Russian association of criminologists, 2000; Involving civil society institutions in the corruption prevention process. Final conference on the Programme. Pushkin, 19-21 May 2000 Conference materials, edited by M. Gorny: St Petersburg Centre "Strategia", 2000; Forming a monitoring department and limitation of corruption by S. Denisov, State and law. 2002. No. 3; A man in corrupted environment by Y. Levada, Monitoring of public opinion. 2000. No. 5. (September-October); The warmth of friendly relations: some words about corruption by G. Satarov, Social sciences and modern life. 2002. No. 6; Corruption as a social and legal issue, legal notions and their characteristics by B. Volzhenkin, Contribution of civil society to corruption prevention. Final conference on the Programme. Pushkin, 19-21 May 2000 Conference materials, edited by M. Gorny: St Petersburg Centre "Strategia", 2000; Shady Russia: economic and sociological survey by I. Klyamkin, L. Timofeev: Russian State University, 2000; Shady lifestyle. Sociological portrait of post-Soviet society by I. Klyamkin, L. Timofeev, Political surveys. 2000. No. 4. pages 19-37; 2000. No. 5; Public service. A look from within by V. Boikov, Sozis. 2003. No. 9; Basics of anti-corruption policy edited by G Satarov M., 2004, etc.

- dependant on each other to ensure mutual control
- making internal security subdivisions of a public organisation independent from its management
- regular rotation of officials
- administrative justice
- extrajudicial mechanisms of appealing against officials' decisions and actions
- using indirect proof of guilt (e.g. large amount of cash at the workplace) as grounds to impose sanctions

2. See "Can corruption in Russia be restrained?" by M. Dmitriev. Presentation on 26 February 2006.

- introducing mechanisms to check the legal documents for corruption risk assessment
- reviewing legal standards of corruption risk assessment
- setting up special regulation mechanisms for executive bodies as well as for positions and functions with a high level of corruption risk
- establishing a comprehensive system of corruption monitoring
- regulating work ethics and conflict of interest
- competitive salary for public officials

- employing public officials as a result of open competition
- regulating lobbies
- increasing transparency and control over large state-owned companies
- independent court and investigation system.

To sum up all the above, the most essential elements of the national anti-corruption strategy have already been developed and proposed. One needs to summarise them, analysing their relevancy and formulating some general approaches to building up an effective anti-corruption concept in the country.

Some principles of formulating a national anti-corruption policy in Russia

An anti-corruption strategy in Russia should be based on the definition of corruption, which is wider than just bribe-taking, also implying "abuse of one's official status with a view of reaching personal benefit". The strategy should be aimed at opposing selfish use of existing laws, rules and procedures as well as depriving certain people and groups of a legal way to use public service for their own purposes.

An anti-corruption strategy in Russia should be built into the general system of strengthening democratic institutes in the country:

- Ensuring real political competition
- Ensuring sovereignty of law
- Ensuring freedom of media
- Ensuring free competition in business
- Ensuring freedom of development for civil society.

An anti-corruption strategy should reflect fully all Russia's international commitments in the area of fighting corruption (Conventions and other documents).

In order to implement a comprehensive national anti-corruption strategy a special independent body should be set up, which will co-ordinate activity on each aspect of the strategy: prevention, investigation and enforcement, public education and public involvement, control and monitoring and international co-operation.

The strategy should be based on a profound analysis of the corruption level and structure in the country. Measurements of both social and business corruption should be made on the federal, regional and municipal levels. citizens, entrepreneurs and public officials should be surveyed so that – firstly – the level of corruption is re-

corded and monitored later; secondly – to develop priorities for a specific action plan.

An anti-corruption strategy must be developed with a view of minimising the damage done by the corruption in the following areas:

Political implications

- State institutions lose support of the population due to distrust in corrupted officials.
- The ideas, approaches and principles proclaimed by the state are discredited by the citizens due to the failure to carry them through (e.g. openness and transparency).
- The state is ruled by the groups, who assumed the leading role solely for their personal benefit.
- The investors' interest and the country's prestige in the world community decline.

Economic implications

- The competitive environment deteriorates; consequently the market receives the wrong signal that a successful business is not the one that meets a demand better, but the one protected by high-level officials or able to pay itself off the state claims.
- Grey economy prospers as means of freeing from the bureaucratic press.
- The state budget stops being a management instrument and becomes a mechanism for channelling corrupted capital flow.
- Goods and services become more expensive as the sellers have to include unofficial payments in the price.

- The revenue part of the budget is considerably less than it could be.

Social implications

- Social inequality deepens as the poor people's access to basic social services is limited (free education, healthcare, social and pension provisions).
- The human resource potential decreases; the process of elite regeneration stops; the role of education and professional achievements is minimised.
- Legal nihilism spreads out, creating good environment for corruption development.
- Double ethics and double standards of behaviour become normal.

In parallel with surveying the current level of corruption and institutional damage it could bring, one should carry out a detailed analysis of the major causes of corruption and the factors promoting its sustainability. The attempts to stand against the corruption as well as the existing legislative and institutional basis should also be reviewed.

In order to put together a valid and successful anti-corruption strategy, one must make an assessment of institutional, human and financial resources available in Russia for corruption combating.

At this stage the main objectives for a national anti-corruption strategy must be the following:

- Developing a unified, consistent, detailed and long-term programme for fighting corruption.
- Defining priorities in fighting corruption.

- Specifying activities, resources, time-frames, responsible individuals and structures in order to meet the priorities.
- Setting up a monitoring system to control anti-corruption activities (with active involvement of civil society)
- Establishing mechanisms to co-ordinate anti-corruption efforts of all public bodies and institutions.
- Assessment of existing anti-corruption institutes and laws as well as effectiveness of the previous anti-corruption activity.
- Setting up a sustainable system of independent corruption level evaluation.

The priorities of anti-corruption programme should be defined following an open and wide discussion, involving all public and social institutions. The facts about the real situation with corruption in the country must also be taken into consideration, namely the zones of the highest corruption risks.

The anti-corruption activities should be carried out on all the main components of

the strategy simultaneously: prevention, investigation and enforcement, public education and public involvement, monitoring and control and international co-operation.

The anti-corruption activities should be planned so that they directly impact all the major forms of corruption in Russia: political corruption, including improper use of administrative resource; administrative social corruption; administrative business corruption; corruption in the area of managing state assets, including state procurement and privatisation; corruption in court system; corruption in law-enforcement bodies and army; corruption in the social security system.

While developing a national anti-corruption strategy in Russia, one must consider and minimise all the possible risks of its implementation. Among them are:

- Lack of determination of the political leaders to commit to serious anti-corruption reforms in the country.
- Declaratory approach to formulating a national anti-corruption strategy.
- Bureaucratic obstruction to adopting and implementing a national anti-corruption strategy
- Deviation from the principles of progressive democratic development of the country.
- Failure to ensure real independence of a special co-ordinating anti-corruption body.
- Tilt towards legislative and enforcement measures, diminishing the role of preventive actions.
- Leaving some areas of the state activity out of the coverage of a unified anti-corruption programme.
- Inadequate human resource potential to carry out anti-corruption measures.
- Failure to ensure legal protection for the individuals participating in implementation of anti-corruption activities.
- Passiveness, withdrawal of media from strategy implementation.
- Withdrawal of civil society from strategy implementation.

Corruption in the legislative process: an overview of the issues

Quentin Reed

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Summary

Corruption of the legislative process lowers the quality of laws and regulations and also results in laws that facilitate corruption. Therefore, designing the legislative process in such a way as to minimise its vulnerability to corruption is a vital component of a successful national anti-corruption strategy. This paper outlines the different stages of the legislative process

and identifies the key principles of a well-designed legislative process whose application – together with other standard anti-corruption measures – will reduce the potential for corruption.

This paper is recommended for reading together with a forthcoming publication on lawmaking in the Russian Federation¹ (hereafter “Council of Europe Guide”),

which offers a detailed description and evaluation of the Russian legislative process.

1. *Законотворчество в Российской Федерации. Методическое пособие по подготовке и принятию законов*, Издательство «Кодекс», St Petersburg, 2006.

Introduction: the problem of corruption of the legislative process

Corruption of the legislative process is an issue that has received relatively little focused attention from the anti-corruption community. The existing anti-corruption literature tends to focus explicitly or implicitly on the bribery of state officials in return for decisions that would favour the briber, in the context of a legal framework that is already “given” – for example, bribes in return for public contracts, licences or other benefits. Where the problem of corruption of law-making itself is identified, the focus tends to be on the corruption itself (e.g. the bribing of a legislator or the provision of a corrupt donation to a political party) rather than on the vulnerability of the legislative process as a whole to corruption.

A particular sector is often made vulnerable to corruption by flaws in the legal framework that governs or regulates that sector. To the extent that laws and rules determine or constrain the behaviour of public officials and politicians, an essential focus of any effective sectoral anti-corruption

strategy must be scrutiny – and reform if necessary – of the legal framework that governs that sector. This is the one of the primary foci of the Rucola 2 project.

Taking this argument one step further, however, flaws in the legal framework that render a sector more vulnerable to corruption are often the result of corruption of the legislative process itself – i.e. corruption of lawmakers in order to secure a legal framework that itself facilitates corruption. Such corruption is in principle a more damaging form of corruption than corruption that distorts the implementation of a law or regulation. For example, bribery of public officials in order that they evade or violate an otherwise sound law on public procurement is less damaging than bribery of legislators in order that they approve a legal framework for public procurement that systematically facilitates corruption.

In the worst case, if the legislative process is controlled by interests external to the state, then – following Adam Prze-

worski’s account of the problem of state autonomy – the state is not able to choose policies. In this situation it will tend to become an instrument to serve interests others than those which it is established to serve, or a battleground in which various interests fight to control policy with no autonomous state to regulate them.²

Corruption is not the only reason a legislative process may be undermined. For example, incompetence or intra-state conflict is another key factor that may prevent a legislative process from functioning as it should. While this paper focuses on corruption, it is also based on the insight that ‘fighting corruption’ directly is less effective than pursuing policies designed to fulfil positive aims. Accordingly, the principles advocated in Section III should be seen as mechanisms not to ‘fight corruption’, but to create a legislative process that

2. A very interesting discussion of this issue can be found in Mark Philp, “Political Corruption, Democratization and Reform”, in Stephen Kotkin and Andras Sajo (eds.), *Political Corruption in Transition*, CEU Press, Budapest/New York, 2002.

is less likely to be undermined by other negative phenomena as well. In short, corruption is made less probable as a secondary effect, rather than its reduction being the primary aim of policy.

The only explicit contribution by the anti-corruption community in recent years to the area of corruption of legislative process has been from the World Bank. In the late 1990s the Bank introduced a distinction between two different types of corruption – administrative corruption and state capture. Administrative corruption involves the “intentional imposition of distortions in the prescribed *implementation* of existing laws, rules and regulations to provide advantages to either state or non-state actors as a result of the illicit and non-transparent provision of private gains

to public officials.”¹ State capture, by contrast,

refers to the actions of individuals, groups, or firms in both the public and private sectors to *influence the formation* of laws, regulations, decrees and other government policies (i.e. the basic rules of the game) to their own advantage by means of the illicit and non-transparent provisions of private benefits to public officials... For example, an influential “oligarch” could buy off legislators to erect barriers to entry in a particular sector.²

The Bank identifies state capture as a key problem of transition countries in particular:

1. World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate*, World Bank, Washington D.C., 2000, p. xvii.

2. World Bank, *Anti-corruption in Transition*, p. 1.

The transition countries have been engaged in a concentrated process of defining the basic rules and institutions to govern their economies and societies, while at the same time redistributing the bulk of their assets. In many countries, corruption has had a significant impact on this process, encoding advantages in these new rules and institutions for narrow vested interests and distorting the path of economic and political development. Media reports throughout the region tell of powerful firms and individual “oligarchs” buying off politicians and bureaucrats to shape the legal, policy, and regulatory environments in their own interests.³

3. World Bank, *Anti-corruption in Transition*, p. xiii.

Existing approaches to tackle corruption in the legislative process

The World Bank’s concept of state capture is a useful starting point for thinking about corruption of the legislative process. However, while the Bank’s approach clearly identifies corruption of the process of law-making as a potentially more serious problem than corruption of the implementation of laws, it does not focus in detail on the legislative process itself. The Bank notes that

To date, anti-corruption programs have largely focused on measures to address administrative corruption by reforming public administration and public finance management. But with the increasing recognition that the roots of corruption extend far beyond weaknesses in the capacity of government, the repertoire has been gradually expanding to target broader structural relationships, including the internal organisation of the political system, the relationship between the state and firms, and the relationship between the state and civil society. [p. 39]

Accordingly, the Bank lists at least four areas of policy as important for restricting state capture:

- transparency in party financing to reduce the likelihood of corrupt incen-

tives for parties to pursue the policy agendas of powerful donors;

- disclosure of parliamentary votes to provide a disincentive for MPs to vote for legislative proposals;
- encouraging collective business associations as “legitimate instruments to represent collective interests in the formulation of law and policy”, rather than allowing specific firms with narrower and less-encompassing interests to influence laws and policies.

In addition, the Bank lists or mentions other policies that may *inter alia* help to reduce state capture, such as duties of public officials and politicians to declare their assets, conflict of interest rules and so on. Many of the policies the Bank mentions have been developed in detail, for example guidelines on party financing legislation.

The Bank’s introduction of the concept of state capture is a useful starting point, clearly identifying corruption of the legislative process as a key problem of transition countries in particular. However, the Bank and other international institutions or anti-corruption organisations have paid much less attention to the legislative process itself – the rules by, procedures for,

and institutional framework within which laws are created and approved.

The difficulty of tackling corruption in the legislative processes in transition countries

A key dilemma, especially for countries undergoing the long transition from authoritarian rule to consolidated democracy, is to open the legislative process to the influence and input of various groups and interests – i.e. to establish pluralist democracy, while preventing the state from serving the interests of particular groups and interests at the expense of the public interest. In short, the challenge is to establish *well-regulated access* of external interests to the legislative process. This is not just a problem of academic interest, especially in countries whose political systems are relatively young and whose economies are characterised by phenomena such as monopolisation of key sectors by powerful economic interests.

A systematic approach to tackle corruption in the legislative process

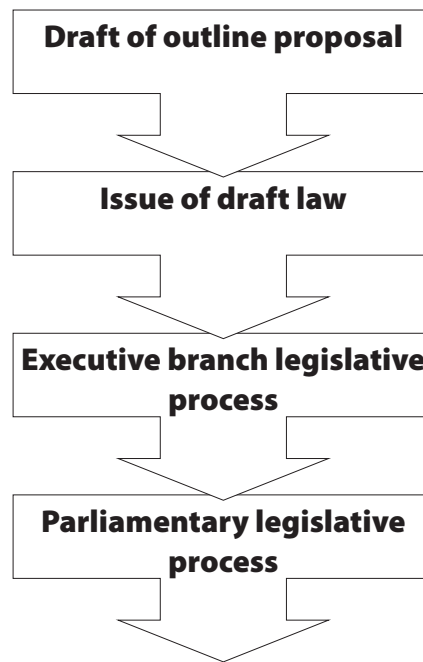
Laws are the most important product or output of a democracy, and in principle are the prerogative of elected representatives. However, elected representatives cannot carry out this function well without a process that is consciously designed to both facilitate the work of legislators and restrain them from (deliberately or non-deliberately) legislating in ways that serve narrower interests at the expense of the wider public interest.

This section defines the legislative process and divides it up into its main constituent stages of components. It lays down five key principles that should be built into the legislative process at all stages, the application of which will minimise the space for corruption. It goes through the different stages of the legislative process to illustrate the application of these principles in practice, and notes other anti-corruption mechanisms that are not integral components of the legislative process but are also important for minimising corruption.

Stages of the legislative process

The legislative process may be regarded as the process from the initial emergence of a legislative initiative to the final approval of a law by the legislature. A law may be an entirely new legal act or amendment to an existing law. In a very general sense, the stages of the legislative process may be divided according to the scheme at the top of the page.

There are some situations where the legislative process may not follow the above scheme. The most important of these for the purposes of this paper is where the government (or even just the Prime Minister or President) legislates by decree – a practice that is used surprisingly often even in some democratic countries (Romania and Albania are examples). In these circumstances the Executive Branch and Parliament may be effectively bypassed. Another exception is where the initiator of the legislation is not the government or an institution from the Executive branch. In particular, where an MP submits a draft law this may not be formally subject to Executive approval before going through the process of Parliamentary approval. This paper does not deal with issues con-



cerning Presidential veto, and for simplicity assumes there is one parliamentary chamber. These stages are outlined briefly in the following subsections.

Initiation/draft of outline proposal

Typically, the first step in the process by which a law is created is the initiation and submission of an outline proposal or policy document identifying the need for a new law. Such a document may vary in specificity. The term “green paper” is often used (for example in the United Kingdom or at European Union level) for a government report of a proposal without any commitment to action, a first step towards changing the law. A green paper often identifies a need or perceived need for a law or legal change, presents a range of options and invites interested individuals or organisations to contribute views and information. A green paper may be followed by a “white paper”, an official set of proposals that is used as a vehicle for their development into law. A white paper signifies the clear intention of the government to pass a new law.

In some cases or in the case of some laws, an outline proposal may not be issued at all, and instead a detailed draft law issued as the first step. Given that outline proposals provide a good first opportunity for consultation (see below, page 22), bypassing this step may be regarded *a priori* as a bad start to the legislative process.

Submission of draft law

The legal text of a draft law may be submitted formally by institutions or individuals defined by law. Typically, these will be the government, executive agencies, other state bodies (for example the Supreme Court), parliament, members of parliament (MPs), and in federal states (such as Russia) sub-national governments or legislatures. In Presidential systems this right will also be held by the President (as in Russia). Except where the initiator of a law is the parliament or its members, a draft will normally be submitted for discussion within the Executive Branch. Even where the draft originates in Parliament, the Government will usually have the right to submit an opinion on the draft law.

Executive branch legislative process

Draft laws generally go through an extensive process of discussion within the executive branch (between ministries and other executive agencies), generally co-ordinated by a central government legislative department or Ministry of Justice. The final output of this process is a government decision on the draft law – whether to approve the law or not, and if so in what exact wording.

Parliamentary legislative process

Once the government has approved a draft law, the all-important stage of parliamentary approval takes place. In most democratic countries laws go through three parliamentary readings, each of which deals with the law from a different aspect. For example, the first reading may constitute a vote on whether to proceed the law at all; the second reading a vote on proposed amendments submitted at first reading by MPs; and the third reading on the final version with some restricted possibilities to change the law.

This stage is all-important, as Parliament determines the final form of the law. Since Parliament is by definition a body of elected members rather than professional legislators, the exact rules of procedure for passing laws and the institutional framework and capacity of parliament have a key impact on the quality of law-making – and its resistance to potential corrupt influences. These key aspects include the procedures for voting, the procedure for introducing proposed amendments to the

draft and the role of committees and legal staff in processing changes to the draft proposed by MPs.

Principles of a well-designed legislative proposal

In all cases, the key question for this paper is how each of the stages of the legislative process is actually conducted, and specifically to what extent they are designed in order to directly or indirectly minimise corruption of the process. For this purpose, this paper proposes six main principles of the legislative process whose application are of key significance in order to restrict corruption. These components, roughly ordered, are institutionalisation, professionalism, collective decision-making, justification, consultation and transparency. These principles are elaborated below.

Institutionalisation

A vital overarching component of any well-functioning legislative process is institutionalisation – the embedding of the legislative process in a set of rules and organisational procedures which ensure that different entities that should or have the right to participate in the process are aware of their rights and/or obligations and are able to exercise/fulfil them. Institutionalisation is a principle that establishes a basis for the consistent and predictable application of the other principles described below. It includes, for example, clear and mandatory rules on:

- the form a draft law must take;
- how draft laws must be made, and which information from the subsequent legislative process should be made public;
- who may and who must comment on the proposal;
- what are the deadlines for such feedback and to whom it is submitted;
- which body or persons co-ordinate the receipt of comments and feedback;
- what mechanisms are established to facilitate discussion of a draft law;
- what are the deadlines within which state bodies must process a draft law.

These examples remain very general, and each of them must itself be broken down into more detailed descriptions: for example, regarding who may comment on a proposal, institutionalisation implies a clear set of procedures for consultation, such as the criteria for selecting which organisations or interested parties should be targeted for consultation, and so on.

Professionalism

In order for the Executive Branch and Parliament to carry out its legislative role efficiently and produce high-quality legislation, extensive assistance from trained lawyers and other specialised staff is needed. Expert lawyers and other staff assist legislators not only to formulate legislation to pursue the goals they have. By providing more-or-less objective feedback on proposed laws or amendments, they may also fulfil an important function of restraining the inclusion in laws of paragraphs that facilitate corruption – and therefore by implication may help to prevent or restrict corruption during the legislative process itself.

In principle, the opinion of expert staff should be an automatic input into every stage of the process of discussion among and decision-making by both executive officials and parliamentary representatives. In general, expert input is more likely to be an automatic component of the legislative process in the Executive Branch, as the Executive is organised (although to varying extents) on the principle of permanent professional staff and sectoral (line) specialisation. The level of professionalism of the civil service clearly varies massively across countries.

Professionalisation of the parliamentary legislative process is equally important. There are vast differences between legislatures within the European Union in terms of the size of their legal staff. For example, the legal department of the German Bundestag employs some 1 000 lawyers, compared to around 15 in the Czech Chamber of Deputies. The less adequate is the legal staff a legislature employs, the more amateur its legislating activities will be, the less information will be available to MPs to make informed decisions, and the more vulnerable to corruption the legislative process.

Collective decision-making

Another very important principle of democratic law-making is that of collective decision-making. This means that decisions at each stage of the legislative process should be collective. For example, the opinion of a line ministry on a draft law that falls within its competence should be the result of a collective decision-making process within the ministry – not just the decision of the minister, who may either decide arbitrarily or on the basis of inadequate information.

The collective decision-making principle also means that proposed amendments to any draft by individual officials or MPs should be subject to sufficient collective consideration – in practice meaning discussion by a parliamentary committee – before being voted on by the legislature. This is a particularly vital aspect of the legislative process, and where it is not applied the opportunities for corruption may multiply.

An example of how not to design the parliamentary legislative process is provided by the Czech Republic. The Parliamentary Rules of Procedure allow MPs to submit proposed amendments to law both during the second reading and up to twenty-four hours before the third and final reading begins. There are essentially no restrictions on the possible scope of such proposals, and there is no procedure to ensure that they are collectively discussed by the relevant parliamentary committee with expert assistance from legal staff. The result of this is that parliament is often literally inundated proposed amendments at third reading, and very often approves amendments with which MPs did not have the time, capacity or assistance to acquaint themselves. This creates extensive opportunities for corruption during the parliamentary legislative process. It also leads to lower-quality legislation, and also other curious phenomena such as the inclusion of a legislative proposal within an entirely unrelated draft law.

By contrast, in Estonia all proposed amendments must be submitted at the committee stage, which takes place prior to second reading, and are then submitted to second reading with the opinion of the committee attached to each proposal. This makes it impossible for an MP to submit an amendment near the end of the legislative process to avoid scrutiny by committees and professional staff. In short, the application of the principle of collective decision-making is an important mechanism to reduce the probability of additions being made to draft laws to serve particular corrupting interests.

Justification

If laws are supposed to embody the pursuit of the public interest, then by definition any legislative proposal or proposed amendment to a draft law must be justifiable in the public domain. Proposed provisions that are designed to benefit particular interests are less easy to justify in terms that can be acknowledged publicly. The re-

quirement of justification usually exists for draft laws themselves, and is often specified in some detail: the initiator should be required to summarise the current legal framework, identify and explain the need for a legislative change, and justify in detail why the proposed law or amendment is the optimal solution. The initiator will also usually be required to calculate the estimated financial impact of the proposal on the state budget. It is also important, however that any change proposed (for example by a ministry or Member of Parliament) to a draft law that is going through the legislative process is also accompanied by a precise justification. This makes the work of others involved in the legislative process easier and provides an *ex ante* restraint on the freedom of legislators to propose anything they want – thereby helping to prevent corruption.

Consultation

Consultation is a vital core component of a democratic legislative process. Where the legislative process is well institutionalised and professionalised, consultation that gives individuals and groups in society an equal chance to comment on a draft law is likely to improve the quality, increase the legitimacy and therefore lower the costs of enforcement of the law. When conducted properly – and if the input gained from consultation is used well – it lessens the probability of corruption of the legislative process by providing influence to a broader range of interests.

Consultation may take place at all stages of the process prior to final approval of a law and may take different forms at each stage; this is an issue dealt with in more detail in the forthcoming Council of Europe Guide. A key rule is that the earlier consultation takes place the better. Ideally, consultation should take place both on the outline proposal and the initial draft law, prior to the government approving a draft for submission to parliament.

Consultation may be targeted or open. Targeted consultation invites selected interests or groups to comment on a draft; participants should be chosen who are expert in the subject of the legislation or represent the interests of those affected by it. Open consultation means opening consultation to the public in general.

Targeted consultation will normally seem to be the more attractive option for legislators, as it will tend to elicit informed responses and is less costly and burdensome administratively. However, there is a

risk that not all relevant interests will be consulted. Therefore, if targeted consultation is chosen then it is very important for the state to attempt to engage representatives of as broad as possible a range of groups/interests affected by the proposal.

Open consultation is likely to elicit a large number of poorly-structured responses that are less well-informed. However, the ease with which open consultation can be organised has changed dramatically, especially due to the expansion of the Internet; the BBC's invitation to visitors to its website to comment on the renewal of its Charter is a topical example. In order to improve the quality of responses from open consultation and reduce the costs of processing responses, it is a good idea to institutionalise a compulsory format for responses to consultation.

Consultation is an ideal mechanism for addressing the danger of unrestricted lobbying. By defining clear rules for consultation and publicising the input of groups or organisations that participate. An important issue is what types of organisation to invite for consultation. The World Bank suggests that "countries in which firms can find expression in legitimate collective associations are less likely to suffer problems of [state] capture and administrative corruption."¹ If this is true, then a clear guideline for consultation is that for a law that impacts a particular sector, only collective industry organisations should be consulted, not individual firms.

Transparency

Finally, transparency is an absolutely necessary component of the legislative process, and a minimum requirement if there is to be any effective democratic scrutiny of draft legislation. Transparency is also a necessary condition for any meaningful form of consultation to take place. Moreover, transparency is in practice an important means even for institutions within the state to be made aware of draft laws and their passage.

Council of Europe Committee of Ministers Recommendation Rec (2002) 2 on access to official documents underlines the crucial role of transparency in the democratic process, stating that

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest

1. World Bank, *Anti-corruption in Transition*, p. 51.

of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.²

The Recommendation defines "official documents" (to which the recommendation as a whole applies) as

any information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.³

While it is not unambiguously clear whether draft laws satisfy the definition of "official documents", when taken together with the public interest criteria of Article XI it would appear to be the most logical common sense interpretation of the definition. That is, at a minimum draft laws after each stage of submission and approval should be regarded as public documents.

Transparency in the legislative process therefore means – at a minimum – the publication of government legislative plans, outline proposals for legislation, initial draft laws submitted by an initiator, and drafts approved by the Government for submissions to Parliament. However, this is hardly sufficient for citizens or groups with an interest in participating in debate on draft legislation to be equipped with sufficient information. In addition, it should be considered whether to make public comments on a draft law which are submitted by institutions within government. All amendments submitted during the parliamentary process should be available to the public, as should the decisions and recommendations of committees on draft laws and the up-to-date versions of draft laws prior to each reading. Last but not least, the voting record of all MPs should be public.

Other mechanisms to reduce corruption in the legislative process

Even where the legislative process is designed to apply the above principles, public officials and legislators will still under some circumstances face incentives to attempt to influence the content of draft legislation for the benefit of particular interests. In particular, officials or legislators

2. Council of Europe Committee of Ministers (COM) Recommendation Rec (2002) 2. on access to official documents, Article XI. Available at <http://wcd.coe.int/ViewDoc.jsp?id=262135>.

3. COM Recommendation No. 2 (2002), Article I.

in key positions (for example heads of a key ministry departments or chairpersons of parliamentary committees) may be especially attractive targets for corrupt pressures. Thus, other mechanisms for the

prevention of corruption will be necessary. In addition to traditional criminal law anti-bribery provisions, important measures include the following: provisions on conflicts of interest; duties to declare individ-

ual interests, assets or incomes; and provisions on the immunity of MPs and/or senior politicians. This paper will not cover such mechanisms in detail.

Conclusion: the legislative process as a virtuous circle

Above (*Principles of a well-designed legislative proposal*, page 21), we outlined principles whose full incorporation into the legislative process should maximise the effectiveness of the legislative process and help ensure that laws are drafted on the basis of the criteria of professional expertise and well-regulated democratic debate. The implementation of these principles will tend to minimise corruption. The same section noted in addition other anti-corruption measures that should also be in place.

The principles outlined in this paper and their application may be seen as a summary "road map" for the creation of a legislative process that fulfils a number of objectives at once, in particular:

- high-quality democratic input in the form of well-regulated access to the legislative process;
- high-quality output (quality legislation);
- increased legitimacy of laws that are passed as a result of the creation of a level playing field for feedback into the legislative process;
- lower costs of enforcement, as more legitimate laws engender increased voluntary compliance.

The indirect result of the application of the principles outlined here will be reduced corruption:

- The availability of information on all legislative proposals and key stages of their passage reduces the chance that legislation will be passed in secret at the behest of vested interests.

- Consultation with legitimate representatives of affected and interested parties leads to broad-based feedback on the content of proposed laws, and lessens that probability that laws will be influenced only by well organised interests with privileged access.
- Collective decision-making and the requirement of justification at each stage of the process reduces the probability that individual officials or legislators (MPs) will insert changes that are counter to the purpose of the law or otherwise contrary to the public interest.
- The engagement of professional lawyers and staff at all stages of the legislative process provides a necessary complement to the free rein of democratically elected legislators (providing them with needed expertise to perform their role effectively) and also a necessary counterweight to attempts by legislators to create or amend legislation in order to serve particular interests.
- In addition, the implementation of standard anti-corruption measures will work to counter remaining corrupt pressures on officials with the most influence on the legislative process.

The fulfilment of these objectives will tend to be a mutually reinforcing virtuous circle. Well-regulated access increases the legitimacy of the law-making process and results in higher-quality laws. This in turn further increases the legitimacy of laws and lowers the costs of enforcement – not to

speaking of reducing the need for further legislative changes. Where the legislative process is professionalised and based on collective decision-making at every stage, this virtuous circle is reinforced.

By contrast, failure to implement the principles will tend to create a vicious circle:

- Where draft proposals or draft laws are not publicly available, this will naturally result in a situation where knowledge of drafts laws will be limited to interests who are well-organised and connected, while the public will lack awareness of upcoming legislation and its justification and will tend to respect the resulting law less.
- The absence of consultation will reinforce this, creating the impression that only privileged interests have influence.
- A legislative process which does not subject every input and proposal to collective discussion and decision-making and does not require every proposal to be explicitly justified will raise the probability of draft laws lacking a public interest justification, and will directly increase the risk of changes being inserted during the legislative process that do not reflect the public interest and are not subject to the filter of collective approval.
- These factors will result in lower quality legislation, undermine its legitimacy, raise the costs of enforcement and – last but not least – increase the probability that the law will have to be amended.

Corruption risk analysis in the Russian Federation: theory and practice

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If combating corruption is to be a success, emphasis should be made not only on suppression of and criminal prosecution for corruption offences but also on their prevention. Prevention warning, prophylactic

of corruption are whole range of measures including lawmaking. Three main objectives could be identified in this area:

- Development of specialised legislation to counter corruption;

- Introduction of preventive anti-corruption rules into sectoral legislation;
- anti-corruption expertise of draft laws.

The present report dwells on the above points, with special concern for the latter.

Terms and definitions

The need to have clear-cut definitions is obvious. One could talk about corruption and mean its different forms. The trouble is that no legislative act of Russia provides its definition: even such criminal offences as bribery, abuse of power are seen as corruption only in every day practice.

Corruption is generally understood as “state” (public) corruption – in public administrations, i.e. receipt by civil servants of rewards from third persons for carrying out certain actions. Thus, the subject of state corruption is a public official. But the legislation on legal liability for offences employs the term “official” that is not fully unified. Since local self-government authorities are separated from state authorities and given the lack of a generalising term “public authorities”, it is not easy to draw boundary lines of this phenomenon.

Meanwhile, the United Nations Convention against corruption, ratified by Russia, interprets this notion broadly, since “public official” can be understood as any person exercising a public function or providing a public service. Hence, a person providing healthcare, education or other services in Russia is also a subject of corruption under the Convention. Of no less importance is the fact that for the purpose

of the Convention (if not otherwise stated) the crimes, indicated by the Convention, do not necessarily have to result in a harm or damage to state property.

The given project is aimed at providing a definition of corruption either from the point of view of international instruments – as a phenomenon existing in the public sector (public administration, state enterprises, public functions by private subjects (agents)) or to extend it to Russia “social” (common) corruption (relationship with healthcare service staff, school and university teachers).

The line between corruption and potential for corruption risks is rather fine but clearly defined. Corruption is a deliberate use of the official position in order to gain an advantage. Corruption risk is an objective possibility in legislation to utilise one’s official position for mercenary interest as a result of application of legal rules. Corruption-prone rules may be introduced into legislation accidentally – due to a wrong legal tradition, negligence, etc. Accordingly, a line is also drawn between corruption acts and actions conducive to them. Therefore, such actions of an official as interfering into the activity of other agencies and organisations, denying infor-

mation, requiring information from other bodies, violation of the rules of the consideration of citizens’ requests, delegating one’s authority, violation of the rules of auctions and competitions, demanding sponsor aid etc. may signal of possible corruption intentions. To make those actions illegal is only feasible by establishing clear-cut competence in the interaction of public authorities and legal liability for distorting “normal” management. Failing that, corruption activity is perceived as a legal field.

Any management is subject to corruption risks, which makes a public official apt to utilise his office to his own, not public, advantage. Corruption risks result from a number of factors – economic, political, social, e.g. from blurred competence, lack of interaction procedures between agencies, lack of material support for official functions, inactivity or inefficiency of authorities, procrastination in considering people’s requests. Much depends on to what extent the idea of “correct administration” has become reality. Many of the above factors could be removed through an evaluation of the administration efficiency, in which case it is necessary to single out a corrupt-prone component. Corruption risks can be classified according to the

scope of the legislation application: public procurement, management of state property, management of state finances, customs relations, tax relations etc.

Countering corruption: specialised Russian legislation

Recognition of corruption and the need to combat it back in the instruments of the Soviet Union (Resolution of the Congress of People's Deputies of June 9, 1989 "On the guidelines of the domestic and foreign policy of the USSR") served as a basis for the RF President's Decree No. 361 of April 4, 1992 "On Combating corruption in the system of the public administration". There was no law on the civil (public) service at the time, so the above Decree focused not so much on the fight against corruption but on the need of social protection for civil servants and on prohibition for them to take certain actions. Later, in the Federal Law of July 31, 1995 "On the basics of the RF civil service" those prohibitions came to be named as restrictions determined by civil service. Civil servants were proscribed to take up entrepreneurial activity, other paid activities excepting teaching, science, arts, etc., to use material, technical, financial, information means other than for the office needs.

Among the current rules and regulations in this scope mention can be made of the Federal Law of 7 August 2001 "On countering the legalisation (laundering) of proceeds obtained in a criminal way" and legislation, establishing legal liability for corruption offences – the RF Criminal Code and the Code of Administrative Offences". But a separate law on counteracting corruption is still not available (there is a draft law, though, approved in the first reading on 20 November 2002).

The federal structure of our state brings about two tier legislation. But there is no single approach to this issue. To illustrate, the law on combating corruption of the Volgograd region was considered contradictory to the federal legislation because its subject matter lies solely within the competence of the Russian Federation (criminal and criminal procedural legislation). Though, as stated above, the fight against corruption does not confine to criminal prosecution. Meanwhile, a similar law was adopted and is in force in the Republic of Bashkortostan. As to other RF entities, the problem is being handled by adopting anti-corruption policies and some legislative acts.

Standing apart in the framework of rules on countering and prevention of corruption among civil servants is legislation on the civil service.

It is obvious that successful anti-corruption strategies largely depend on the well defined and detailed regulation of the status of civil servants. If a would-be official is well informed in advance of his functions and authority, he is responsible for, legislation fulfils its preventive function and creates necessary conditions for repressive measures to be taken when the need arises.

The current Russian legislation on the civil service envisages a number of provisions with anti-corruption thrust. Article 17 of the Federal Law "On the RF civil service" formulates proscriptions in the area of civil service (entrepreneurship, divulgence of official information etc.) A civil servant takes upon himself to submit, in the order established under federal law, information about himself and his family members, to declare his income, property liable to taxation and property liabilities. The law stipulates moral and ethical rules of conduct (Article 18 "Requirements for official conduct of a civil servant"). Incidentally, international practices usually prescribe moral ethical requirements to civil servants in special codes of conduct for officials. The code sets forth standards of conduct such as integrity, honesty, loyalty, transparency, responsibility and accountability. But the Russian legislator incorporated a list of ethical standards right into the text of the law, leaving aside the draft of the Code of conduct for civil servants.

For the first time the law stipulates that after resignation or retirement from the office former officials for two years are not entitled to be employed or do any work on the basis of a civil law contract in organisations, if some functions of public administration of these organisations are directly related to the officials' duties during their tenure (though no liability is provided for the breach of this proscription). A new form of preventing breaching of official duties has been established to resolve conflicts of interest in the civil service (Article 19). Does this institute work?

According to the normative definition, a conflict of interest takes place when the objective performance of official duties by a public official is affected or may be affected by his self-interest, which results or may result in a contradiction between the official's self-interest and legal interests of citizens, organisations, society, an RF entity or the Russian Federation, which may damage the legal interests of citizens, organisations, an RF entity or the Russian Federation.

Self-interest of an official that affects or may affect the objective performance of his official duties is understood as a possibility for a public official in the exercise of his official duties to receive income (illicit enrichment) in whatever form, money or in-kind, income in the form of material gains for himself, family members, close relatives or for citizens or organisations the official is connected with by financial or other obligations. In case a public official has a self-interest that may result in a conflict of interest, he is obliged to inform in writing a representative of the employer.

But correct stipulation of the status of civil servants is not enough. Their activity should be properly organised and put under control. The Conception of an administrative reform in the RF for the period of 2006-2008 approved by the executive order of the RF Government of 25 October 2005 No. 1789-p notes, that application of additional mechanisms to curb corruption is appropriate. The most widely used of them are the following:

- the best possible depersonalisation of interaction of public officials with citizens and organisations, including by way of introducing "one window" service and a system of electronic exchange of information;
- detailed rules for the procedure of interaction with entities (subjects, agents) of regulation (users of public services);
- division of administration and management procedures into stages, with public officials, independent from each other, in charge of each stage to ensure mutual control.
- rotation of public officials.

In short, well-organised civil service should include anti-corruption measures, prophylactic (prevention measures), de-

tailed regulation of authority and official conduct, effective control of civil servants. It would be a good initiative to introduce

psychological testing in employment in order to find out if prospective employees are inclined to corrupt conduct.

Anti-corruption rules in sectoral legislation

Broad interpretation of anti-corruption legislation as a system of normative rules obstructing corruption, makes it also possible to include into it preventive anti-corruption rules in sectoral legislation.

It is common knowledge that there are areas where the potential for the spread of corruption is much higher than in others, in particular, those connected with management of public property or budget funds, provision of benefits etc. Such sectoral legislation is to fulfil an additional anti-corruption function. This idea is reflected in the RF President's Decree of 8 April 1997 No. 305 "On priority measures of the prevention of corruption and reduction of expenses on public procurement". Its anti-corruption thrust was emphasised by a wide scope of prospective suppliers allowed to gain access on a competition basis and by establishing express procedure for the actions of the state customer. Understandably, it is not enough,

that is why the laws on public procurement of 1994 and 1999 have been gradually but still inadequately improved. At present, much is expected from the Federal Law of 21 July 2005 "On placing orders for delivering goods, doing work, rendering services for state and municipal needs" that has incorporated positive experience of other countries in this area. Thus, the United Nations Convention against Corruption of 31 October 2003 places particular emphasis on anti-corruption requirements for public procurement (Article 9, para. 1) which have been developed in the given law.

Article 1015 of the RF Civil Code can also be considered a preventive anti-corruption rule (property is not subject to trust management by a public authority or a local self-government authority). The same is true of the rule of Article 7 of the still effective RSFSR Law "On competition and restriction of monopoly activities in

goods markets": prohibited are combined functions of federal executive authorities, executive authorities of RF entities, local self-government authorities, other authorities or organisations entitled to the rights and functions of the said authorities, and those of economic entities (market participants). Also, economic entities (market participants) are not entitled to functions and rights of the above bodies, including those of the organs of state supervision, excepting cases provided for by RF legislative acts.

It is worth mentioning, that up to now RF legislation has given little consideration to such measures as transparency and accessibility of public information, its free provision. It is only recently that in the framework of the administrative reform, transparency in the system of public administration came to be regarded as a preventive anti-corruption mechanism.

Anti-corruption expertise of draft laws

Apart from traditional ways to fight corruption, anti-corruption thrust of legislation on the whole is assuming paramount importance. What is meant is not special rules but anti-corrupt rules that establish standards of conduct for officials. Assuming that not only specific measures to counter corruption help to reduce corruption risks, the correct structuring of rules can also be effective in preventing corruption deals.

The United Nations Convention against Corruption sets forth (Article 5, para. 3):

Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy in respect to preventing and fighting corruption. This rule can be regarded as a basis for anti-corruption expertise.

The Conception of administrative reforms in the Russian Federation for the period of 2006-2008 has set the task of introducing mechanisms of countering corruption in the executive bodies. Within the framework of measures to introduce ex-

pertise of legal rules in respect to their potential for corruption risks, methods of primary and specialised (subject) expertise of current legal acts and draft laws would be developed, their expertise would be made and the resultant changes would be introduced into legal acts and submitted drafts. The foundation has already been laid. The Centre for strategic developments is effecting the project "Analysis and monitoring of the federal legislation for corruption risks"; in its course a Memorandum for Experts on Primary Analysis of Legislative Acts for corruption risks has been written.¹ Behind this title are methods enabling to evaluate rules of a law (draft law) from the point of view of its corruption-prone potential in the process of its realisation. It is an important preventive measure aimed at the legislation discouraging civil servants from corruption deals,

1. Analysis of Corruption-prone nature of Legislation: Memorandum for Experts on Primary Analysis of Legislative Acts for corruption risks. M.A. Krasnov, E.V. Talapina, Yu.A. Tikhomirov, K.A. Golovshchinsky, V.N. Yuzhakov. Edited by V.N. Yuzhakov. V., 2004

since after expertise the rule definitions would not leave any loopholes for arbitrary actions of civil servants.

Typical potentially dangerous definitions are perceived as corruption factors that, given unscrupulous attitudes of civil servants, would enable them to commit legal actions in the interest external to the state interest. To reveal corruption factors, it is necessary to evaluate:

- the connection of the analysed rule with other legal rules (if they increase risks for corruption reference and blanket rules, broaden departmental and local law-making, the presence of collision of legal rules that enable an official to "manoeuvre" between them);
- realisation of the authority of a state body or public official (corruption factors – definition of the competence according to the formula "in the right", broad discretionary powers, absence of administrative procedures, excessive claims made on persons for the exercise of their rights, absence of competition (auction) procedures;

- exercising control of civil servants' activities (corruption factors – lack of specialised detailed bans and restrictions for civil servants in some areas of their activity (management of state property, tax, customs relations), absence of liability of a civil servant for offences, lack of control (including public control) of state authorities and civil servants).

There may be other corruption factors, such as omissions (gaps) in legislative regulation, lack of the link "the right of a citizen – the obligation of a state organ", corruption factors in the jurisdiction sphere (possibility of requalification of a criminal offence into an administrative offence, excessive and unjustified differentiation of administrative penalties, etc.).

The above-mentioned memorandum has become a basis for the further development of the problem with the purpose to extend anti-corruption analysis to the adoption of government regulations (a joint project of the Ministry of Economic Development and Trade and the World Bank, 2006). The Memorandum specifies and complements the list of corruption factors. Now the Methods contain:

- 13 general corruption factors, referring to both laws and subordinate legislation regulations (competence according to the formula "in the right", broad discretionary powers, excessive claims made on persons for the exercise of their rights, juridicolinguistic corruption-prone potential, gaps in regulation, absence of administrative procedures, absence of competition (auction) procedures, absence of specialised bans for civil servants in the area of corruption-

prone activities, absence of liability of civil servants for offences, lack of control of government bodies and officials, false objectives and priorities of a rule, rule collisions, excessive case of ease of departmental and local lawmaking);

- 3 corruption factors reflecting the specific nature of subordinate legislation (adoption of a rule "beyond competence", filling up legislative gaps by subordinate acts, "imposed" corruption risks);
- forms of risks for corruption (formal technical corruption risks, non-adoption of a rule, upsetting the balance of interest).

Anti-corruption expertise is made by two or more experts who offer their opinion. Use has been made of the said methods to analyse, in respect to their potential for corruption risks, a number of draft laws, considered by the RF State Duma, as well as laws of some RF entities in the course of the training of civil servants of the Sverdlovsk, Kurgan, Tomsk, Vologda regions and Stavropol and Perm regions.

In the framework of the present project, the following can be done to further develop the given Methods:

- to adjust the text of the Methods to the analysis of legal acts generally, but not legislative acts and subordinate legislation;
- "to broaden" the scope of the Methods: at the moment they are targeted at a civil servant as the subject (agent) of corruption offences (as well as at persons fulfilling public functions) and legal acts on the regulation of permis-

sion, registration, jurisdiction and other powers of state (municipal) authorities. The project is to give an answer to the question, if it is possible to extend the methods not only to public law but also to private law relations. In our opinion, if the methods can be applied to private law relations at all, they should be confined to those, "burdened" by public law elements (public procurement, provision of a public service to private subjects (agents) on the basis of delegating);

- to resolve the issue of possible subject (specialised) expertise for corruption risks – whether it is intensive anti-corruption screening performed by the same methodology by a subject expert, or special subject examination methods for specific areas (public procurement, election legislation, customs relations etc.) – the task may involve a combination of deductive and inductive methods – identifying specific corruption factors (if there are any) in a certain subject sector theoretically or through analysing the corruption market.
- to resolve the issue of specificity and classification of anti-corruption expertise: external anti-corruption scrutiny *per se* (the status of the expert, the force of his opinion), internal analysis for corruption risks made by the author of the normative legal act himself (how the fact of the analysis is reflected), internal anti-corruption expertise by the law department of the body that drafts the normative act.

Outline proposals on introducing the analysis of corruption risks in draft laws into legislative process

The effectiveness of an anti-corruption expertise and the available experience in the field make it advisable to impart to it an official status. Due consideration is to be given to the following:

- An official status of anti-corruption expertise is bound to enhance its anti-corruption effect. Hence, its procedure, the choice of draft laws for the examination and of experts are to be expressly regulated, excluding ambiguous interpretation.
- The results of any expertise, even when a single method is employed, are bound

to reflect the expert's views and philosophy, therefore a) it is advisable to enlist the services of two or more experts on each draft law, b) the expert's opinion has to be formalised to be compared if the need arises.

- Corruption risks are potentially corrupt-prone situations that facilitate or even encourage corruption. What is relevant is the scope of evaluation of corruption risks – whether modelling a possible corruption situation (not clarified or illustrated by figures) or evaluation of the corruption market.

- The present project is targeted at the modelling of legislation with regards to corruption risks. How can one take account of corruption risks? To illustrate, two methods are advisable in a potentially corrupt situation, when the procedure is not observed (environment assessment): 1) establishment and enforcement of liability for the breach of material and procedural rules; 2) encouragement of lawful conduct. Corruption risks, as they are, have not been taken account of in the Russian legislation. However, one could say, they are

removed by a positive procedure of actions (encouraged lawful actions) and liability for breaches. But so far as corruption risks have not been indicated, the solution of the task is far from systematic and is dependable on the situation. The development of legislation in a potentially corrupt-prone sphere should be targeted at advance evaluation of corruption risks and incorporation of a number of preventive and repressive measures.

At what level (in what normative act) is it appropriate to define the rules and requirements for an anti-corruption expertise?

In theory, a few options are possible – from adoption of a legislative act (including a separate chapter in the federal law on normative legal acts) to the introduction of relevant changes into the RF State Duma Rules of Procedure. The current State Duma Rules of Procedure make it possible to introduce an anti-corruption expertise in several ways:

- expert analysis performed by the Public Chamber (Article 108, para. 1);
- expert analysis made on the initiative of the State Duma (Article 108, para. 1);
- analysis by the responsible committee (Article 111) or forwarding it by the committee for an external examination (Article 112);

- analysis by the Law Department (Article 112, para. 3).

Those versions do not exclude each other, i.e. combinations are possible. The current methods of the evaluation for corruption risks are based on the adjustment of the rules on legal techniques for law-proofing. Therefore elements of methodology of identifying corruption risks could be incorporated into the rules which drafting of federal laws is guided by.

It is well to remember that most draft laws are developed by the Government and ministries. Hence, partial responsibility for the registration and prevention of corruption risks lies with them too. In this regard, changes should be introduced into the Executive Order of the RF Government of 2 August 2001 "On the adoption of major requirements for the conception and drafting of federal laws". In particular, the conception of a draft law envisages the consequences that the realisation of the draft law may entail, including potential corruption risks. There are also several agencies in this field that can administer an anti-corruption expertise – sectoral federal organs of the executive, Ministry of Justice, Institute of Legislation and Comparative Law.

The order of conducting an anti-corruption expertise in the State Duma Rules of Procedure (or in a separate State Duma

resolution) could result from the answers to the following questions:

- the subject-matter of the expertise – what rules and regulations should an anti-corruption expertise apply to;
- Initiators of the examination – who is entitled to initiate one. In this respect, possible are internal analysis for corruption risks (made by the author of the law and by the juridical service of a state organ) and external examination (from involvement of external experts to original expertise performed by civil society institutes). Generally speaking, the issue of anti-corruption expertise is to be raised openly (on the initiative of a certain number of deputies, the Public Chamber etc.). It means though, that far from all draft laws need to be examined, but only those, concerned with potentially corrupt-prone sectors;
- status and expertise of the expert (who chooses experts, by what procedure, who teaches authors (certification) etc.);
- legal force of an expert's opinion, the procedure of ironing out differences, repeated expertise;
- recognition of a single method of the analysis for corruption risks of rules and regulations and approval of a list of corrupt-prone factors (as a supplement).

The issues of formulating the methods of assessing corruption risks in specific policy areas

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In Russia of today, corruption has permeated not only government bodies but almost all areas of social life. People come across corruption when applying to state (municipal) bodies as well as state (municipal) enterprises and organisations. Corruption is especially rampant in education, healthcare, housing maintenance and utilities, housing construction etc. With Russia's transition to market economy most issues in these areas are predominantly regulated by private law. Given that, it seems the time has come to monitor the potential for breeding corruption in legislation in the field of private law regulation.

However, such an approach needs additional theoretical justification as it does not fully agree with the concept of corruption as abuse of state power. To illustrate, the "Memorandum for Experts on Primary Analysis of Corruptogenic Character of Legislative Acts"¹ recommended by the anti-corruption Commission of the RF State Duma for members of the Expert Council under the authority of said Commission questions the existence of corruption provisions in legislative acts included in the domain of private law. As an argument, the Memorandum asserts that provisions in these acts "do not regulate the activities of public servants without whom corruption, with rare exceptions, is not feasible".

Yet in international legal instruments there is an indication of possible manifestations of corruption in the private sector. For instance, in the United Nations Convention against Corruption dated 31 October 2003, three articles mention corruption in the private sector: Article 12 "Private Sector", Article 21 "Bribery in the Private Sector", Article 22 "Embezzlement of Property in the Private Sector". In the Council of Europe Criminal Law Convention on Corruption corruption in the private sector is treated as active (Article 7) and passive bribery (Article 8).

Besides, according to the polls conducted by the "Public Opinion" Fund, Russians associate the image of a corruptionist not only with a public official but also with representatives of the private sector. The sociological poll carried out by the Federal Security Guard Service in August of 2005 has shown that education ranks third (55%) among eighteen areas of activity where corruption is the most rampant – after law enforcement bodies (61.1%) and administrative sphere (60.2%).

So, narrow understanding of corruption only as abuse of power by its representatives does not respond to the needs of the present day Russian society in its fight against corruption.

It is noteworthy that the problem of elaborating a single concept of corruption has become the cornerstone in the discussion on adopting a single law on combating corruption. Many specialists in this area justly assert that it is impossible to develop such a definition of corruption which would cover all the aspects of this complex

socio-legal phenomenon. In view of this it seems reasonable to follow in the footsteps of the Council of Europe. The Council of Europe Conventions "Criminal Law Convention on Corruption" and "Civil Law Convention on Corruption" use different definitions of corruption depending on the purposes and fields in which these documents are applied.

In order to organise monitoring of draft laws and current laws within the framework of activities of the RF State Duma anti-corruption Commission a broad understanding of corruption should be used as a basis, including all the negative phenomena regarded by Russian society as corrupt acts irrespective of their legal nature. Such a broad definition of corruption was developed by the Council of Europe Multidisciplinary Group on Corruption in 1995. It was stated that corruption means bribery or some other behaviour of persons authorised to fulfil certain duties in public or private sector, resulting in a breach of duties assigned in accordance with the status of government officials, private employees, independent agents or some other relations and whose goal is to obtain undue advantages for himself and others.²

Proceeding from the above definition of corruption it would be useful to include in the list of legislative acts scrutinised for the presence of corruptogenic provisions the laws governing relations in the private sector.

1. Analysis of Corruptogenic Character of Legislation: Memorandum for Experts on Primary Analysis of Corruptogenic Character of Legislative Acts. M.A. Krasnov, E.V. Talapina, Yu.A. Tikhomirov, K.A. Golovshchinsky, V.N. Yuzhakov. Edited by V.N. Yuzhakov. M., 2004, p. 52.

2. See: Lunev V.V. Crime in the 20th Century. Global, Regional and Russian Trends. M., 1999, p. 337.

It should be borne in mind, however, that the legislative acts themselves do not always contain loopholes for corruption. As an example, being a practising lawyer I could cite such cases when one business entity pays a kickback to another business entity in the process of supplies of goods. In my opinion it would be a mistake to believe that such behaviour is made possible by virtue of RF Civil Code provisions on supplies. This type of corrupt behaviour is rather testimony to the fact that there is lack of legal culture in Russian society of today. That is why selection of private law acts in need of scrutiny for their potential for breeding corruption should be based on a priority principle.

Corruptogenic provisions are most likely to be found in those laws that regulate relations in property transactions with the participation of the state and municipal entities. A vivid example is legislation on purchasing goods, work and services for state and municipal needs.

Corruptogenic provisions may also be incorporated in laws devoted to the exercise of people's rights, above all those provided for by the constitution. In the RF Constitution the following people's rights have been proclaimed: right to housing (Article 40); right to healthcare and medical assistance (Article 41); right to education (Article 43) and others. Hence, laws and draft laws governing relations in healthcare, education, housing maintenance and utilities, housing construction etc should be subject to monitoring for their corruptogenic potential. At the same time, it should be borne in mind that medical, educational and housing maintenance and utilities services are performed mostly by state or municipal organisations. This also creates extra opportunities for corruption.

In order to organise monitoring for the corruptogenic potential of laws in private law regulation it is necessary to elaborate methods which would enable the achievement of pursued goals. As of today there is no single basic methodology of analysing the corruptogenic potential of legislation though it would be useful not only for the RF State Duma anti-corruption Commission but for other federal authorities, including the RF Audit Chamber. The existing methods, among them those recommended by the anti-corruption Commission, are designed for the analysis of corruptogenic legislation in public law regulation. In view of this, a legitimate question arises: do we need separate, special

methods for the analysis of the corruptogenic potential of legislation in the area of private law regulation, i.e. methods of performing the so-called specialised expert examination?

We believe that at the present stage of the organisation of monitoring of corruptogenic potential of legislation within the framework of work of the RF State Duma anti-corruption Commission focusing efforts on elaborating such a methodology would be impractical. In order to create such methods it is above all necessary to develop theoretical questions and secondly – to have enough empirical data. However, problems of corruption are not studied by specialists in private law as there has been firm conviction that this problem belongs to other branches of law (mostly criminal and administrative law). Besides, there is not enough empirical data for generalisations as the analysis of the corruptogenic potential of legislative acts in the field of private law is actually still in embryo.

Given that it seems advisable to consider possible use of "Methods of Analysis of Corruptogenic Potential of Legislative Acts" (further on – the Methods) presented by the project's expert E.V. Talapina for monitoring the corruptogenic potential of legislation in the domain of private law though it has been designed for use in public law regulation.

We believe that the Methods could be applied to the above-mentioned area primarily because legislation in private law regulation is often of a comprehensive nature, that is, it contains quite a substantial amount of public law provisions. Hence, from this point of view the use of the Methods is quite adequate and does not raise any doubts.

Some corruption factors contained in the Methods can also be applied, by analogy, to the analysis of corruptogenic factors in legislative acts of private law. In this case, the content of a corruption factor must be determined taking into account the specificity of private law regulation.

From this point of view when monitoring the corruptogenic potential of legislation in private law regulation the following corruption factors could be used:

Omissions in legal regulation

This factor is the most relevant for legislation in private law regulation. During the Soviet period public law regulation was prevalent often governing even those relations which in market economies are tradi-

tionally regulated by private law. For example, relations in healthcare and education were governed by administrative rather than civil law. Russia's transition to market economy necessitated changes in ways and methods of legal regulation in many sectors of social life. Also, development of legislation is way behind social needs with resultant omissions in private law regulation. To illustrate, there are no provisions on healthcare and medical services contracts in relevant laws.

Scope of discretionary powers

A similar corruption factor in a legislative act of private law may consist in lack of precise regulation of fulfilling obligations by the debtor as refers to deadlines, volume, possible ways of meeting obligations etc. This factor engenders corruption in legislative acts governing relations between consumers – organisations and individuals – i.e. the purchasing of goods, work, services for personal, everyday life needs, as well as relations involving compensation for harm caused to the individual's safety, health and (or) property (for example, in mandatory insurance).

Excessive demands made on persons for the exercise of their rights

Under private law, excessive demands can be made in relation to both individuals and legal persons. Individuals may face excessive demands when exercising their rights to education (for instance, the establishment of extra conditions for entry into an educational establishment), housing rights (for example, when registering those in need of housing), etc. Excessive demands with respect to legal entities and individual entrepreneurs may be established in the area of licensing some kinds of activities, standardisation and certification of goods, work, services etc.

Excessive ease of departmental and local lawmaking

Legislative acts in the domain of private law often abound with blanket provisions. It appears advisable to evaluate the corruptogenic potential of such norms.

Upsetting the balance of interests

When describing this corruption sub-factor the authors of the above-mentioned "Methods" directly refer to civil legislation (Article 1 of RF Civil Code), rightfully stressing that civil law is based on the principle of equality of the parties. This principle is renounced only in the interests of an economically weaker person in need of extra support, for instance, a consumer. Upsetting the principle of equality of the parties in regulating relations between economic agents may not only be indicative of unlawful lobbying of the interests of one group but also facilitate manifestations of corruption.

Hence, the analysis of the list of corruption factors specified in the presented Methods shows that some of its provisions can be used in monitoring the potential for breeding corruption in private law regulation. However, what makes private law regulation special is the content of corruption factors, suggesting that further development of the present Methods could be quite promising if the corruption factors which can be identified only in private law enactments were incorporated into it. At the same time, it does not rule out but on the contrary strengthens the necessity of creating a specialised technique at a later stage as we accumulate more empirical data.

When setting ourselves such a long-term task as creating specialised methods it is necessary to determine the subject, i.e. the scope of relations for which these methods should be designed. Apparently we could use for this purpose the branch division traditional for the Russian legal system.

The choice of experts for monitoring the corruptogenic potential of legislation should too be based on the division of Russian law into branches. The Methods recommended by the RF State Duma anti-corruption Commission indicate that at least one expert in the area of normative acts application should participate in the

performance of anti-corruption expert examination. The Methods' authors believe that corruption factors contained in it are formalised to such an extent that any lawyer would be able to form an opinion on the presence of corruptogenic provisions in this or that act.

We cannot quite agree with such an approach. A number of corruption factors are evaluative by nature, which is specified in the Methods themselves. Hence, an expert's opinion would depend to a considerable degree on the level of his/her special knowledge in the application of the law, which too is stressed by the authors of the Methods. To prove this point here are some of the excerpts from the Methods:

- "Yet the identification of this factor (*excessive demands made on persons for the exercise of their rights – L.S.*) from the formal point of view is one of the most difficult tasks facing an expert. In this case the successful solution of this task directly depends on the expert's qualification";
- "To identify collision it is necessary to scrutinise not only the regulatory act in question but rules and regulations at different levels in related relations and branches, which requires considerable skill and erudition of the expert";

In our opinion, only specialists in a particular branch of law are able both to identify corruptogenic rules and regulations in a legislative act on the basis of their formal characteristics and to uncover the mechanism of potential acts of corruption in the process of the implementation of these legislative acts as well as to propose, if needed, measures for their elimination. These are the tasks which should be set for the experts when performing a specialised expert examination.

However, when an expert carries out primary analysis for the corruptogenic potential of a legislative act, no specialised knowledge (subject-matter competence) in the legislative act application is required. Yet it is desirable to use primary analysis only when selecting legislative acts for

their subsequent specialised scrutiny for the corruptogenic potential.

Thus, in order to counter corruption the analysis of the corruptogenic potential should be carried out exclusively by experts-specialists in the area of the scrutinised legislative act. That is why the RF State Duma anti-corruption Commission when analysing the corruptogenic potential of a legislative act should use specialists in that branch of law to which the said act belongs.

On the basis of the above it appears advisable to recommend the RF State Duma anti-corruption Commission to:

- use a broad definition of corruption when organising the monitoring of draft laws and current laws, which would include all the negative phenomena perceived as acts of corruption by Russian public, irrespective of their legal nature.
- perform the monitoring of the corruptogenic potential of legislative acts and draft laws regulating relations in the private sector, with special attention to legal regulation:
 - in the area of property transactions with the participation of the state and municipal entities;
 - in the area of relations evolving in the exercise of people's rights, above all, those proclaimed by the Constitution (right to education, healthcare, housing etc.).
- use as a basis for analysis of the corruptogenic potential of legislation in various branches of law the "Methods of Analysis of Corruptogenic Potential of Legislative Acts" presented by E.V.Talapina, the project's expert. Some parts of the Methods can be used in the monitoring of the corruptogenic potential of legislation in the area of private law regulation.
- use the services of specialists in the pertinent branch of law for the analysis of potential for breeding corruption of the legislative act selected for expert examination.

Overview of the anti-corruption reform measures undertaken by the Duma

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Demands to remove from Russian legislation the regulations (and defects thereof) which can be used (and indeed are used) for corruption purposes became vocal several years ago coming, among others, from Russian parliamentarians, representatives of experts and journalists communities.

Today as a rule no one objects to the assertion that corruption is largely a product of flawed Russian laws and subordinate legislation. Some of these flaws (probably the majority) appear in laws through oversight. Others are built into it deliberately to create opportunities for corruption.

However, until recently this attention to the problem of minimising corruption risks of Russian laws has had no legislative and methodological support.

This problem has been largely perceived through the prism of general concern over the quality of draft laws and those already in force.

By way of example, the Rules of the State Duma of the Russian Federation stipulate only a general possibility of conducting an expert examination on the initiative of a sectoral or other responsible committee of the RF State Duma or (by its decision) at the request of the Public Chamber. Para.1 of Article 112 of Chapter 12 of the RF State Duma Rules states the following: "By the decision of a responsible committee a draft law with a cover letter signed by the chairman of the committee of the State Duma can be submitted to government bodies and other organisations for preparing comments, proposals and remarks as well as for carrying out a scientific expert

examination" "In case the responsible committee has taken a decision on performing an expert examination of the draft law by the Public Chamber the responsible committee shall submit a draft of the address of the State Duma to the Public Chamber on carrying out an expert examination of the draft law and a draft of the decision of the State Duma on adopting the said address in accordance with the procedure set forth in Articles 93 and 94 of the present Rules".

A legal expert examination is also performed by the Legal Department of the RF State Duma. Under Para.2 of Article 112 of Chapter 12 of the State Duma Rules "The Legal Department of the State Duma on the instructions of and within the time limit fixed by the Council of the State Duma or a responsible committee shall perform a legal expertise of the draft law with respect to its conformity to the Constitution of the Russian Federation, federal constitutional laws, federal laws, major sectoral legislative acts; shall check the list of federal legislative acts to be invalidated, suspended, amended or adopted in connection with the adoption of a given draft and shall perform a juridical and technical examination of the draft law. The responsible committee may instruct the Legal Department of the State Duma Apparatus to conduct a linguistic expert examination of the draft law".

Clearly the above does not state expressly the need for special attention to corruption risks of legislation (draft laws). We can assume that such an expert examination may include identification of the flaws in the legal framework that facilitate

corruption. However, this work is by no means mandatory, as it is not prescribed by rules and regulations. In practice until recently an expert examination (scientific examination) of draft laws has not required purposeful identification of legislative defects creating risks of corruption.

The legal framework for purposeful work on lowering corruption risks has appeared due to Russia's efforts – with active participation of the RF State Duma anti-corruption Commission – to ratify the United Nation Convention against Corruption.

The Federal law on the ratification of the United Nations Convention against Corruption was approved by the RF State Duma on 17 February 2006, and was published and came into force on 20 March 2006. As a result of the ratification by the Duma of the United Nation Convention against Corruption casual attention to the problem of reducing corruption risks of legislation has acquired the status of official requirement mandatory for all government bodies. Para. 3 of Article 5 of the Convention stipulates within the framework of preventive anti-corruption policies and practices: "Each State Party shall endeavor to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption".

It goes without saying that this provision of the Convention, same as its other provisions, needs specification in national Russian legislation. Nevertheless, it creates sufficient grounds to insist on mandatory

specialised expert examination of legislation aimed at reducing its corruption risks.

In this situation, the first priority is to develop the techniques of such expert examination enabling reliable identification and subsequent elimination of flaws in legislation (draft laws) facilitating corruption.

Certain efforts were made to solve this problem by the Russian expert community with the support of the RF State Duma anti-corruption Commission.

In 2002-2003 the representatives of the expert and scientific community (INDEM Foundation; National anti-corruption Committee, Higher School of Economics) and the Audit Chamber of the Russian Federation formulated proposals on technology of reducing corruption risks of legislation.

In 2004 the Centre for Strategic Research (CRS) prepared the "Memorandum for Experts on Primary Analysis of Legislative Acts for corruption risks" (further on – Memorandum) based on these proposals and with the active participation of its authors. The co-authors of the Memorandum were representatives of the Ministry for Economic Development of the Russian Federation, Centre for anti-corruption Studies and Initiatives "Transparency International-R", All-Russian Non-Government Organisation of Small and Medium Businesses (OPORa Rossii), International Confederation of Consumers' Societies and other concerned organisations. At present further work continues under the CSR project "Analysis of Corruptogenic Potential of Legislation and its Enforcement".

In July of 2004 the Memorandum was presented to deputies – members of the RF State Duma anti-corruption Commission and discussed at the Commission's meeting. Judging from the discussion that took place the Commission's members were impressed with the opportunity for task-oriented and systematic work on reducing corruption risks of Russian legislation.

The methods of analysis of the potential for breeding corruption (anti-corruption expertise) attached to the Memorandum helps identify the most typical corruption factors in legislative acts and draft laws.

Thus the search for flaws (and formulas) of legislation containing corruption risks becomes more task-oriented. Among numerous flawed provisions decreasing the quality of laws (and subordinate legislation) are identified those that contain corruption risks. Then – based on a broad expert examination – the most typical cor-

ruption factors are singled out, i.e. those that occur most frequently and always create pre-conditions for corruption.

The Memorandum describes these typical corruption factors, enabling their reliable detection by any participant of the lawmaking process. It Memorandum also gives a brief appraisal of possible corruption consequences of retaining these corruption factors in legislation.

In its turn any provision of a draft law (and subsequently of an effective law) where a corruption factor is detected (above all, a typical corruption factor) is considered to be **corruption-prone**.

That means that this factor may be used for the purposes of corruption – to obtain undue advantage, administrative rent. However, it does not mean something more categorical – that it is bound to be used for these purposes. There is no need to prove that. Not every corruption factor becomes a basis for corruption practices, yet corruption practices are most often based on corruption factors of legislation. Corruption factors must be removed from legislation not because they have already been used for corruption purposes but because they may be used to this end.

This also means that corruption-prone provisions must be removed or adjusted so that they did not create "legal" prerequisites for corruption, that is, did not contain corruption factors or at least typical corruption factors.

Finally, it means that the law proper or a draft law (or subordinate legislation) containing corruption-prone provisions is, too, corruption-prone and must be amended. In case of a draft law it must not be adopted in this form.

The Memorandum was improved and published taking into account the discussions in the RF State Duma anti-corruption Commission.¹ It was sent to concerned organisations including the RF State Duma, legislative bodies of the RF entities, federal executive bodies, heads of RF entities.

Due to the initiative of the RF State Duma anti-corruption Commission the methods for screening legislative acts and draft laws for corruption risks (the anti-corruption expertise) were evaluated in April 2005 – September 2006 during the review by the RF State Duma of six draft federal laws. With regard to the three of those draft laws the anti-corruption exper-

tise was carried out twice – before the first and the second readings. A number of draft laws were subjected to the anti-corruption expertise by the Commission based on the decision of the Council of the RF State Duma.

The anti-corruption expertise of draft laws was performed by external experts. The expert examination was organised by the Centre for Strategic Research, Institute for Modernisation of State and Municipal Governance and was supported by the Government of the United Kingdom through the Global Opportunities Fund.

In most cases, the results of anti-corruption expertise were discussed at the meetings of the RF State Duma anti-corruption Commission forming a basis for decisions supporting experts' opinions on the presence of corruption-prone provisions in the draft laws and recommending the removal of these provisions from the corresponding draft law. In some cases these decisions of the Committee were endorsed by the RF State Duma Council which recommended sectoral committees of the RF State Duma to take into account the comments made on the results of the anti-corruption expert examination.

Between April 2005 and September 2006 on the instructions of the RF State Duma anti-corruption Commission anti-corruption expertise were carried out with respect to:

- Draft federal law "On Amendments and Additions to the Federal Law "On Medicines".
- Draft federal law "the Harm Inflicted While Operating Hazardous Facilities".
- Draft federal law "On the Protection of Competition".
- Draft federal law "On State Regulation of the Activities and Conduct of Gambling Organisations and on Introducing Amendments to Some Legislative Acts of the Russian Federation".
- Draft federal law "On Amendments to the Federal Law "On Appraising in the Russian Federation".
- Draft federal law "On Amendments to Article 40 of the Federal Law "On Privatisation of State and Municipal Property" and Article 28 of the Federal Law "On Joint-Stock Companies".

The necessity of conducting an expert examination of the **draft federal law "On Amendments and Additions to the Federal Law "On Medicines"** resulted from the decision of the Council of the RF State Duma dated 14 April 2005. In accordance with this decision the anti-corruption

1. Analysis of Corruptogenic Legislation: Memorandum for Experts on Primary Analysis of Corruptogenic Character of Legislative Acts. M., Centre for Strategic Research/Statute, 2004.

Commission of the RF State Duma was instructed to review this draft federal law and submit proposals to the Council of the RF State Duma.

The experts' opinions reviewed at the Commission's meeting and the discussion that followed, the report of the Commission prepared on their basis and submitted to the Council of the RF State Duma proved that a number of provisions of the draft law might facilitate the setting of additional conditions for the development of corruption relations in sales of medicines. Also, in the operative part of the conclusion on the results of the anti-corruption expertise the Commission recommended the State Duma to reject the draft law.

Based on this report the RF State Duma Committee on Healthcare responsible for the review of this draft law a decision was taken to set up a working group on the draft federal law in order to improve it. The working group included deputies of the RF State Duma – the chairman and members of the Commission, independent experts who had performed the examination of the draft law. All the reports on the corruption risks of the draft law specified in the conclusion were thoroughly discussed. The text of the draft law was corrected taking into account the proposals specified in the report.

Later the draft law was considerably improved, with all the provisions (flawed provisions and legislative formulas) facilitating to corruption excluded from the text. As a result the draft federal law "On Amendments and Additions to the Federal Law "On Medicines" was passed in the first reading on 8 July 2006. At present the draft law is in the responsible Committee.

The expertise of the federal law "**On Mandatory Insurance of Civil Liability for Causing Harm When Operating Hazardous Facilities**" was carried out by the anti-corruption Commission in accordance with the decision of the Council of the RF State Duma dated 13 December 2005. The Commission stressed in its report on the draft law passed by the RF State Duma on 16 December 2005 in the first reading that the study and analysis of said draft project made it possible to identify the provisions which create legal potential for corruption. The operative part of the conclusion contained the Commission's opinion that it would be impractical to review the draft law in the second reading without eliminating the corruption factors contained therein.

By decision of the Council of the RF State Duma, the report of the anti-corruption Commission was submitted to the responsible Committee of the State Duma on Credit Institutions and Financial Markets so that it would be taken into consideration while preparing the draft law for discussion in the second reading. The conclusions made by the Commission on the results of the anti-corruption expert examination of the draft law were on the agenda of the working group set up in the Committee on Credit Institutions and Financial Markets of the State Duma and were included into a consolidated table of amendments to be taken into account in the preparation of the draft law for deliberations in the second reading.

At present the draft law has been prepared by the responsible Committee for review by the RF State Duma. On the initiative of the anti-corruption Commission experts are performing an anti-corruption expertise of the draft law prepared for the second reading in order to see if all previously made comments were taken into consideration in the course of the draft law preparation.

The expert examination of the **draft federal law "On the Protection of Competition"** introduced to the State Duma by the Government of the Russian Federation and passed by the State Duma in the first reading on 8 July 2005 was carried out on the initiative of the Commission in accordance with the Regulations on Commissions of the State Duma of the Federal Assembly of the Russian Federation. In particular, the Commission's decision to perform an expertise of the draft federal law resulted from the analysis of reports made by the RF President's Administration, responsible Committee on Economic Policy, Business and Tourism of the State Duma and the Legal Department of the State Duma Apparatus.

The anti-corruption expertise showed that many of its provisions are directed against corruption and can promote preventive measures of combating corruption. Quite a few progressive innovations of the draft law reflect the effort to regulate more thoroughly the activities of government bodies. Nevertheless, the anti-corruption expertise of the draft law identified in it the provisions in need of improvement as they create favourable conditions for corruption. In the operative part of its report, the Commission pointed out the necessity of removing the corruption factors from the

draft law before its deliberation by the State Duma in the second reading.

On 24 January 2006 the report of the anti-corruption Commission of the RF State Duma was approved at the Commission's meeting and submitted to the responsible State Duma Committee on Economic Policy, Business and Tourism.

The Commission's remarks were translated by the responsible Committee into corresponding amendments to the draft law and discussed by the RF State Duma during the second reading. On 5 July the draft law went through the second reading and on 8 July the third.

On 9 February 2006 the Council of the State Duma took a decision instructing the anti-corruption Commission of the RF State Duma to submit to the Council of the RF State Duma a report on the draft **federal law "On State Regulation of the Activities and Conduct of Gambling Organisations and on Introducing Amendments to Some Legislative Acts of the Russian Federation"**. The Commission's report on the findings of the anti-corruption expertise submitted the RF State Duma Council contained important comments on the draft law in view of corruptogenic factors identified in it and a recommendation to the State Duma not to consider the said draft law in first reading without changing its conceptual provisions.

By the decision of the RF State Duma Council of 16 February 2006 the report of the anti-corruption Commission was referred to the responsible Committee on Economic Policy, Business and Tourism of the State Duma to be taken into account in the preparation of the draft law for the first reading by the State Duma. The draft federal law "On State Regulation of the Activities and Conduct of Gambling Organisations and on Introducing Amendments to Some Legislative Acts of the Russian Federation" was approved by the State Duma in the first reading on 24 March 2006. At present the responsible Committee works at the procedure of preparing this draft federal law for the second reading in the State Duma.

The need to carry out an expertise of the draft federal law No. 279490-4 "**On Introducing Amendments to Article 40 of the Federal Law 'On the Privatisation of State and Municipal Property' and Article 28 of the Federal Law 'On Joint-Stock Companies'**" arose as a result of the address of the Chairman of the RF State Duma Property Committee and after the

RF State Duma Council took a decision to make the said Committee responsible for the above draft law.

The report of the Commission on the findings of the anti-corruption expertise submitted to the RF State Duma Property Committee was testimony to the fact that the draft law contains a number of corruption factors. Also, in the operative part of the Commission's report it was emphasised that it would be inexpedient to consider the draft law without striking off the corruption factors from its provisions. Another anti-corruption expert analysis of the draft law was performed after its preparation for the second reading. The Commission's opinion on the findings of the anti-corruption expertise was submitted to the responsible Committee and handed over to the deputies in the chamber of the RF State Duma. On 7 July 2006 the law was approved in the second reading, and on 8 July in the third.

In the analysed draft law were identified almost all typical corruption factors. Some of them crop up in all or in the majority of draft laws.

As it turned out one of the first places (by frequency of "use") is occupied by **excessive demands made on persons for the exercise of their rights**. This corruption-prone factor almost inevitably gives rise to corrupt relations when using the relevant provision of the draft law. This flaw is most frequently manifested when a person exercises his/her right to obtain a permission or registration. It is especially conspicuous in the lists of grounds for refusal – for instance, the list may not be exhaustive or may contain vague, subjective-evaluative wording (for example, information submitted by the applicant is incomplete or is not credible).

Absence of administrative procedures is another corruption factor often occurring in the above-mentioned draft laws. The potential for breeding corruption increases if there is no well-defined procedure of decision-making, obtaining and use of information, review of applications from individuals and legal entities, control, etc.

Another corruption factor closely connected with the one characterised above is **omissions in regulation**. In rules and regulations are often absent provisions on the performance of the function vested in a government body. This enables the officials to act at their own discretion in an unregulated sphere.

Quite "popular" is a corruption factor called **provisions determining competence according to the formula of "being authorised"**. Such a factor actually means that, for instance, employees of an authorised body may or may not take a decision on the distribution of permissions and exercise of rights. This creates a market for purchasing legitimate rights.

Provisions containing excessive discretionary powers of officials and government bodies are also among the most frequently occurring corruption factors. The scope of such discretionary powers is extremely large – from extending the period of decision-making to establishing rules by the executor.

Juridicolinguistic misinterpretations – the use of ambiguous terms or those that have not yet come into usage, evaluative categories, words with a vague meaning is, too, a frequent phenomenon.

Among other factors of corruption can often be found the following:

- **Absence of competitive (auction) procedures** when several individuals or legal entities claim a specific right (purchasing or lease of government property, supplies of goods for government needs). The potential for breeding corruption increases if there are no provisions for an advance notification of the tender, selection of the winner in accordance with the previously established criterion, transparency and publication of results, collective decision-making by the tender committee.
- **False goals and priorities**. The approval of the law may be impractical, the regulation of the issue may be excessive, create additional administrative barriers and make exorbitant demands. Sometimes the direct result of the adoption of an unsubstantiated law may be the reinforcement of corruptogenic schemes.
- **Upsetting the balance of interests**. Only one group of persons (e.g. insurance companies, large business) benefits because of the adoption of such a law.

Overall, the evaluation of the methods of analysis of the corruptogenic potential of legislative acts enables drawing three conclusions:

- Judging from the scrutinised draft laws corruption risks are a real problem for Russian legislation;
- A significant minimisation of corruption risks of Russian legislation is quite feasible.

- The methods of analysis of the potential for breeding corruption in legislation (the anti-corruption expert examination) evaluated at the RF State Duma anti-corruption Commission have proved their usefulness. They can be used as an instrument of purposeful, systematic and productive work for cleansing Russian legislation of corruption factors.

Moreover, this work may be highly effective if efforts to reduce the corruption-prone potential of legislation focus not only on federal legislative acts but also on regional laws, rules and regulations of executive bodies.

Such efforts were also made in 2005-2006 at the same time with the evaluation of the methods of analysis of the corruptogenic potential of legislative acts in the RF State Duma and largely due to the success of the approval.

The need to incorporate screening of laws for corruption risks has been recognised and approved in the Concept of Administrative Reform in the Russian Federation in 2006-2008.

In 2006 on commission from the RF Ministry of Economic Development together with the CSR supported by the World Bank and the DFID Trust Fund of the United Kingdom on the basis of the "Memorandum for Experts on Primary of Legislative Acts for corruption risks" was prepared a paper called "Methodology for screening of Legislative Acts of Executive Bodies got corruption risks". At the same time there were elaborated methods of conducting training activities for the study of this document by employees of legal departments of executive bodies, lawmakers and independent experts.

Projects have been launched to disseminate the methods of analysis of corruptogenic potential of legislative acts and rules and regulations of executive bodies with the support of the World Bank and the DFID Trust Fund of the United Kingdom.

In 2006, training activities were started on mastering the methods of analysis of the corruption-prone potential of legislative acts (the anti-corruption expertise) by specialists of federal authorities, power bodies of RF entities and independent experts. Such trainings were held by the Institute for Modernisation of State and Municipal Governance with the support from the Government of Great Britain through the "Global Opportunities" Fund for specialists and independent experts of the Vo-

logda, Kurgan, Sverdlovsk, Tomsk, Perm and Stavropol Regions.

On the initiative of the RF State Duma anti-corruption Commission with the support of the Chairman of the RF State Duma and the Duma Legal Department, the training on mastering the methods of analysis of the corruptogenic potential of federal legislative acts (anti-corruption expert examination) was also conducted for specialists of the RF State Duma.

The decision to conduct such training was largely based on the conclusion that in order to accomplish a substantial reduction of the potential for breeding corruption in federal legislation it is not enough to invite external experts and perform an external expert examination. Such a conclusion was made in the course of the discussion of the results of evaluating the methods of analysis of the corruptogenic potential of draft laws by M.I. Grishankov, Chairman of the RF State Duma anti-corruption Commission, and the experts.

The emergence of corruption factors in a draft law can and must be prevented and (or) curbed at the stages of development and review of the draft law in sectoral and other responsible committees and commissions of the RF State Duma and in the RF State Duma Legal Department.

To achieve that, all the participants of the lawmaking process must first recognise the necessity for special, purposeful and systematic efforts to minimise corruption risks of legislation. It has to be admitted that this goal is not achieved as a result of traditional efforts to make a quality draft law – within the framework of legal or juridico-technical expert examination. In the future, the anti-corruption expertise might well become part of standard legal and juridico-technical expert examination. It is essential that in time such an expert examination should become a standard practice. However, now, at the very beginning it needs special attention. Its cultivation requires that it should be perceived and mastered as a system of special efforts.

Second, all the participants of the lawmaking process should master the technique of reducing corruption risks of legislation. At present, such a technology is supplied by the methods of analysis of the

potential for breeding corruption in legislative acts.

Third, it is necessary to set up a rule according to which every participant of the lawmaking process should bear responsibility for the absence of corruption factors in a draft law at each stage of its elaboration. An appropriate procedure of confirming the results of anti-corruption work performed by the participants should be elaborated.

Such a confirmation may be demanded, under certain circumstances, from the holder of the right of legislative initiative. For example, a decision may be taken that the explanatory note to the draft law must include a statement that when a particular draft law was elaborated it was scrutinised for the corruptogenic potential of proposed provisions by way of control, and that the draft law submitted to the State Duma does not contain any corruption factors.

Such a confirmation must become mandatory for committees and commissions, the State Duma Legal Department, their specialists in charge of the quality of the draft law in their area of responsibility. Each of them passing on the draft law for further consideration must put on it a kind of a stamp: "All checked. There are no factors of corruption".

It is through such efforts that we can bring about the minimisation of the corruptogenic potential of the whole mass of federal laws. Analysis of the corruptogenic potential of elaborated and discussed draft laws, proposed rules and regulations must become a form of day-to-day self-control of lawmakers and other participants of this process. Barring that, the anti-corruption expert examination will remain an exotic technology alien to the lawmaking process.

Strictly speaking, external expert examination of draft laws, similar to that currently organised and performed by the State Duma anti-corruption Commission, must be carried out strictly on a selective basis as a means of control of the credibility of those previously put stamps testifying to the absence of corruption factors.

Taking into account these considerations, M.I. Grishankov, Chairman of the RF State Duma anti-corruption Commission,

has sent a letter to the Chairman of the RF State Duma B.V. Grizlov with the proposal to start training specialists of the State Duma in the analysis of the potential for breeding corruption in federal laws. As a first step, a proposal was made to hold a training for the State Duma specialists on how to use the methods of analysis of the corruptogenic potential of legislative acts.

"The practice of performing an anti-corruption expertise – states the letter – has confirmed the effectiveness and credibility of the application of methods of analysis of the corruptogenic potential of legislative acts elaborated earlier by the Centre for Strategic Research.

At the same time, we have reached a conclusion that a considerable part of corruption-prone provisions (flawed provisions) might well be eliminated by the makers of draft laws or in the process of work with these documents of specialists of sectoral committees and the State Duma Legal Department.

In view of this I ask you to support the proposals of the Institute for the Modernisation of State and Municipal Governance to organise a training on mastering the methods of analysis of the corruptogenic potential of legislative acts for specialists of the State Duma Legal Department and other units responsible for the quality of draft laws submitted for consideration by the State Duma"

The proposal was approved.

The first training on applying the methods of analysis of legislative acts for corruption risks for the specialists of the State Duma was conducted in July of 2006. Some specialists of the State Duma became familiar with the methods.

In the near future, the Duma Commission plans to send a Memorandum with information on the experience of its use to all the deputies of the RF State Duma. For interested deputies an information seminar will be held.

Thus, the first steps will be made to incorporate the analysis of corruptogenic potential (the anti-corruption expertise) of legislative acts in the day-to day legislative practice of the RF State Duma.

Experience of European countries in the sphere of creation and functioning of a specialised body responsible for the co-ordination of national efforts in the sphere of combating and prevention of corruption

Drago Kos

Chairman of the Commission for the Prevention of Corruption in Slovenia and Chairman of GRECO

Introduction

So much has been said about corruption recently that there can be no doubt about the enormous damage it causes, and the threat it poses to the rule of law and to the development of democracy. It does not attack the state, its institutions and the basic principles of democracy from the outside, but corrodes them from within. It is an integral part of every public administration. The knowledge about how far-reaching corruption is and how much damage it can cause the private sector, civil society and every individual is growing every day.

Although corruption does damage to individual countries, we find ourselves in a paradoxical situation – because the driving force in combating corruption is not individual countries, but the international community. The reason for this is the realisation that the best way to fight the

damage caused by corruption internationally is to fight it within individual countries. The Council of Europe, as a leading institution in this field, has devoted a lot of attention to this issue, as have others such as the European Union, the organisation for Economic Co-operation and Development (OECD), and recently the United Nations. Many countries have accepted the leading role of these international organisations with relief because, despite a growing awareness of the necessity for action in this field, many recognise the delicacy of these issues. The prevention, detection and suppression of corruption are made difficult by powerful individuals and/or groups obstructing progress in individual countries. No single country or institution is immune to corruption and any individual could find himself or herself in a situation of a conflict of totally irreconcilable

interests. It is because this is the case that it is vital to set effective standards that are accepted by the majority of, if not all, the countries of the international community.

The international community is taking on a vital co-ordinating role, which is necessary for all countries due to increasing globalisation and the (at least minimal) universality of solutions. However, adopting fundamental positions also importantly affect the formulation of the concept of corruption and its attributes, the strategies for its reduction and the measurement of its consequences. One of the measures, lately almost fixed as an international standard, is also the establishment and functioning of the national specialised anti-corruption institutions.

International standards in the area of anti-corruption institutions

Almost all international legal instruments devote some attention to the position and powers of institutions fighting corruption:

- The United Nations Convention against Corruption stipulates in Article 6:

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- Implementing the policies referred to in Article 5 of this Convention and, where appropriate, overseeing and co-ordinating the implementation of those policies,

- Increasing and disseminating knowledge about the prevention of corruption.

Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from undue influence. The necessary material resources and specialised staff, as well as training that such staff may require to carry out their functions, should be provided.

Each State Party shall inform the Secretary General of the United Nations of the name and address of the authority or authorities that may assist other State Parties in developing and implementing specific measures for the prevention of corruption."

- Furthermore, the United Nations Convention against Corruption stipulates in Article 36:

"Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies specialised in combating corruption through law enforcement. 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 be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies

should have the appropriate training and resources to carry out their tasks."

- The Council of Europe Criminal Law Convention on Corruption (ETS No. 173) stipulates in Article 20 that "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 Part, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks."
- The Council of Europe's Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption stipulates that countries have the duty:
 - 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 (Guiding Principle No.3);
 - to promote the specialisation of persons or bodies in charge of fighting

corruption and to provide them with appropriate means and training to perform their tasks (Guiding Principle No. 7).

It is very easy to summarise essential mandatory international requirements for the bodies with respect to the effective fight against corruption:

- necessary independence and autonomy,
- absence of undue pressure or influence,
- appropriate training,
- enough resources,
- specialisation.

The following features can also be extracted from the above-mentioned legal texts:

- there can be one or more anti-corruption bodies in a country;
- establishment and functioning of the anti-corruption body(ies) have to follow the fundamental principles of the legal system of the country,
- anti-corruption body(ies) can have only preventive, only repressive (investigative, law-enforcement¹) or combined preventive/repressive powers;
- preventive functions should at least include assurance of the implementation of the national anti-corruption policy(ies) and dissemination of knowledge about the prevention of corruption.

1. Including educational and awareness raising functions.

Practical problems connected with the possible decision on the establishment of specialised anti-corruption body(ies)

Rarely do countries decide to establish a new budgetary consumer in a form of a new public institution – they usually do it because they are forced so, either by the population or by their international commitments. The area of corruption is a field, where lately both push factors are very intensive and therefore more and more countries establish different anti-corruption institutions. Since fighting corruption can be a very unpleasant exercise for the main policy makers of the country they might be tempted to establish such body with a legal act, which can easily be changed or even abolished. Therefore, one of the most important pre-requisites for an effective anti-corruption body is a *proper legal document* which serves the purposes of the establish-

ment and functioning of this body. Without any doubt the best possible way to establish such a body and ensure its relatively unhindered operation is a form of a law, adopted in a (normal) legislative procedure, providing both for its independence resources and methods by which it is to be accountable to the public.

The very first decision, which has to be made in such law, is the *decision on the main character* of the anti-corruption institution and its position in the existing institutional set-up of the country. There are different forms of anti-corruption institutions, dealing with the following ways of fighting corruption: prevention, repression and education. It is understandable that prevention and education go together

hand by hand, but what about the repression? Independent repressive anti-corruption bodies are usually created when corruption is so pervasive and law enforcement agencies so corrupt or ineffective that corruption offences are either not investigated or prosecuted. It is basically very simple: if the population still trust the "ordinary" law enforcement services risks of establishing an additional one would be too unforeseeable: division of work between the existing and new institution, division of powers and cases among them, information-flow, the level of co-operation, fragmentation of the fight against corruption, ..., are simply too problematic to be tackled without any serious need.

When the decision on the character of a body is made, the decision on its position in the country's institutional set-up has to be made and its powers have to be defined and regulated. Of course, powers of the body with investigative authorities are completely different than powers of the body, which deals exclusively with prevention (and education). Investigative powers are very close to possible breaches of basic human rights, much more than the powers of pure preventive bodies. Therefore, legislators have to be very careful in defining those powers and they have to follow at least the same standards as they are used for the powers of traditional law enforcement agencies. The powers, which an anti-corruption body has and the range of its duties in respect of targeted professions already give the first hint on its formal position: if this is a body established to fight corruption in all three branches of power and it really wants to be independent, the best possible position for it is completely (of course, bound by the basic constitutional principles of the country) independent position, without interference with any branch of power. That said, it has to be clear that such institution is also completely accountable for its deeds and actions and a proper reporting mechanism to a superior state body has also to be established. In the theory accountability to the countries' legislative body, the parliament is considered to be the best form of

accountability of an independent anti-corruption body.

When the body is established and its powers are regulated the most difficult task starts: the anti-corruption institution has to be given sufficient resources to hire and educate employees, to purchase necessary premises and technical equipment and to pay at least decent salary to the employees. Independence in drafting and expenditure of its budget is again a basic pre-condition for its effective work and a clear signal on the real intentions of the country establishing such a body. The successes of countries' anti-corruption institutions depend on such trivial matter as money but – money is a proof of a real political will. The best legal arrangements on the establishment even ideally positioned anti-corruption institution will undoubtedly fail if there is not an appropriate part of the budget devoted to this institution.

Once the body starts to operate, it strictly has to follow some principles, which are unconditionally linked to its work: objectivity, professionalism, impartiality, integrity, honesty, effectiveness and efficiency. If these principles are not followed, the enemies of the institution have a very easy job in discrediting its efforts and in demanding its re-structuring, or even its abolishment.

Based on the international legal and other¹ texts and practice, it is also apparent that in order to succeed, an anti-corruption

1. OSCE: Best practices in combating corruption.

agency besides fulfilling the conditions mentioned above (*International standards in the area of anti-corruption institutions*, page 37) needs:

- to be an element within a wider national anti-corruption policy,
- government commitment and political will,
- co-ordinated action with other stakeholders,
- adequate legislation with clearly defined powers,
- transparency and accountability mechanisms,
- credibility and public trust,
- co-operation with civil society,
- a high level of ethics.

In any case, before the decision on the establishment of a new (anti-corruption) institution is made, three questions² have to be answered:

- What is the problem to be addressed and how should it be addressed?
- Is the corruption high-volume³ or high-value⁴ or politically sensitive⁵ or sophisticated?
- What are the strengths and weaknesses of existing institutions and should or could they be resolved by a new institution, a merger, interagency co-ordination or co-operation, or segmented responsibilities?

2. As formulated by Professor Alan Doig, University of Teesside, United Kingdom.

3. Such as traffic police or licence clerks.

4. Procurement contracts, for example.

5. Involving highest government officials.

European countries and specialised anti-corruption institutions

During its first evaluation round Group of States against Corruption – GRECO has been dealing with the existence and functioning of the specialised anti-corruption institutions in its Member States. It was surprising to find out that specialised anti-corruption institutions are not only missing in countries known to have low levels of corruption, but also in countries with a high incidence of corruption. At the same time, these countries are also characterised by a high degree of organisational deficits and lack of adequate equipment. This might cause to be able to conclude that all the lacks mentioned are result of the minor importance attached to fighting corruption by the entire society, further-

more that are result of the lack of the proper political will and of the lack of the national financial resources.

The second very important failure noticed by GRECO was a shortage of sufficient and fairly educated staff, which includes the lack of specialisation.

As long as specialised anti-corruption institutions are missing, there seems to be neither the need nor the chance for a specialised professional education in this area. Therefore, specialised anti-corruption training programmes are still exceptional. Having in mind that theoretical knowledge is not enough, it has to be complemented with the practical experience of investigators trained in corruption cases.

Some practical cases of specialised anti-corruption institutions in Europe

In practice several types of anti-corruption institutions were developed in Europe. For this expert opinion they are split into three different groups: repressive institutions, preventive institutions, combined institutions.

Repressive institutions

Major strengths of these institutions are the following:

- high level of specialisation and multi-disciplinary approaches
- concentration of skills and resources

- fast and efficient action against corruption
- pro-active and intelligence-led activities
- great visibility and credibility of the anti-corruption efforts
- capabilities for long-term corruption investigations.

Major difficulties encountered by these institutions are the following:

- lack of understanding of other services on the meaning of the term "corruption"
- not always clear legal basis for investigation and prosecution
- creation of barriers to investigations of complex cases involving not only corruption
- decrease of anti-corruption interest of general law-enforcement bodies
- isolation within the criminal justice system
- direct international police co-operation is sometimes not possible
- no access to confidential and protected information
- investigations blocked by different immunities
- political interference in investigations.

Typical cases of specialised repressive anti-corruption institutions are those of "Clean hands" in Italy, the "Central Office for the Repression of Corruption" in Belgium, "National Authority for the Investigation and Prosecution of Economic and Environmental Crime – Økokrim" in Norway and the "National anti-corruption Prosecutor's Office" (NAPO) in Romania.

Clean Hands, Italy

It was not a specialised unit or service, but a group of prosecutors at the public prosecutors office in Milan who started to uncover large scale and far reaching corruption cases in 1992. In three years the group has investigated 2 800 people, including 80 members of parliament. In the following 8 years 576 people were convicted for corruption and the investigation had also political implications. There were three main elements crucial for the success of the action: disappointment of the population with the state of play in the area of corruption, co-operation of key witnesses and independence of the prosecutors.

Central Office for the Repression of Corruption, Belgium

It carries out judicial investigations into great corruption. It is a service under the Directorate General of the Judicial Police.

It has a head, 20 officers, 40 principal inspectors and other personnel. Its investigations have led to number of convictions of high-profile perpetrators. It is dealing with high-profile corruption cases and assisting other police units in their efforts against corruption.

National Authority for Investigation and Prosecution of Economic and Environmental Crime – Økokrim, Norway

A specialised anti-corruption team was established within the National Authority for the Investigation and Prosecution of Economic and Environmental Crime – Økokrim, which is the service combining police officers and prosecutors. This team focuses on the investigation and prosecution of serious cases; it is also involved in prevention and public education work.

National Anti-corruption Prosecutor's Office (NAPO), Romania

NAPO was created in 2002 and deals with high- and medium-level corruption cases of complex nature and high impact. It has around 500 staff, including judicial police officers, prosecutors, specialists ... It has a central office in Bucharest and 15 regional services. In a year NAPO handles up to 2 000 corruption cases.

Preventive institutions

Major strengths of these institutions, which also include services for managing implementation of anti-corruption strategies, are the following:

- they focus on the core corruption problems: lack of integrity, transparency and accountability,
- they can undertake a wide variety of measures – from general preventive to specific monitoring,
- they can mobilise and work with a large range of institutions,
- they can concentrate on institutions and/or procedures which are exposed to particularly high risks,
- they are comparatively inexpensive,
- they can help integrate anti-corruption measures in the overall process of administrative reform and strengthening of good governance,
- they can ensure that anti-corruption strategies are actually implemented and that the progress made is monitored,
- they can ensure that the elements of law enforcement, prevention and public education are pursued in a balanced and mutually reinforcing manner.

Major difficulties encountered by these institutions are next:

- it is difficult to assess the real impact of these services,
- the concept of prevention is not always clear to institutions which should co-operate,
- their control functions are limited due to absence of investigative powers,
- due to lack of investigate powers and possibilities for sanctioning they are sometimes not taken seriously by other institutions,
- they have to send received complaints and reports on concrete corruption cases to the criminal justice system (and not handle them alone),
- they can serve as cover for the lack of investigation and prosecution,
- their performance depends on the political commitment of the countries' leadership to implement such plans and on the commitment of other institutions to co-operate,
- if they are situated close to the head of government or state (to ensure effective co-ordination), their independence might be limited.

Typical cases of specialised preventive anti-corruption institutions are those of the Central Service for the Prevention of Corruption in France, the Commission for the Prevention of Corruption in Slovenia, the Anti-corruption Monitoring Group in Albania, and the Council to Fight Corruption in Armenia.

Central Service for the Prevention of Corruption, France

It is an interministerial body attached to the Ministry of Justice with a magistrate as its director and advisers coming from different institutions (police, gendarmerie, customs, tax administration, audit chambers ...). It is a central body with no regional offices. Its main tasks are centralising and analysing all information which may point out at risks of corruption, to provide advice on the prevention of corruption, to co-operate with courts by forwarding information on corruption or providing technical assistance, and to train public and private sector institutions.

Commission for the Prevention of Corruption, Slovenia

It is an independent state body, which has to report quarterly and annually to the Parliament. Its main tasks are collection of reports on financial assets of 5 000 functionaries, ensuring the implementation of

statutory provisions on incompatibility of public functions with profit-making activity, on conflicts of interest and on limitations on acceptance of gifts, ensuring the implementation of the national anti-corruption strategy and enhancing the integrity of the public sector.

Anti-corruption Monitoring Group, Albania

It consists of a Board (representatives from a range of institutions) and a Permanent Unit based at the Office of the Minister of State to the Prime Minister, which daily follows implementation of the anti-corruption plan. Its main tasks are implementation of the national anti-corruption plan, assurance of inter-institutional co-operation and assessment of the progress made. Once a year at the national conference, it is assessed whether any progress was made is assessed as a result of which the plan is improved and updated.

The Council to Fight Corruption, Armenia

It was established by Presidential Decree in 2004 with the task to co-ordinate the implementation of the Armenian anti-corruption strategy. It is chaired by the Prime Minister and assisted by a Commission to monitor the implementation of the anti-corruption strategy.

Combined institutions

Major strengths of these institutions are:

- they can ensure not only planning but also the implementation of anti-corruption measures in all fields,
- they can ensure that enforcement, prevention and public education are implemented in a coherent manner,
- they allow for concentration of skills and resources,

- they do not depend so much on the co-operation of other institutions,
- they can be highly visible symbols of integrity and determination to fight corruption.

Major difficulties encountered by these institutions are:

- the readiness of other institutions to co-operate may be reduced due to the all-purpose approach of these institutions,
- the success and failure of anti-corruption efforts depends on one service,
- they are very clear targets for all forms of pressure and undue influence,
- expectations are very high,
- priorities among their different tasks have to be set,
- their law-enforcement functions may make it less acceptable for civil society, business community and public administration to co-operate in prevention and education measures.

Typical cases of combined anti-corruption institutions are those of the Office for the Prevention of Organised Crime and Corruption (USKOK) in Croatia, the Bureau for Preventing and Combating Corruption in Latvia and the Special Investigation Service in Lithuania.

Office for the Prevention of Organised Crime and Corruption (USKOK), Croatia

It has the status of a special public prosecution office. Its tasks include the law enforcement functions of a prosecution office (data collection, intelligence work, directing the police work ...), co-operation with other bodies on the implementation of the national anti-corruption programme, preparation of analytical reports on the forms and causes of corruption, anti-corruption training of public officials, raising public awareness ... USKOK has its headquarters in Zagreb and three sections in

the regions. The main office consists of the department on Research and Documentation, anti-corruption and Public Relations, Prosecution, Secretariat and Support Services.

Bureau for Preventing and Combating Corruption, Latvia

It has been set up as a single agency in charge of enforcement, prevention, public education and development of the national strategy against corruption. It is also in charge of monitoring compliance with the law on conflicts of interest and the declaration of assets by public officials, the rules on financing of political parties and follow up to complaints related to public procurement. The Bureau is under supervision of the Cabinet of Ministers.

Special Investigation Service, Lithuania

It is a specialised law-enforcement agency supervised by a prosecutor and accountable to the President of Republic and the Parliament. Its main functions are detection and preliminary investigation of corruption, collection and analysis of information on corruption, development and implementation of preventive measures, public education. It is made up of the following departments: Intelligence Activities, Corruption Prevention (including divisions for Corruption Prevention and Supervision, anti-corruption Education and International Education, Division of Legal Affairs, Personnel and Internal Investigations, Complaints), Information Technology, Finance, Internal Audit and field offices in five major towns in the country. The Special Investigation Service has signed several co-operation agreements with different law enforcement and intelligence bodies and control institutions in Lithuania.

Conclusion

Following the acceptance of the United Nations Convention against Corruption, countries will have to establish or maintain some kind of preventive institution(s) for the implementation of national anti-corruption strategies. This element can also be used by attaching to such institution(s) other tasks, such as general prevention, public education, awareness-raising and – respecting obstacles mentioned above – even law enforcement. With the establishment of new anti-corruption in-

stitutions several complex questions have to be answered, too:

- what is with the "old" institutions which were also dealing with suppression of corruption?
- how to establish fair and useful relations with other institutions in the anti-corruption and related areas?
- how to find qualitative and determined leadership and staff for the institution(s)?

- how to ensure enough resources for proper functioning of the institution(s)?

Existence and functioning of specialised anti-corruption institution(s) in the country is the most visible and easily accessible sign on their real readiness to fight corruption and of the existence of a real political will to suppress this phenomenon. However, if anti-corruption institutions do not get the resources needed, it is obvious that their establishment is just another failure in the anti-corruption develop-

ments throughout the world and a tool for the politicians in the country for their short-term survival in the expanding anti-corruption demands of modern societies.

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The issue of creating in Russia a specialised body/bodies responsible for the co-ordination of national efforts in the sphere of combating and prevention of corruption

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Summary

Up to this moment (December 2006) there is no unified body in Russia, co-ordinating activity on preventing and combating corruption. Moreover, up to this day there is no national strategy on combating corruption in Russia and therefore, the goals and objectives for the specialised anti-corruption body are not formulated. There are two main areas of activity in combating corruption: punitive (General Prosecutor's Office) and preventive (State Duma Committee on combating corruption and Ministry of Economic Development of RF). Establishing a specialised anti-corruption body in Russia totally depends on the polit-

ical will of the top government officials. As the issue of fighting corruption in Russia has intense political nature, proceeding with the option of immediate establishing a unified independent anti-corruption body seems highly unlikely. In this situation it is more feasible to set up a co-ordinating body, which will incorporate strategic planning of activity within existing trends as well as will make preparations for the actual creation of a specialised anti-corruption body and national anti-corruption strategy laying the foundation for the operation of the specialised body. Thus the main tasks for this temporary co-ordinat-

ing body will be as follows: developing a national anti-corruption strategy, conducting surveys on assessment the level of corruption in Russia, preparing legislative initiatives on bringing internal legislation in line with the requirements of the United Nations Convention against Corruption and Council of Europe's Criminal Law Convention on Corruption and with other legislative initiatives aimed at anti-corruption regulation of the activity of public authorities and institutions as well as carrying out current anti-corruption monitoring.

Introduction

The need to set up a specialised anti-corruption body in Russia is not only due, but long overdue. And it is not so much because setting up such a body is a requirement imposed by international anti-corruption documents ratified by Russia – the United Nations Convention against Corruption and the Council of Europe's Criminal Law Convention on Corruption – and therefore, sooner or later it will be established. The main problem is that the task of active and meaningful fight against corruption proclaimed by top national political

figures could not be fulfilled if the situation remains as it is.

At this point practically all more or less significant entities of public administration in Russia have publicly recognised their intention to take an active part in combating corruption. State Duma of the RF, Government of the RF, General Prosecutor's Office of the RF, the Supreme Arbitration Court of the RF, Ministry of Economic Development of the RF, Ministry of Finance of the RF, etc., put forward their anti-corruption initiatives.

All these initiatives raise in one way or the other an issue of instrumental fight against corruption, but are absolutely unco-ordinated and chaotic. It is hard to imagine how, for example, an initiative of the Supreme Arbitration Court on mandatory declaration of gifts to judges could be implemented without formalising a similar requirement in regard to other categories of public officials in Russia. The root of this problem, however, is that a national anti-corruption strategy is still not developed in Russia, the priorities are not set, the plan of legislative and practical anti-corruption

measures is not worked out, the people accountable for specific areas of activity are not appointed; so in this situation any systematic, effective and long-term fight against corruption on the national level is out of the question. It is interesting that in accordance with the requirements of Administrative Reform Concept for 2006-2008 approved by a Decree of the RF Government dated 25 October 2005, the Russian regions and federal authorities are currently developing and adopting regional and departmental strategies on combating corruption. The nature of this process is no doubt creative, but far from being in any way systematic. By the beginning of 2007 the country may face a paradoxical situation when a strategy and plan for combating corruption would exist in some regions and agencies, but not on the national level. For this reason it is highly important to establish a national specialised body for combating corruption as soon as possible.

If we go back to the requirements of international anti-corruption legislation, the following points are noteworthy:

- Article 6 of the United Nations Convention against Corruption:
"Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
 - implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and co-ordinating the implementation of those policies;
 - increasing and disseminating knowledge about the prevention of corruption.

Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources

and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.

Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption."

- Article 36 of the United Nations Convention against Corruption:
"Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. 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 be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks."
- Article 20 of Council of Europe's Criminal Law Convention on Corruption:
"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. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks."
- Resolution (97) 24 of the Council of Europe on the twenty guiding principles for the fight against corruption:
 - 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 (Guiding Principle #3);

- to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks (Guiding Principle #7).

Thus there are some international legal framework requirements for what a specialised anti-corruption body should look like and what it should accomplish. At the same time the principle of "independence" is stressed in the documents over and over again. Also importantly enough, the necessity to combine prosecution for corruption offences with a preventive function is repeatedly pointed out.

The challenge for Russia now is to choose, adjusting these framework requirements to the actual institutional and political situation in the country, the most adequate and effective option for a specialised anti-corruption body, where on the one hand, its activity would harmoniously fit into the existing legal and institutional system and on the other – would be maximally independent from political disposition and would not turn out to be a fake.

In order to evaluate how realistic that is, it is necessary to answer the following questions:

- What is corruption in Russia?
- Which counteraction strategy comes out of a specific corruption situation in the country?
- What should be the structure and principles of setting up a prospective specialised anti-corruption body in Russia based on the key tasks of a national anti-corruption strategy; how do these principles correspond to the current situation with co-ordinating anti-corruption efforts in Russia?

Situation with corruption in Russia as of 2006

During the last year many surveys on the subject of corruption were conducted in Russia. Below are the findings of the main surveys on how the Russian citizens perceive corruption as well as on the peculiarities of corruption in the Russian business environment.

Public Opinion Foundation (November 2006)

Corruption will never be rooted out of our country – so are assured 67% of Russians taking part in the last survey of Public Opinion Foundation. 79% of them believe that even raising salaries to the officials

would not help. Almost every third of our compatriots (28%) came across extortion on the part of the public servants in the last few years; practically the same amount of respondents gave them bribes.

In answer to the question, where the need "to give" arises most frequently, police and the customs are absolute leaders

(52%). 45% of Russians mentioned road police, 33% medical institutions, 26% Prosecutor's Office and courts, 21% military registration and enlistment office, 18% education, the same number – local authorities; 12% are sure that the major bribe-takers are federal level officials. It is noteworthy that 70% of Russians condemn bribe-takers, but at the same time most of them would willingly accept bribes, should the opportunity arise. Those condemning "the giver" are in the minority – 38%. Here also a remarkable phenomenon is found: based on their own experience the citizens say that most often they bribed the doctors (8% out of 27% of those giving bribes), but not policemen (6%). But in a more abstract sense – when the question is asked about the situation in general, not about the personal experience, police firmly holds both the first and the second place – law enforcement bodies as a whole (52%) and road police in particular (45%), leaving the third place to the medical profession (33%). Obviously, in everyday life people deal with policemen less frequently than with doctors. Nevertheless, they strongly believe that, if necessary, they will be able to pay themselves off a situation with police at any time.

The perspectives of combating corruption are vague: only 4% think that corruption decreased in recent years (57% are sure of the opposite); the majority of people (67%) think that corruption in Russia is impossible to overcome, they have no faith in the traditional cure – increasing salary for the officials (79%). Approximately half of respondents believe that the country's leaders are unable to solve the problem of corruption; another third consider them able, but not willing to do so.

VTSIOM (November 2006)

As the survey results indicated, only 1% of citizens live in blissful ignorance regarding such a widespread phenomenon as corruption; the same amount believe that corruption in the country is non-existent. The survey revealed that 78% of respondents defined the level of corruption as "high" and "very high". The paradox is that the citizens view some "global" national corruption that way, whereas the corruption situation in their own region or city seems to them much more favourable. The share of those considering the level of corruption

in their region "high" or "very high" is only 57% and the number of people assured that either there is no "local" corruption or it is insignificant amounts to 10%.

Another conclusion that can be drawn from the survey results is – the bigger the respondents' locality is, the more corruption they perceive both in the country as a whole and their region in particular. For example, 58% of the population of Moscow and St Petersburg consider the level of corruption generally in the society as "very high", whereas only 40%-46% people from other cities and 32% respondents from rural areas hold the same view.

Within the last 2 years the share of those who admitted that they often gave money or presents to people for solving their problem reduced from 23% to 17% (a similar survey was held by VTSIOM in October 2004); at the same time the share of those who did it on rare occasions grew from 33 to 37%. The number of those who never gave bribes increased by 2%, from 41% to 43%. As the survey showed, the poorer people had to give bribes more often – 17% compared to 15% of people in good economic circumstances. However, the share of those who never gave bribes is also higher among low-paid population: 52%, compared to 37% of those having no financial difficulties.

43% of respondents believe that the main cause of corruption is greed and immorality of Russian officials and businessmen; 35% inefficiency of the state and law imperfection; 18% low level of legal culture and a small number of law-abiding citizens among the population. Two years ago during a similar survey the people put law imperfection as number one cause: 40%, whereas they seemed less concerned about the morality of public officials and businessmen in 37% of cases.

Despite the fact that fewer respondents doubt effectiveness of the Russian legislature, many of them still see the improvement of legal base as a solution to the corruption problem – 38% (six months ago in a similar survey it was 30%). At the same time the number of those in favour of radical ways of fighting bribes decreased: 16% of respondents demand the introduction of the death penalty for corrupt officials (in May 2006 it was 28%); property confiscation for bribe-takers and their family members, 36% (earlier 39%); reducing the public service staff, 26% (earlier 38%). 11% of respondents supported legal-

ising the least damaging types of corruption, such as tips, gifts to doctors and teachers (in May 2006 it was 8%).

TI Global Corruption Barometer (November 2006)

See Tables 1 to 7 on this and the following pages.

Table 1: To what extent does corruption in Russia affect your and your family's life?

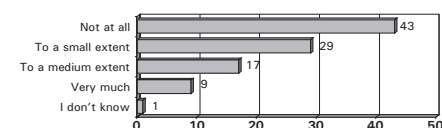


Table 2: Does corruption influence business climate in Russia?

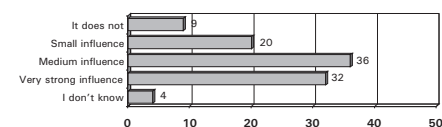


Table 3: Does corruption influence political life in Russia?

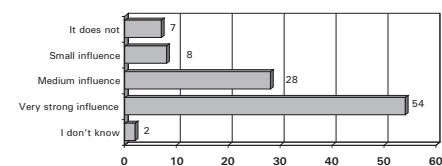


Table 4: In your opinion, how effective are the anti-corruption efforts of the authorities in Russia?



The proportion of Russian citizens and their family members who have given bribes in the last year is respectively 8% and 9%.

The Russians view the corruption level in personal and family life as very low (1.9 out of 4 points, where 1 equals zero level of corruption). However, if the Russians were asked not about the personal bribes, but about corruption in the areas they have to deal with, the situation became clearer. They come across bigger corruption, when they deal with police (4 points out of 5 with the average at 3.5). The Russians are also very much aware of corruption in legislative authorities, legal system and business (all at 3.9).

Table 5: To what extent, in your view, are the following areas of life in Russia affected by corruption?

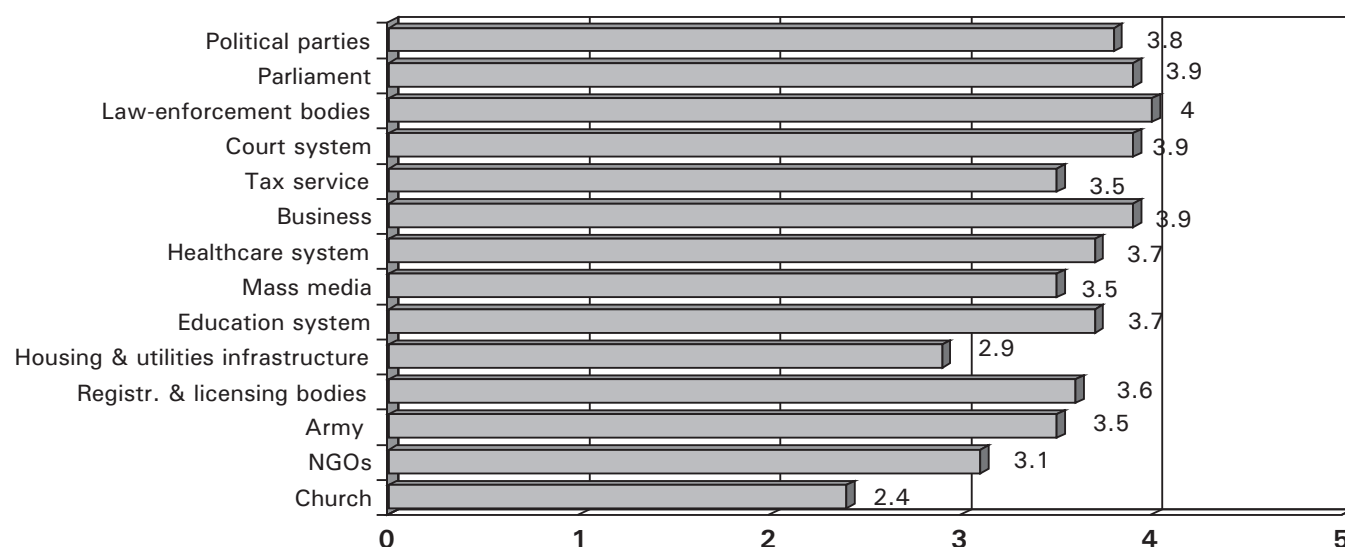


Table 6: Within the last 12 months did you or your family member have to give a bribe to a representative of the entities listed below?

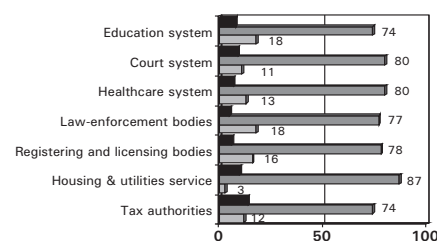
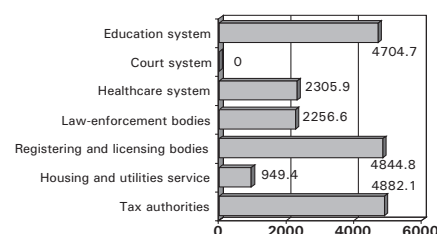


Table 7: How much was the last bribe that you or your family member gave to a representative of the entities listed below?



World Bank Survey¹

Analysis of EOS survey results conducted annually by World Economic Forum to contribute to the report "Global competitiveness" provides additional general indicators on the tendencies of development for the public administration system and combating corruption in Russia.² Under EOS survey expert evaluations by over 10 000 business leaders and entrepreneurs from 117 leading countries and countries with developing economy are put together. In 2005 over 450 enterprises in Russia took part in EOS survey. It revealed extremely low ratings in some key parameters of public administration and business envi-

ronment. Table 8 summarises the results of the survey held in 2004 and 2005 by sub-index "public institutions".

The results of EOS surveys show that among the areas of greater concern for business are *independence of court system and protection of ownership*. Due to the poor legal provision for ownership protection and instability of court system operation their ratings keep going down (independence of court system – down by 18 points; protection of ownership – down by 20 points). A high level of organised crime and corruption put an additional burden on the enterprises (101 and 106 places among 117 countries).

1. Administrative reform and reform of public regulation in Russia. Removing potential sources for corruption. Analytical note. 1 October 2006. Department for economy management and poverty reduction Europe and Central Asia. Report #: 36157-RU.

2. <http://www.weforum.org/site/homepublic.nsf/Content/Global+Competitiveness+Programme>.

Table 8: Index of macroeconomic competitiveness, World Economic Forum (2004-2005)*

Sub-index: public institutions, contracts, legislation	Rating in 2004 (among 104 countries)	Rating in 2005 (among 117 countries)
Independence of court system	84	102
Effectiveness of legal regulations	80	95
Protecting ownership	88	108
Protecting right for intellectual property	84	105
Favouritism of public officials	85	106
Effectiveness of rule-making activity	63	80
Level of bureaucracy	89	90
Reliability of enforcement system	90	99
Pressure on business by organised crime	88	101
Quality of auditing institutions and accounting standards	81	89

Source: World Economic Forum

Table 8: Index of macroeconomic competitiveness, World Economic Forum (2004-2005)*

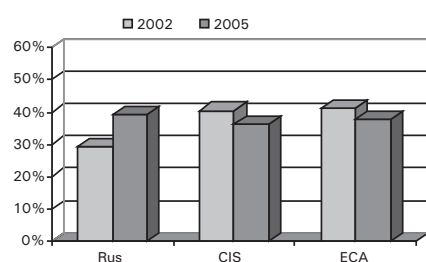
Sub-index: public institutions, contracts, legislation	Rating in 2004 (among 104 countries)	Rating in 2005 (among 117 countries)
Role of taxes as incentives to work and to invest	73	81
Freedom of media	84	96

Source: World Economic Forum

* <http://www.weforum.org/site/homepublic.nsf/Content/Global+Competitiveness+Programme%5CGlobal+Competitiveness+Report>

Corruption as a problem for business operation (BEEPS data)

See Table 9.

Table 9: Share of businesses reporting that corruption creates problems for their operation

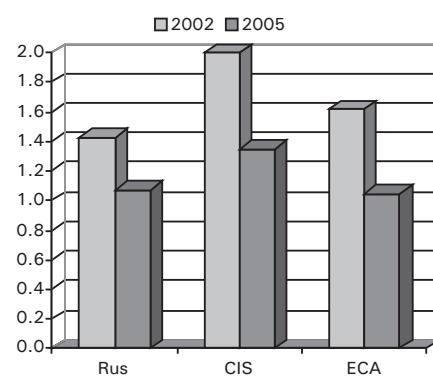
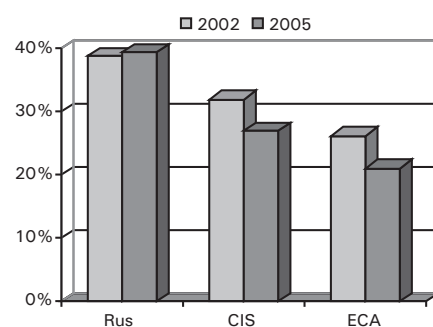
According to the preliminary BEEPS results, during 2002-2005 corruption was becoming more of a barrier for doing business.

It is noteworthy that despite the fact that according to subjective assessment the influence of corruption upon business increased and BEEPS results by this indicator were negative, the situation improved judging by another key indicator – “corruption tax”. According to the information provided by the enterprises, the amount of bribes as share in the total annual sales decreased. As for the frequency of bribe-taking (the third key indicator), there have not been any significant rating changes within 2002 to 2005.

Bribing

See Table 10 and Table 11.

The scale and the impact that corruption produces can also be measured by the amount of informal payments in specific areas or by comparing with other potential problems for business operation as shown below. Although some aspects that were considered “problems for business operation in 2002” now seem to stir less concern (e.g. macroeconomic instability), a negative tendency in the area of corruption remains.

Table 10: Corruption tax. Share of bribes in the annual receipts**Table 11: Frequency of bribe-taking. Share of businesses reporting about high frequency of informal payments**

Problems for business operation in Russia: time dynamics

See Table 12.

Informal payments in different areas in time dynamics

See Table 13.

Table 13 graphically describes a situation with informal payments in different areas – in time dynamics and compared to other countries of the region. From these charts it is obvious that in 4 areas the amount of informal payments have significantly increased – both in time dynamics and compared to other countries.

One of the key problems identified as a result of BEEPS survey is an increase in bribing for receiving public contracts.¹

According to the results of an OECD survey conducted in 2004, over 40% of en-

terprises consider the information about bidding rules and requirements insufficient and untimely and named lack of transparency in this area as a “serious” or “very serious” problem. OECD report also revealed that “access to relevant information is even more difficult in the regions as a larger number (60%) of respondents from the regions expressed their discontent with the current situation in this area”. Finally, according to the report, “over half of the enterprises taking part in the survey (57%) complained about lack of transparency in bidding procedures, especially among transport companies (almost 75% of them consider this problem serious or very serious)”. This data is confirmed by BEEPS survey results, which show an increase in the number of informal payments for receiving public contracts.

Informal payments for receiving public contracts

See Table 14.

Survey National transparency rating of procurement²

By the end of 2006 the total market loss from procurement at overstated prices will reach about 650 billion roubles. At the same time the public agents’ losses will reach about 300 billion roubles – more than 45% from the total amount. The weight-average price deviation, characterising discrepancy between market and actual procurement prices is on the average 16.1%.

Conclusion

Corruption in Russia has systematic character. All institutions of public administration are affected by it, including law-enforcement agencies and court system.

1. Change in the amount of informal payments for receiving public contracts is statistically correct.

2. Transparency Rating, 2006. National rating of transparency in procurement. Moscow, November 2006, p. 66

Table 12: Share of enterprises agreeing that the following aspects are a problem for their business operation

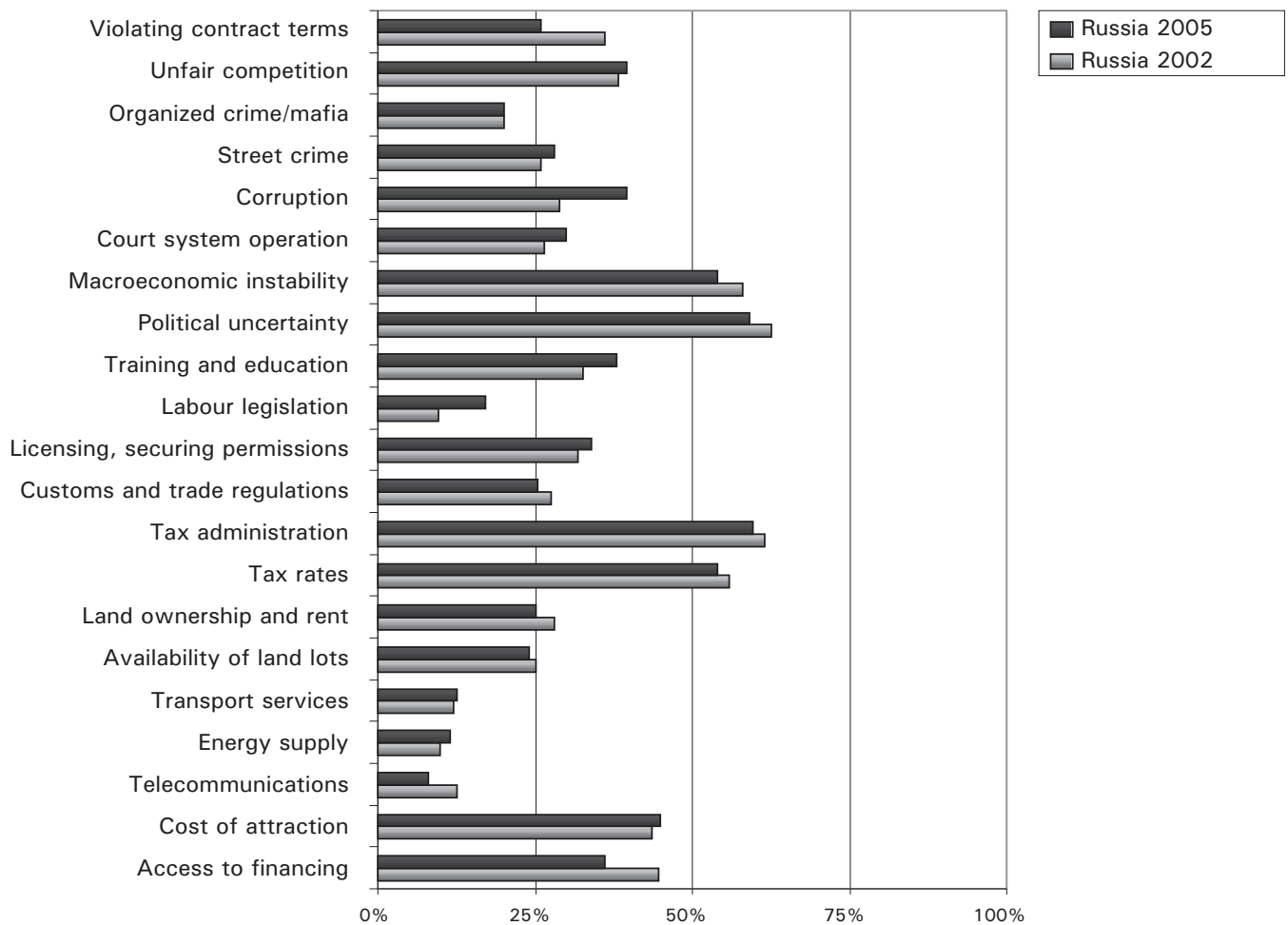
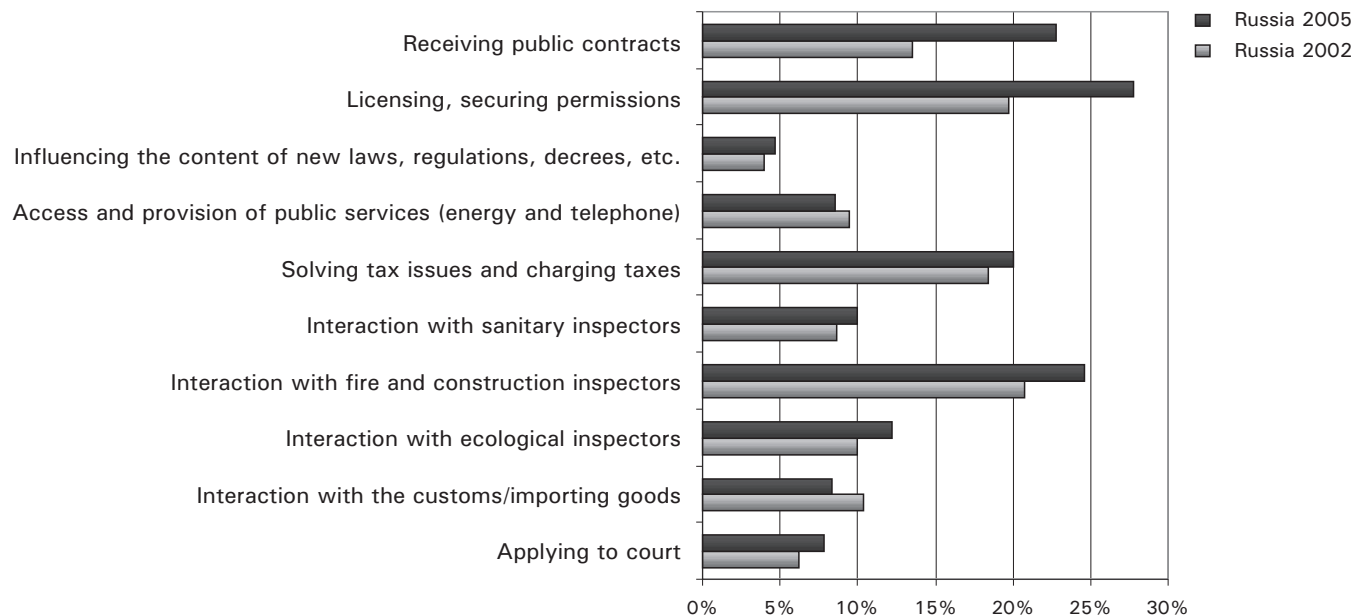
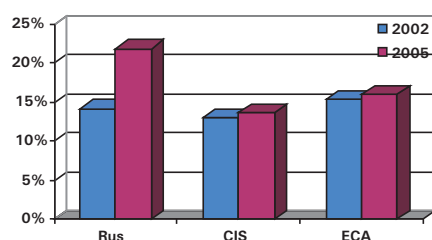


Table 13: Share of businesses reporting about high frequency of bribing



Source: BEEPS-2005

Table 14: Share of companies reporting about high frequency of bribes for receiving public contracts



Source: BEEPS-2005

A short list of statements upon which a national anti-corruption strategy in Russia should be based

Based on the analysis of the general corruption situation in Russia, one can formulate some general statements, which could lay a foundation for a national anti-corruption strategy and for a systematic approach to combating corruption and therefore – significantly increase effectiveness of anti-corruption activity in the country. All these statements can be divided into 3 groups: prosecution for corruption offences, prevention of corruption offences and anti-corruption education. Such a division not only covers all areas and spheres of combating corruption, but is also completely in line with international practice of building national anti-corruption strategies.

Establishing an effective system of prosecution for corruption offences

- It is necessary to set up a body co-ordinating the activities of different agencies in the area of investigating corruption offences and prosecution for corruption.
- It is necessary to bring the Russian legislation in compliance with the requirements of the United Nations Convention against Corruption and the Council of Europe's Criminal Law Convention on Corruption, especially in regard to defining the elements of corruption offences and initiating sanctions for each one.
- It is necessary to take measures in order to implement the proposals contained in G8 Statement "Fighting High Level Corruption" in the RF legal system.
- It is necessary to proceed with top priority anti-corruption activities in law-

enforcement agencies and the court system.

- It is necessary to establish an effective supervising system over the departments both in public service and in law-enforcement agencies dealing with prosecution for corruption offences.
- It is necessary to expand the opportunities for civil society's involvement in combating corruption by creating a monitoring system of media information on corruption as well as making a "hot line" available for citizens to report about corruption instances.

Establishing an effective system of preventing corruption

- It is necessary to set up a body co-ordinating the activities on preventing corruption. The main tasks of this body will be provision and co-ordination in the area of implementing measures for corruption prevention, developing an anti-corruption policy, conducting monitoring and evaluation of corruption level and effectiveness of anti-corruption measures as well as control over carrying through the anti-corruption activities.
- It is necessary to ensure that civil society institutes are actively involved in corruption prevention activities.
- It is necessary to conduct an analysis of all legal regulations for corruption risk assessment.
- It is necessary for executive authorities to ensure full access of citizens to the information on the activity of executive authorities in Russia.

- It is necessary to strictly follow the requirements of Federal law # 94-ФЗ dated 21 July "On placing orders for the procurement of goods, carrying out jobs and providing services for state and municipal needs".
- It is necessary to identify potentially corruptive areas in the activity of executive authorities, to put in place a system of control over the public servants in these areas and to develop and introduce the methodology for evaluating corruption risk of positions in public service.
- It is necessary to introduce mechanisms for the institutions operating in potentially corruptive areas of activity in order to let them conduct on-going internal anti-corruption diagnostics of their own.
- It is necessary to strictly follow the requirements of the Federal law # 79-ФЗ dated 27 July 2004 "On public civil service of the Russian Federation".
- It is necessary to set up and introduce a system of control over submitting declarations of income and property by public and municipal servants, judges and representatives of legislative authority as well as on their economic and financial incentives and conflict of interests.
- It is necessary to establish a system of on-going evaluation of corruption level in the country aimed at measuring and study the following:
 - commonly recognised corruptive practice;
 - mechanisms of corruptive deals;
 - level of corruption;
 - structure of corruption;
 - factors promoting corruption;

- effectiveness of anti-corruption activities.

Establishing a system of anti-corruption education

- It is necessary to make the civil society institutes take a more active part in anti-corruption education, enlightenment and propaganda.
- It is necessary to inform the society about level of corruption in the country

and about combating corruption in executive authorities.

- It is necessary to organise activities aimed at forming intolerance of corruption instances and explaining to the citizens, public servants, judges, representatives of legislative authority and businessmen the main points of international and federal legislation on combating corruption.
- It is necessary to set up a system of ethical education for public and municipal servants, judges and representatives of legislative authority.

Structure and principles of forming a specialised anti-corruption body in Russia

Principles

As seen from the main points of the national anti-corruption strategy, a specialised anti-corruption body will be given a set of tasks, which, according to the existing institutional and legal system in Russia, are currently under authority of different public institutions of the federal level. The situation is aggravated by the fact that at this point there is no unified body responsible for organisation and control over the public service (the functions of organisation and control over the public service are also given to different departments).

In order to succeed in implementing all aspects of the anti-corruption reform in Russia, the activity of the specialised anti-corruption body should be from its very outset based on the following key principles:

- Legitimacy. Establishment of a national specialised anti-corruption body should be legalised by a special legal act, specifying its objectives, functions, structure, accountability, principles of forming and financing. This legal act can be a Federal law of RF or a Decree of the President of the RF.
- Independence. It is crucial that specialised body should be independent from the executive authorities of the RF. Considering the specific character of political and government system in Russia it should be accountable only to the Federal Assembly of the RF or the President of the RF.
- One-man management. Considering the peculiarities of political and management practice in Russia it is necessary that firstly – managing the

specialised anti-corruption body should not be combined with holding a management post in any other public institution (law-enforcement agency), and secondly – the specialised anti-corruption body should be headed by a sole manager. His (her) appointment should be affirmed by the Federal Assembly of the RF (one or both Chambers) following representation by the President of the RF.

- Collegiality. Strategic planning of the specialised anti-corruption body's activity and organisation of its daily operation should be co-ordinated by a collegial entity (council, board) consisting of highly qualified representatives of public authority, law-enforcement agencies, court system and civil society organisations. The principles of forming such a collegial entity should be clearly defined by a legal regulation on establishing a specialised anti-corruption body.
- Representation. A specialised anti-corruption body should employ (both for management purposes and everyday activity) on a full time basis the most highly qualified personnel from the federal ministries, departments, regional authorities, specialised civil society organisations and expert institutions having experience in combating corruption. The legal regulation on establishment of the specialised anti-corruption body should define its staffing principle so that it would include representatives of the President's Administration, RF Government, the State Duma of the RF, The Federation Council of the RF, the Supreme, Consti-

Conclusion

Russia is tasked with developing a systematic national anti-corruption strategy and while implementing it, a maximum number of interested stakeholders should be involved in the activity of a specialised anti-corruption body. They should possess experience in prosecution for corruption offences, preventing corruption and anti-corruption education.

tutional and Supreme Arbitration Courts of the RF, General Prosecutor's Office of the RF, RF Ministry for the Interior, RF Ministry of Justice, RF Ministry of Economic Development, RF Ministry of Finance, Central Bank of the RF, the Federal Service for Financial Monitoring, Accounts Chamber of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes.

- co-ordination. The legal regulation on establishing a specialised anti-corruption body should make provisions for mandatory co-ordination of activity of public authorities, RF courts and law-enforcement bodies with the specialised anti-corruption body.
- Transparency. The activity of the specialised anti-corruption body should be maximally transparent. The legal regulation on establishing such a body should make provisions for accountability of this body to the public. It could take a form of mandatory annual detailed reports as well as monthly or quarterly progress reports.
- Independent financing. In order to avoid pressure on the specialised body from any of the authorities, it is necessary to stipulate a form of its financing, which would be maximally independent – e.g., a separate fixed budget line.
- Utilising international experience. While forming the specialised anti-corruption body it is necessary to thoroughly study, analyse and, where possible and relevant, apply international experience in establishing and running such specialised bodies, especially in regard to ensuring independ-

ence, determining the number of employees, operational functions, etc.

All the above-mentioned principles are in some way universal. However, in Russia one more radical principle may need to be considered while establishing the specialised anti-corruption body: phasing.

The following factors make this principle necessary:

- Firstly, the main forces of institutional anti-corruption activity are currently scattered and consequently, the key issue now is not so much establishing a specialised body, but rather bringing together all the different and often contradictory views on what this body should be like: whether it should be a separate independent institution (as, e.g., Accounts Chamber of the RF); whether it should be built into the system of representative agencies of State power (e.g., the State Duma or the Federation Council), or, on the opposite, into the existing system of law-enforcement agencies (e.g., General Prosecutor's Office, Ministry for the Interior, etc.); or whether it should operate within the President's Administration.
- Secondly, there is still no common understanding in Russia what the specialised anti-corruption body should do. The views on this subject range from: "only prosecution for corruption offences" to "only anti-corruption education for the society". Considering that all three sets of tasks (prosecution, prevention and education) must be comprehensively addressed to combat corruption in Russia effectively, it is necessary to work on coming to some agreements, involving all the stakeholders.
- Thirdly, one cannot neglect the peculiarities of a specific political period in Russia. In 2007-2008 the country will face Parliament and Presidential elections. Obviously, a hasty and unco-ordinated approach to setting up a new body is out of the question, as its activity (combating corruption in such a country as Russia is by all means a politically sensitive issue) could significantly influence the outcome of both election campaigns. One should bear in mind that the tasks of election campaigns and the tasks of a systematic long-term fight against corruption are totally different by definition. The strategic task of establishing an effective anti-corruption system in Russia should not be in any

way sacrificed for the sake of momentary political interests.

Thus provisions should be made for setting up the specialised anti-corruption body in two stages:

- Establishing a temporary co-ordination body, consisting of all the interested stakeholders (representatives of the President's Administration, RF Government, the State Duma of the RF, The Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, General Prosecutor's Office of the RF, RF Ministry for the Interior, RF Ministry of Justice, RF Ministry of Economic Development, RF Ministry of Finance, Central Bank of the RF, the Federal Service for Financial Monitoring, Accounts Chamber of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes);
- Establishing the actual permanent specialised anti-corruption body.

The main tasks the co-ordinating anti-corruption body should perform:

- preparation for establishing the specialised anti-corruption body, and
 - development of a national anti-corruption strategy.
- Besides, among the tasks of the co-ordinating anti-corruption body would be:
- collecting and systematising the existing data about the level of corruption in Russia;
 - conducting an additional profound survey on corruption in public authorities of Russia (federal ministries and departments, regional and municipal authorities);
 - collecting proposals from the federal authorities on ways and methods of combating corruption and positive experience in implementing departmental and regional anti-corruption programmes;
 - preparing legislative initiatives to bring the internal legislation in compliance with the requirements of the United Nations Convention against Corruption and Council of Europe's Criminal Law Convention on Corruption as well as with other legislative initiatives aimed at anti-corruption regulation of the activity of public bodies and institutions;
 - conducting current anti-corruption monitoring.

Undoubtedly, just as with the actual specialised anti-corruption body, it is nec-

essary to rely on the following key principles while forming a co-ordinating body:

- Legitimacy. It is necessary to adopt a relevant legal act, e.g. Decree of the President of the RF.
- Representation. Representatives of all the stakeholders should by all means participate in the activity of the co-ordinating body.
- Publicity. The activity of the co-ordinating body should be maximally transparent for the society. Provisions should be made for community consultations regarding fulfillment of its two key tasks.

Conclusion

Establishing the specialised anti-corruption body in Russia should begin from establishing a temporary co-ordinating body, which will make preparation for establishing the actual specialised anti-corruption body, will develop a national anti-corruption strategy and – in the short-term perspective – will solve some burning anti-corruption issues.

Structure

Despite the fact that the actual development of structure for the specialised anti-corruption body should become a subject for the joint discussion within the temporary co-ordinating body, even now we could, based on the range of tasks it would be expected to perform, consider the option for its structure, which would best comply with the goals of the national anti-corruption strategy.

The structure of the specialised anti-corruption body should reflect both the key principles of its activity (one-man management, collegiality, transparency, etc.) and the three main areas of the national anti-corruption strategy (prosecution, prevention and education). Besides the structure of the specialised body should be in line with the federal system of the Russian Federation and make necessary provisions for co-ordination with various entities within the Russian public administration.

The structure of the specialised anti-corruption body should include 4 Directorates:

- Prosecution Directorate
 - Prevention Directorate
 - Education Directorate
 - Administration Directorate.
- Prosecution Directorate includes:
- investigation departments (there could be several of them considering the size

- of the country; the exact number can depend on different factors, e.g., based on seven federal districts in the Russian Federation),
- co-ordination department (its task is to co-ordinate efforts with law-enforcement agencies),
 - international co-operation department (its task is to co-ordinate efforts with foreign countries on the issue and recovery of assets, as well as on other aspects), and
 - "hot line" department (it is in some way a department working with the citizens' appeals, but with a wider range of functions – it analyses the collected data and, if necessary, passes it to investigation or any other departments; among its functions are also monitoring of media publications, the actual opening of "hot lines" in Russian regions, etc.)
- Prevention Directorate includes:
- legal department (responsible for preparing legal initiatives on the whole range of anti-corruption issues; it also provides legal expertise, if necessary),
 - public service department (exercises control over observing the legislation in the area of public service; collects and analyses the information provided by the public officials about their income, property owned, etc.),
 - conflict of interest department (collects information about the instances of conflict of interest; offers relevant consultations to the public officials, etc.),

- public procurement department (ensures that the transparency principles in public and municipal procurement are observed; offers relevant consultations to the public and municipal authorities, etc.),
- corruptive risk evaluation department (conducts monitoring in the areas of public administration, which are the most vulnerable to corruption; analyses legal regulations for corruptive risks, etc.),
- monitoring and research department (conducts national, regional and departmental corruption surveys; monitors public opinion on the permanent basis, etc.)

Anti-corruption Education Directorate includes:

- public programmes department (develops and introduces educational programmes targeted at different sectors of the society; prepares training programmes for schools, organises special campaigns, prepares media programmes, etc.),
- sectoral programmes department (prepares special programmes on ethics of the public service, court ethics, ethics of law-enforcement service, business ethics; offers special training to the public authorities of the federal, regional and local levels, etc.),
- communications department (responsible for communications with civil

society institutions, business society, mass media, etc.)

Administration Directorate includes:

- HR department (responsible for selecting and training personnel for the specialised body),
- information department (informs the society about what the specialised body does through mass media, its own website; also acts as press service),
- financial department,
- planning department (carries out daily planning of the specialised body's activity based on the information provided by all the other directorates and departments; prepares its regular progress reports),
- security and audit department (responsible for internal security of the specialised body and for internal audit of its activity),
- IT department (responsible for all the information and communication systems within the specialised body).

The proposed structure is only a draft and can vary depending on the specific tasks and functions the specialised anti-corruption body will be expected to perform. The elements of this draft structure are based upon functions and tasks, which seem the most relevant for Russia at this stage. On the other hand, this draft structure has proved effective in the countries where the specialised anti-corruption bodies already exist and function actively.

Table 15: Draft structure of the specialised anti-corruption body

Head of the specialised body			
Collegial entity (council, board) including representatives of all the interested stakeholders (15-20 members)			
Prosecution Directorate	Prevention Directorate	Education Directorate	Administration Directorate
Investigation department 1	Legal department	Department of public programmes	HR department
Investigation department 2	Public service department	Communications department	Information department
Investigation department 3	Conflict of interest department	Sectoral programmes department	Financial department
Investigation department 4	Public procurement department		Planning department
International co-operation department	Corruptive risk evaluation department		Security and audit department
co-ordination department	Monitoring and research department		IT department
"Hot line"			

General conclusions

Corruption in Russia has systematic character: daily life of citizens and business, public administration, political and court systems are all affected by it.

The level of corruption in Russia is extremely high; the losses from corruption are as much as billions of roubles.

All sectors of public administration are affected by corruption. It is necessary to pay a special attention to a high level of corruption in law-enforcement agencies and social welfare system.

Russian citizens evaluate the effectiveness of the state anti-corruption efforts as very low, also being pessimistic about the prospects of such an activity.

There is no unified anti-corruption strategy in Russia, but there is a great need for one.

In Russia there is no unified co-ordination centre of anti-corruption activity.

Establishing a specialised anti-corruption body is urgently needed in Russia.

In the existing situation, when the anti-corruption activity in its present form is widely scattered throughout different ministries, departments and other public bodies; when neither the society, nor the public authorities have a clear picture of the format, principles of forming and objectives of the specialised anti-corruption body, it is necessary at this stage to set up a co-ordinating anti-corruption body, which could solve the following short-term tasks:

- systematising the existing data about the level of corruption in Russia;
 - conducting an additional profound survey on corruption in public authorities of Russia (federal ministries and departments, regional and municipal authorities);
 - collecting proposals from the federal authorities on ways and methods of combating corruption and positive experience in implementing departmental and regional anti-corruption programmes;
 - preparing legislative initiatives to bring the internal legislation in compliance with the requirements of the United Nations Convention against Corruption and the Council of Europe's Criminal Law Convention on Corruption as well as with other legislative initiatives aimed at anti-corruption regulation of the activity of public bodies and institutions;
 - conducting current anti-corruption monitoring;
 - developing proposals on the format, functions and membership of the specialised anti-corruption body;
 - developing proposals on the national anti-corruption strategy;
 - conducting departmental and public expert discussions of the relevant proposals;
 - preparing a legal act, regulating the activity of the specialised anti-corruption body in Russia;
 - preparing a legal act defining a national anti-corruption strategy.
- A temporary co-ordination body should include representatives of the President's Administration, RF Government, the State Duma of the RF, The Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, General Prosecutor's Office of the RF, RF Ministry for the Interior, RF Ministry of Justice, RF Ministry of Economic Development, RF Ministry of Finance, Central Bank of the RF, the Federal Service for Financial Monitoring, Accounts Chamber of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes.
- While establishing a permanent specialised anti-corruption body in Russia, the following principles should be laid in its foundation: legitimacy, independence, one-man management, collegiality, representation, transparency, co-ordination, independent financing and using international experience.
- The structure of the independent anti-corruption body should strictly comply with the main principles of its activity and the main tasks of the national anti-corruption strategy in Russia: prosecution for corruption offences, prevention of corruption offences and anti-corruption education.

Corruption in education systems: an overview of problems and solutions

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Executive summary

This paper provides an overview of corruption in education systems, based on a review of existing literature and the author's own insights. After underlining the massive impact that it can have, corruption in education is broken down according to the main components of the educational

system that may be affected: policy decisions and school accreditation, financing of educational institutions, procurement, the personnel system, and the educational process. It summarises the policies and measures that can be implemented to minimise it, and identifies as key issues a

formula-based funding system, objective standards for assessment at all levels and in all areas of the education system, and an adequate control framework in the widest sense. Where relevant, the paper uses examples and raises issues that have been identified as important in Russia.

Introduction

Although corruption in education is a subject that has been relatively neglected in the existing literature and research, surveys indicate that in many countries education is one of the areas worst affected by corruption. This should make corruption in education one of the key targets of the anti-corruption community and international community, for several reasons:

- Education is the first or second largest component of the public sector in most countries, both in terms of financial and human resources consumed.

- Equal access to quality education is defined by the United Nations as a fundamental human right.
- Education is the main channel through which a country's professional elites are constructed.
- Education is probably the most important factor in the establishment and maintenance of norms of public ethics, as one of the key tasks of education is to instil values and ethics.

Corruption in the education sector therefore may lead to major misallocation of public funds, undermine equal access to

quality education, lower the quality of professional elites, and establish corruption as an essential and acceptable behavioural norm for pupils and students – thereby building it into the fabric of society.

Education systems are huge complex organisational structures, in which corruption can take many different forms. Rather than covering all of these forms in detail – an impossible task in a contribution of this size – this paper attempts to provide a clear overview, clarifying the main issues and pointing at the main solutions.

Types of corruption in education

This section outlines the main types of corruption that occur in education systems, divided into five main areas: policy decisions, financing, procurement, personnel, and the educational process itself.

Policy decisions and school accreditation

Corruption can distort a range of decisions affecting the educational system. First, research indicates that corruption reduces the share of public expenditure allocated to education. Research carried out by Paulo Mauro indicates that corruption lowers in-

vestment and alters the composition of public expenditure, “specifically by reducing the share of spending on education.”

Second, major investment decisions may be corrupted. This may happen for example where a decision to build a school or on its size is taken on the basis of the political or personal gains of an individual public official or legislator (for example in

return for bribes from construction companies) rather than on objective needs-based criteria. Conversely, decisions to sell off school assets may also be motivated by corrupt exchanges; decisions by many schools in the United Kingdom in recent years to sell off sports facilities and playing fields to commercial developers have raised questions about whether financial considerations (even if not corruption) have been given priority over the educational needs of children.

A third type of corruption of educational policy decisions may be seen in corruption in the accreditation of educational institutions. In particular, educational systems in post-communist transition countries have seen a rapid increase in private educational institutions. However, systems of accreditation have remained outdated and based on extensive assessment criteria (such as assessment of school quality) that may increase the ability of officials responsible for accreditation to extort bribes. Between 1991 and 2003, in Russia 392 private higher educational institutions were created, but only one-third of them were accredited by the Ministry of Education.¹

Financing

All states with educational systems must address the challenge of how to allocate money (generally from a central ministry budget) to schools in order that it is used efficiently and effectively. There are several obvious risks of corruption:

First, many reports stress the impact of low teacher salaries in providing a context in which corruption may flourish. The World Bank has noted a massive fall in the proportion of GDP devoted to education in Russia, by two-thirds in 1990 to 3 per cent in 2000. Although the trend has reversed since 2000, the Bank still appeared in 2004 to regard salaries as a key problem within the system for financing education (Canning 2004).

Second, as funds are allocated from the centre to regions, educational authorities and schools, they may be siphoned off by officials or politicians. Reinikka and Svensson describe how public expenditure tracking surveys in a number of countries have identified dramatic differences between funds allocated by central government to schools, and the amount of funds actually reaching schools. For example,

1. Canning (2004), p. 15.

from 1991 to 1995 in Uganda only 13% of the per-student central government grant to schools actually reached them. This problem seems much more likely to afflict less-developed countries than European (including post-communist) countries, however.

Third, schools may provide inaccurate information to central authorities in order to secure a larger portion of funds than they are entitled. The employment of 'ghost' (fictive) teachers or exaggeration of data on numbers of classes or children are typical examples. In general, the more complicated are the criteria for determining budget allocations for schools, and the less effective is supervision and inspection, the more vulnerable will be the budget allocation process to corruption. This is a key theme taken up in Section III on solutions to restrict corruption.

Fourth, management of funds that *have* been received by a school may also be subject to corruption involving teachers and staff responsible for handling and/or spending money. Teachers or administrative staff may also siphon off money, especially if cash payments are often used and poor records of financial transactions are kept.

Procurement

As in any other sector where significant amounts of money are spent on public contracts, procurement is a component of the education system vulnerable to corruption. Although procurement is intimately related to the financing of education, it is conceptually a separate issue as it involves decisions on how to spend funds that have already been allocated. Much procurement is likely to be handled at the level of a central education ministry, although some may be handled at lower levels, such as a regional education authority or even a school itself.

There are two main types of procurement relating to education: public works contracts (construction of schools or other educational facilities) and supply contracts for educational textbooks and other educational materials.

Concerning works contracts, corrupt investment decisions may be accompanied by corrupt processes for the selection of construction companies to realise such investments. In southern Italy, for example, appalling construction quality that led to collapsing roofs in a number of schools were attributed to systematic corruption.

Regarding supply contracts, Heynemann notes that corruption may occur particularly in the design, manufacture and distribution of textbooks and other educational materials.²

Personnel

As Osche notes, up to 90% of educational budgets are taken up by salaries, and a recent study shows that in the vast majority of countries salaries account for over 70% of the education budget.³ The education sector generally employs more staff than any other component of the public sector. In this situation the way in which teachers are recruited, placed and promoted is of fundamental importance to the functioning of the education system.

According to Osche,

The crucial factor in recruitment, appointments, etc. is frequently not the qualification and performance of candidates, but bribes paid, family links or friendship, allegiance to a certain political party, ethnic group or religious community, or gender.⁴

Corruption may occur not only to influence the recruitment or career decisions of school heads and administrators, but also to influence the activities of inspection bodies, one of whose functions is to ensure that teachers perform their duties adequately. Bribery of inspectors to overlook teacher absenteeism (a systemic phenomenon in many less-developed countries) or to ignore complaints are a natural counterpart of corruption that fills teaching positions with persons who are not the best candidates.

The educational process

Last but not least, a fundamentally important area of corruption in education – and the one that probably affects pupils/students most directly, is corruption within the educational process itself. Stated very generally, such corruption occurs at school level where admission, quality or quantity of education, test results and exam results are determined or influenced by criteria other than professional standards, merit and ability.

Such corruption may be divided into the following types:

- Students are admitted to school in return for cash or other benefits pro-

2. Heynemann (2002), pp. 8-10.

3. Osche (2004), p. 9.

4. Osche (2004), p. 12.

vided to teachers, instead of on the basis of clear objective criteria. Educational institutions as entities may also provide places to applicants in return for financial contributions to the institution as an entity.

- Students or parents provide cash or other benefits to teachers in return for favourable marks for work, in school tests or examinations. In systems where the design and marking of examinations is decentralised, or where oral examinations are common (the case of post-communist countries) such corruption is greatly facilitated.

- Examination papers or questions are provided to pupils/students in advance in return for bribes. Such examination papers may also be for entrance to a higher educational institution (as was the case in a scandal involving the leakage of entrance examinations at Prague's prestigious Legal Faculty in the late 1990s).
- Teachers provide paid private tuition to students outside school hours (or even within school hours) as a condition for receiving good marks or standard quantity and quality of teaching within school. Poisson and Hallack cite figures showing massive proportions of stu-

dents and pupils receiving after-school tutoring in countries such as Brazil, Malaysia and Morocco.

The World Bank notes in a recent report that in Russia, "Inequalities are compounded by a rise in privately-financed education, and worsened further by an increasing incidence of informal payments"¹. The same report also implies that there have been problems with corruption in school-leaving examinations and notes that one of the aims of introducing a Unified National Examination for school graduation is to reduce corruption.

1. (Canning, 2004), p. 23.

Policies to restrict corruption in education

Policies to prevent corruption in education may be divided into two main categories: general and sector-specific. General policies are policies and measures to reduce corruption that apply not only to the education sector; sector-specific policies are those that are specifically designed for and applied in the education sector.

General policies

There are three main types of general policies that are important also in the education sector: legislation to tackle bribery and abuse of official powers, public procurement regulation and budget procedures.

Legislation to tackle bribery and abuse of powers

Officials in government institutions responsible for managing and financing the education system must be subject to clear laws against bribery, with appropriate sanctions for violations. Moreover, teachers and administrative staff in educational institutions are in principle public officials, while teachers in private educational institutions perform functions that are of vital importance to the public interest.

The issue of bribery of teachers is of particular importance. It is not uncommon for bribery legislation to apply only where a public official is involved, and for teachers not to be included – or not be clearly included – in the definition of what is a public official; this was the situation at least until recently in Poland, for example. Where bribery only applies to exchanges involving a public official, it is therefore important for teachers to be included clearly in the definition of public official.

Another solution – for example found in Czech law – is to make bribery laws apply to actions by any person in a position of responsibility who acts – in return for unauthorised benefits – in a way that is contrary to the public interest, whether s/he is a public official or not.

Public procurement regulation

Procurement in education is in principle the same as procurement in any other area, and ensuring it functions with as little corruption as possible means pursuing the same policies and measures as are needed for procurement in general. These will not be covered in detail here as they are the subject of a separate report being submitted for this project. An important issue to note is that procurement in education may raise specific challenges, in particular the fact that price may often not be the most important criteria for allocating contracts. This is particularly the case for textbooks and other teaching materials, where it is vital for clear quality standards or criteria to be defined for procurement purposes.

Budget procedures

Given the importance of education as a proportion of public budgets, general budget procedures will have a major impact on the potential for corruption in budget decision-making. The issue of general budget procedures is separate – although clearly interacts with – the specific system of financing education that is chosen by a country. The latter is covered under specific policies in the following subsection.

In particular, it is important that major decisions on investment in the education

system are open to public scrutiny, and that the process of budget approval is designed to minimise the potential for undue influence. In Federal systems – such as in the Russian Federation – the task of making budget procedures transparent and effective is a more challenging one, and the World Bank among others has noted that Russia "has not yet developed a satisfactory and equitable system of fiscal federalism, which is particularly urgent for all social services, including health and education."²

A very useful instrument for assessing the integrity of education budgets are Public Expenditure Tracking Surveys (PETS). PETS gather information on the funds allocated by central government to education and compare this to information from lower levels of the system – regional education authorities and schools themselves – to assess to what extent the funds allocated actually reaches their destination. Reinikka and Svensson (2003) provide a useful account of PETS and their use in specific countries.

Specific policies

Accreditation

Corruption in the process by which educational institutions are accredited is likely to have a direct effect on the quality of education institutions themselves, as objective criteria are pushed aside by bribes. Corruption in accreditation is a problem that applies primarily to private educational institutions that want to enter the system, at both secondary and higher education level.

2. Canning (2004), p. 24.

Canning (2004) suggests that one of the main reasons for corruption in accreditation in post-communist countries is that the criteria for making decisions on whether to accredit a school are too extensive. In particular, she notes in a discussion of higher education institutions that "quality" beyond the fulfilment of certain essential criteria should not be controlled at the stage of accreditation of schools. This argument could be applied also for primary and secondary education, the logic being that quality is logically best monitored by school inspection bodies when a school is already running.

Financing and audit

Two main areas of education financing policy are of crucial importance in influencing the vulnerability of the system to corruption. The first is simply the level of financing. Where education is allocated insufficient resources, one likely result is a decrease in equal access to quality education – and, often, an increase in corruption as bribery may become an important means for securing increasingly scarce places. In addition, the effect on teacher salaries is likely to be disproportionate, as other items of spending are less easy to reduce, and a fall in salaries is likely to increase the incentives for teachers to engage in corrupt practices. Russia still lags behind other central and eastern European countries in the proportion of GDP spent on education.

The second and fundamental issue is the method by which schools and educational institutions are financed. Two main types of funding exist,¹ with countries occupying various positions on a continuum between them:

Input-based treasury funding

Traditionally, education systems in Europe have tended to allocate resources from a central education ministry on the basis of estimates of "inputs" submitted by schools – such as average class size, number of classes per topic, number of buildings etc. If the estimates are in excess of the education budget allocated, a compromise would have to be reached based on negotiation with schools or simply cutting the funds allocated to a percentage of the total estimate. The funds would then be allocated on a monthly basis directly to schools,

1. This section is based on material from the following: Levacic R., Downes P. et al. (2004); Canning (2004), Appendix 1.

which can only spend the money line-by-line on the items for which it is allocated.

Russia (as of 2004) still operated essentially with the model outlined above. According to the World Bank, "the resulting budget allocation process, which involves bargaining and discretion, is nontransparent, unpredictable, cumbersome, and ... results in inflexible and inefficient use of scarce resources."² Funding determined in this way creates a large area for schools to attempt to "inflate" various inputs – for example by overstating the size of classes, buildings, etc.

Formula-based funding

Increasingly, governments finance education through formula funding, defined by Levacic, Downes *et al* as "a rule for allocating resources to schools that is universally applied to all schools of a given type within an educational jurisdiction." This means that a school receives funds based on a formula, that is itself mostly derived from the number of pupils and their age; hence, formula funding is often synonymous with 'per capita funding'. Once the school receives the funds, it then controls some or all spending decisions. Relating funding to the number of pupils/students means that governments determine funding on an objective basis that is available and understandable to the public. If information on school performance is readily available, this also makes schools much more accountable to parents. In particular, it also reduces the space for the provision of incorrect information in order to secure more funds. Last but not least, schools have an incentive to use funds more efficiently, as they make spending decisions themselves and are rewarded for saving money in one area – not the case under an input-based financing system.

Best combination: formula funding + sound financial procedures and audit

Formula funding has become a standard model in Western Europe, and there are strong arguments for why it will lead to a more efficient allocation of funds. The consensus among education experts is that formula funding with decentralised control over spending is also likely to lead to less corruption, at least corruption involving central bureaucrats. Levacic, Downes *et al.* argue that it will reduce such corruption, but also create more space for small-scale corruption in the use of funds at school level. They conclude on the basis of their

2. Canning (2004), p. 24.

research on formula funding that the following conditions are of special importance if formula funding is to unambiguously reduce corruption:³

- School principals and governing boards are sufficiently trained in financial procedures, and there must be a detailed manual of financial procedures.
- Governing boards and/or school councils must be sufficiently well-informed about the funding process to be able to detect fraud or corruption.
- There must be standard national formats for financial reporting.
- There must be regular internal monitoring by a trained person independent of the school head.
- There must be thorough and regular external audit, either by public audit bodies or private auditors independent of the school.
- Statistics submitted by schools that are used for the funding formula must be subject to external checks.
- The details of formulae for distribution of funds must be explained in enough detail and clearly enough to enable greater understanding both within and outside the school and among both professionals and non-professionals.

Russia has been experimenting in a small number of regions with formula funding. However, according to the World Bank the results have been unclear, there is huge work to be done on improving the financing system, and – crucially – there need to develop adequate regulatory frameworks and national systems of testing, monitoring and reporting – both of financial data and school test and examination results.⁴

Personnel systems⁵

In order to minimise corruption of the personnel system, it is first and foremost vital to establish clear, objective and transparent criteria and procedures for teacher recruitment, placement, promotion and remuneration. Second, educational institutions should have in place established standard procedures for recording and evaluating the performance of teachers. Third, governance institutions (see below, page 59) should be sufficiently representative of all stakeholders – especially parents – that they can play a role in detecting teachers who do not perform; such bodies should have the authority to either address such

3. Levacic R., Downes P. et al. (2004), p. 144-145.

4. Canning (2004), p. 25, 39.

5. Osche (2003), pp. 12-13.

problems directly (for example by initiating sanctions) or notify them to the appropriate inspection body.

Admission procedures

Similarly as for the recruitment of teachers, corruption in the admission of pupils/students will be minimised where criteria and procedures for admission are clear, objective and transparent. In primary and secondary education, the full implementation of a formula funding system (see above, *Financing and audit*, page 57) is likely to help, as it will provide more resources to schools which become more popular, thereby helping to satisfy demand for places at good schools and reducing the pressure for corruption to determine which pupils are admitted. Admission to higher education institutions should be based primarily on the criteria of standard nationwide examinations (see above, *Testing and examinations*, page 58). In general, the potential for corruption in admissions processes will also be reduced if assessment and decision-making is conducted by more than one person – for example, a panel of teachers.

Testing and examinations

Testing and examinations are a key point of vulnerability to corruption within the education system. In order to minimise the possibility of teachers allocating marks in return for unauthorised benefits, the following principles should be applied in the design of tests and examinations.

- Key tests and examinations at primary or secondary school – in particular leaving examinations – should be standardised nationally.
- Important examinations should ideally be based on more than one type of assessment – for example a combination of written exam papers, multiple choice, course work assessment and oral examination where appropriate.
- The use of oral examinations – a very widespread method in former communist countries – should be restricted, and ideally should be used only for subjects where oral examination is necessary (languages are the obvious example).
- The criteria and procedure for marking examinations should be clearly laid out and binding. Where possible, exam marking should be carried out by autonomous examination agencies, as is the case for example in the United Kingdom.

Russia has taken important steps towards standardising examinations, introducing a Unified National Examination (EGE) in 2001 for pupils completing general education. According to the World Bank the examination has spread rapidly across Russia, and was taken by around 70 per cent of all graduating students in 2004.¹ However, the same report indicated that most universities were continuing to design their own entrance examinations.

Gifts and contributions

In addition to the establishment and implementation of clear objective criteria for admission and examination, there should be clear guidelines for the acceptance of gifts by teachers from pupils or parents (see below, *Professional standards and codes of conduct*), and also for the acceptance of financial contributions by educational institutions. Such guidelines should include the obligation to of educational institutions to publish financial contributions they receive. Failure to mandate publication of contributions will facilitate the awarding of places in return for parental financial contributions, and has done so even in some of the most highly respected educational institutions.

Professional standards and codes of conduct

A vital component of any education system is the existence of clear and widely disseminated professional standards. Institutions responsible for administering the education system in advanced countries invariably produce and endorse a set of professional standards and/or code of conduct that explicitly defines both the positive core values teachers should represent and pursue, and practices from which they should refrain. The value of such standards and codes in creating a culture and norms that are resistant to corruption should not be underestimated. As the Declaration of Professional Ethics developed by Education International (the World Union of Teacher Associations) states,

...[the] raising of consciousness about the norms and ethics of the profession may contribute to increasing job satisfaction among teachers and education personnel, to enhancing their status and self-esteem, and to increasing respect for the profession in society.²

An excellent example of such documents is provided by the Code of Conduct and Practice of the General Teaching

Council of England, together with its Statement of Professional Values and Practice for Teachers.³

The Code of Conduct contains a strong and clear statement of both core values and practices – including corrupt ones – that are incompatible with such values.

Restrictions on private tutoring

Private tutoring is a phenomenon that is often linked with corruption, for example being paid for by parents or students as a condition for receiving good marks or other treatment to which pupils or students should be entitled anyway. Although there is little information available on whether this is a problem in Russian primary and secondary schools, the World Bank expressed the opinion in 2004 that in higher education institutions in Russia, "In addition to fees paid by students to private and some public institutions, students often find themselves liable for fee for 'unofficial' tutoring..."⁴ Again, the very low salaries received by teachers may encourage such practices. In addition, it may be worth considering specific restrictions on private tutoring, for example the registration of tutors or prohibitions on private tutoring by teachers of students they already teach in school.

Complaint mechanisms and feedback

As in other public organisations, it is important for schools to have established mechanisms for complaints to be submitted by parents or pupils/students. Complaints may concern the conduct of teachers or school management and financing. There are three especially important aspects of complaints processes:

- There must be a body that is independent of those that are the subject of complaints, for example a representative School Council or regional education authority. In the case of financial wrongdoing, it is also necessary to facilitate the filing of complaints to independent audit bodies.

2. E.g. Declaration of Professional Ethics developed by Education International, adopted in 2001. See http://www.ei-ie.org/worldcongress/docs/WC03Res_DeclarationProfEthics_e.pdf#search=%22Education%20International%20Declaration%20of%20Professional%20Ethics%22.

3. See General Teaching Council for England: Code of Conduct and Practice for Registered Teachers, <http://www.gtce.org.uk/shared/contentlibs/92511/92601/conductcode.pdf>; The Statement of Professional Values and Practice for Teachers, http://www.gtce.org.uk/shared/contentlibs/92511/92572/statement_of_values.pdf.

4. Canning (2004), p. 17.

1. Canning (2004), p. 3.

- The complaints process must be subject to clear rules and procedures, with complaints recorded in writing and filed.
- Where complaints concern misconduct by teachers, it is important for complainants to be protected from reprisals against the pupil/student filing the complaint (or whose parents filed the complaint).

Likewise, it is important for whistleblowing by educational staff on misconduct of school management to be afforded explicit protection.

Disciplinary procedures and sanctions

Often, the first step in addressing suspicions of misconduct (including corrupt behaviour) are internal disciplinary proceedings within the education institution. It is important that such proceedings are codified, conducted by a sufficiently broadly representative body (for example the School Council or Schools Inspectorate). Likewise, where wrongdoing is con-

firmed, the body conducting proceedings needs to have the authority to impose adequate sanctions.

Governance

For any of the policies and measures described in the subsections to be implemented properly, it is vitally important that schools and universities have adequate governance structures. While authority for school management rests with the head, governance structures exist mainly to carry out the following tasks:

- provide representation to all local stakeholders, in particular teachers, parents, other education professionals and other civil society organisations or groups (for example representing children with special needs or ethnic minorities);
- make important or strategic decisions;
- to provide oversight both of schools' financial management and the conduct of teachers;
- in some cases, receiving and processing complaints by parents;

- in some cases, participating in disciplinary proceedings against teachers.

School (or university) councils are also seen by the expert literature as an important mechanisms to provide a buffer between the state and the final provider of education, and this buffer may be of particular importance in countries where the state administration is politicised and the education sector is vulnerable to staffing on the basis of political loyalty rather than merit.

Inspection bodies

In order to supervise whether schools fulfil the standards to which they are obliged, European have established professional school inspectorates, responsible for carrying out regular checks. In post-communist countries school inspectorates tend to be weak and focused on checking formalities rather than the substance of school activities. It is vital to provide inspectorates with sufficient resources.

Conclusion: the need for a comprehensive approach

Corruption in education is not a one-dimensional phenomenon, but takes many different forms affecting different components of the education system. A fundamentally important lesson from the experience of advanced countries in building educational systems is that none of the policies and measures outlined in this paper will be effective alone; each of them requires a certain context, and specifically

the implementation of other policies listed here; a clear example is formula funding, which will not yield the expected benefits without an adequate financial control framework. In addition, the sheer size of education systems means that reforms are a huge task and must be carried out over a long period, with a systematic vision and political consensus. It is worth noting with

regard to Russia the following statement by the World Bank:

Unfortunately, Russia has a long heritage of announcing education reforms, doctrines, concepts, and new regulations, but leaving the entrenched practices within the system virtually untouched. That can be avoided this time only if the implementation of new ideas is properly planned and institutionalised.

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Corruption risk assessment of the Russian legislation regulating education

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I.

Corruption in education has grown to such an extent within the last decade, that it greatly troubles the Russian society. The results of surveys on corruption in the education system, conducted by the All Russian Public Opinion Research Centres

(VTsIOM) and INDEM Foundation in 2005, indicate that the population considers it to be a threat to Russian national interests. The overwhelming majority of respondents – 81.3% believe that corruption blocks the development of education

system and improving its quality. According to the Minister for Education and Science Mr A. Fursenko, during the year around 2 billion US dollars was handed over in the Russian higher education institutions.

II.

The following instances of corruption in the education system can be considered to be the most typical:

- bribes for entering educational institutions;

- bribes or illegal demands of extra payments for passing (resitting) exams;
- misuse (namely, misappropriation) of budget funding allocated to educational institutions;

- misuse of funds collected from parents and students for the needs of educational institutions;
- bribes for issuing state licences and accreditation of educational institutions.

III.

Among the key reasons for corruption in education economic factor is most frequently mentioned, e.g.: insufficient financing of educational institutions, low salaries of the teaching staff, lack of vacancies in educational institutions (e.g. in kin-

dergartens), etc. Along with the economic reasons the legal regulation of relations is also of great importance. Inefficiency of legislation and potentially corruptive regulations create the basis for corruption. As a result, in order to prevent corruption in ed-

ucation, corruption risk assessment in the appropriate legislation must be carried out, that would have allowed to develop concrete recommendations on its improvement.

IV.

Relations in education are regulated by a wide range of legal acts rather than a unique codified document. Among them are: federal laws, Decrees of the RF Government as well as the various legal documents, issued by the RF Ministry of Education: orders, statements, etc. (over

100 legal documents). The following legal documents could be used for corruption risk assessment:

- the RF Civil Code;
- RF Law No. 3266-1 dated 10 June 1992 “On Education”;

- RF Federal Law No.125-FZ of 22 August 1996 “On Higher and Postgraduate Professional Training”;
- regulations of educational services provided on a paid basis, approved by RF Government Decree No. 505 of 5 June 2001.

V.

The following corruption factors were identified while analysing legal documents in education:

Gaps in legislation

The **framework and declaratory character** of the current laws, regulating education (the RF Law "On Education" and the RF Federal Law "On Higher and Postgraduate Professional Training") are their common drawback.

The framework character of these laws comes out of its goal, which defines the RF system of education and is, therefore, reflected in the structure of these laws. Thus, the RF Law "On Education" consists of six chapters, three of which deal with the general issues of education system, its management and economy. Three of the seven chapters of the RF Federal Law "On Higher and Postgraduate Professional Training" also address the issues of higher and postgraduate education, its management and economy.

A direct consequence of such legal outcome is lack of legal provision for exercising rights by the subjects of educational system. The rights of participants of the educational relations as defined in the laws "On education" and "On Higher and Postgraduate Professional Education" are of a declaratory character:

- the rights and duties of the subjects of the educational system are defined in such a way that they do not correspond to the rights and duties of other subjects. *For example, Chapter V "Social guaranties for RF citizens to exercise right for education" of the RF Law "On Education" does not state or regulate the duties of educational institutions as well as the teaching staff.* Thus, the citizens' right for education, declared in this chapter has no legal back up.
- no one bears responsibility for breaching the rights of students or pupils. In P. 3, Article 32 of the RF Law "On Education" the reasons to hold an educational institution responsible are listed, however, it also says that it can be held responsible **in the order stipulated in the legislation of the Russian Federation**. P. 7, Article 51 of the RF Law "On Education" states that **"employees of educational institutions** are responsible for creating adequate conditions for studies, labour and leisure of students,

according to RF legislature and the Charter of the institution". P. 2, Article 3 of the Federal Law "On Higher and Postgraduate Professional Training" states the following: "The higher education institution is accountable for its activities to citizens, society and the state". Thus, the legislation on education, does not specify the forms and degree of responsibility imposed on educational institutions and their employees.

Lack of the mechanisms to exercise the right for equal access to education can also be regarded as a deficiency in legal regulation of education activities. P. 3, Article 5 of the RF Law "On Education" recalls and develops the statement of P. 2, Article 43 of the RF Constitution, which guarantees equal free pre-school, secondary and professional education in the state and municipal educational institutions.

Public recognition of contracts for educational services could become one of the elements of such a mechanism. It would make Article 426 of the RF Civil Code applicable to such contracts in the following way:

- obliging an individual providing educational services to sign a contract with any applicant on equal conditions;
- providing an opportunity to take a case to the court if an educational institution refuses to sign a contract for illegitimate reasons.

P. 13 of the Regulations for paid educational service obliges an educational institution to provide the paid educational services upon signing a contract, if it has a possibility to offer such a service and without giving any preferences. Nevertheless, the above-mentioned Regulations do not provide for an opportunity for a customer to go to court and force the institution to sign a contract in case it failed to do so.

It is believed that the prospects of being called to court as a result of illegitimate refusal to enter an educational institution could make miscreant managers think about the consequences and a number of invalid refusals and money extortion cases will be reduced.

Besides P. 4, Article 426 of the RF Civil Code states that the Government of the Russian Federation has the right to issue rules, obligatory for the parties when signing and executing public contracts. The existing samples of contracts for paid

educational services were developed and approved by the RF Ministry of Education in accordance with P. 16 of the Regulations for paid educational service rendering. It is believed that once the RF Government adopts the standard contracts for paid educational services, the consumers' rights would be more protected.

In order to apply the regulation stated in Article 426 of the RF Civil Code to relations between consumers and educational institutions, the number of subjects involved has to be increased. In the current version only the relations between a commercial organisation and a consumer are regulated. It is necessary to extend this regulation to the relations between consumers and non-profit organisations, including educational institutions. For this purpose the words "commercial organisations" in P. 1, Article 426 of the RF Civil Code should be changed to "profit and non-profit making organisations".

The laws on education in question do not regulate **providing paid educational services by educational institutions**.

The RF Law "On Education" allows state and municipal educational institutions to provide additional paid education services, which are not included in the corresponding curricula and state educational standards, implying only that paid services cannot replace budget-funded educational activities (Article 45). Private educational institutions are also given the right to provide paid educational services (Article 46).

The RF Federal Law "On Higher and Postgraduate Education" directly states that a higher education institution decides **independently** on signing contracts, defining responsibilities and other conditions that should not contradict to the RF legislation and the Charter of a higher education institution (P. 2, Article 29).

Thus, the laws on education do not regulate a number of important parameters and conditions for providing paid educational services, such as: the procedure for providing paid educational services, the type of paid educational services, contractual arrangements, etc.

These gaps are often filled in by sub-legislative legal acts, which is insufficient for an effective legal regulation of contractual relations between the educational institutions and the consumers of paid services on a contractual basis.

It is necessary to make contracting for paid educational services a part of the federal law (RF Civil Code or RF Law "On Education"), including definition, procedures, important conditions, execution, reasons for termination, liability.

Filling in this gap will allow to protect the rights of educational service users much more effectively.

At present, contracts for paid educational services are regulated by Chapter 39 of the RF Civil Code: "Paid Service Rendering". Article 782 of the RF Civil Code allows for unilateral termination of the contract for a service provider. Thus, an educational institution, being a service provider, can choose to terminate a contract, which obviously infringes upon the rights of the students and pupils.

Filling in the gap in legal regulation of paid educational service provision will result in elimination of such instances of corruption as illegal financial charges of pupils and their parents. Here are some other examples of corruption :

- setting a special fee for taking or resitting tests and examinations;
- fees for private tuition, when a regular teacher takes the function of a private tutor;
- inclusion of paid extra services into the obligatory school curriculum, so the pupils cannot refuse to take paid classes, etc.

Filling in the legislative gaps with the help of legal acts issued by executive authorities

The numerous gaps in legal regulation of relations in education called for adoption of sublegislative legal documents both on the level of RF Government and the Ministry of Education. At the same time, the RF Law "On Education" and the Federal Law "On Higher and Postgraduate Education" contain very few direct references to these legal documents adopted by the RF Government. However, since there is no direct indication of the need for adoption of the legal acts by the government, the gap is filled at a lower level – by the acts of the RF Ministry for Education and Science.

As an example will serve Article 45 of the RF Law "On Education" that allows the state and municipal institutions to provide paid additional educational services.

The following sublegislative acts were adopted to further develop this statement:

- Regulations for paid educational service rendering, affirmed by Decree No. 505 of the RF Government of 5 July 2001;
- Instruction on paid extra services provided by state and municipal educational institutions, affirmed by Order No. 1578 of the Ministry of Education of 16 June 1998;
- Letter of the RF Ministry of Education No. 31-52-122 of 25 December 2002 "On licensing paid educational services provided by public education institutions";
- Order No. 2994 of the RF Ministry of Education of 10 July 2003 "On creating a contract format for educational services provided in the area of public education";
- Order No. 3177 of the RF Ministry of Education of 28 July 2003 "On creating a contract format for educational service provided in the area of professional education".

Excessive freedom of sectoral and local rule-making

According to the RF Law "On Education" and the Federal Law "On Higher and Postgraduate Education" a wide range of issues are at the founders' discretion. The RF Ministry of Education and Science carries out the role of establishing educational institutions at the federal level. This function is established by the RF Government. For this reason a large number of legal documents, affirmed by this Ministry, regulate important issues of educational services.

For example, P. 1, Article 16 of the RF Law "On Education" states that procedures for enrollment to educational institutions are determined by a founder and regulated by the Charter of the educational institution, if they are not regulated by this Law. Furthermore, Order No. 50 of the RF Ministry of Education of 14 January 2003 affirms the enrollment procedures to state institutions of higher professional education (higher education institutions) established by federal executive authorities.

It is believed that this issue should be regulated by a law since it deals with right of citizens to education.

Collisions in legal regulation

According to P. 6, Article 39 of the RF Law "On Education" withdrawal and (or) alienation of property assigned to an educational institution is possible only upon

expiration of the contract between the owner (or the authorised legal entity) and the educational institution or between the owner (or the authorised legal entity) and the founder, **if not stipulated otherwise in the contract.**

According to P. 2, Article 43 of the RF Law "On Education", financial and material assets of an educational institution assigned to it by the founder can be used by the educational institution in accordance with its Charter and cannot be withdrawn from it, **if not stipulated otherwise in the legislation of the Russian Federation.**

Thus, the RF Law "On Education" contains two mutually exclusive regulations regarding withdrawal of property from educational institutions (one is imperative and the other is non-mandatory). Consequently, the decision on withdrawal of property from an education institution remains at an officials discretion acting on behalf of an owner (a state or municipal institution). There is certainly a potential for corruption in this situation.

According to P. 7, Article 12 of the RF Law "On Education", branches, sections and structural divisions of an educational institution can by power of attorney fully or partially exercise the power of a legal entity. The similar regulation is found in P. 3, Article 18 of the Federal Law "On Higher and Postgraduate Education": "structural divisions of a higher educational institution can exercise by power of attorney complete or partial authority of a legal entity in accordance with an institution's Charter".

The above-mentioned regulations contradict to P. 3, Article 55 of the RF Civil Code. A letter of attorney cannot be issued to a branch, section or a structural division since they don't have a legal entity status.

Granting authority to structural divisions of educational institutions leads to unnecessary independence and creates the corruption risk potential for the administration of these divisions.

Competence definition according to "may" formula

P. 5, Article 47 of the RF Law "On Education" states that the founder or local authorities **may** suspend until court decision the entrepreneurial activity of an educational institution, if it has a negative effect on educational activity stipulated by the Charter.

The "may" formula in this regulation leaves potential for improper use of au-

thority, including corruption, in regards to an educational institution. It seems that it should be a court decision to suspend entrepreneurial activities, or otherwise a complete list of reasons for suspending should be put together.

Lack of competitive (auction) procedures

Introduction of competitive (auction) procedures is mostly needed in the system of higher and postgraduate education. P. 4, Article 1 of the Federal Law “On Higher and Postgraduate Education” declares that “**competitive** and transparent character of setting priorities in scientific, technical and technological development, as well as in training of specialists, further training and improving professional qualifications of the employees.” P. 5 of this article stipulates “**state support** of specialists’ training, as well as prioritised scientific research in higher and postgraduate professional education”.

It is envisaged that the state support should be distributed only on a competitive basis. As the Minister of Education and Science Mr A. Fursenko rightly pointed out, “The RF Government Decree ‘On state contracting for training of specialists with secondary and higher education’ can cause a breakthrough. Budget financing should also be made within the framework of this contract”¹.

Excessive demands to a person in implementation of his/her rights

Excessive admission barriers to the educational institutions of all levels is an important factor for corruption. At present, practically all education institutions introduce the admission tests (or other forms of selection), which becomes an extra barrier no matter how good the intentions are. An act of corruption thus becomes a means of overcoming this barrier. For this reason it is necessary to legally forbid admission testing on the pre-school, general and secondary professional education levels.

For this purpose Part Two of P. 1, Article 16 of the RF Law “On Education” should be adopted in the following way:

“No testing or other competitive forms of selection violating rights of citizens to education are allowed in the process of ad-

mission to state and municipal educational institutions at the pre-school, primary general, basic general, secondary (complete) general and primary professional education levels.”

Lack of public control over educational institution’s activities

According to P. 8, Article 41 of the RF Law “On Education”, educational institutions can generate extra financing, including voluntary contributions and fees by individuals and (or) legal entities. In reality voluntary contributions is often a synonym for charging parents.

We should admit though that demands of extra payments in the educational institutions result from insufficient state funding and cannot always be regarded as corruption. There are no traces of corruption when funds are used for the needs of an educational institution only. However, since no effective control mechanisms are in place, it often leads to misuse of funds on the part of institution administration.

It seems reasonable to make educational institutions accountable to students and (or) their parents on the use of extra funding. An annual financial report can be published and distributed in order to prevent misuse of resources.

In order to carry it out the RF Law “On Education” should be edited in the following way:

- To add P. 11 to Article 41 of the RF Law “On Education”, stating:

“An educational institution shall present an annual report on spending extra funding, listed in P. 8 of this article, by means of its publication in the media or distribution to the students and (or) their parents (authorised representatives)”.

- To add P. 23 to Article 50 of the RF Law “On Education”, stating:

“Students of secondary professional or higher professional educational institutions may ask for documents, indicated in P. 2, Article 16 and P. 11, Article 41 of this law”.

- To add Part Two to P. 1, Article 52 of the RF Law “On Education”, stating:

“Parents (authorised representatives) of students may ask for documents indicated in P. 2, Article 16 and P. 11, Article 41 of this law”.

Providing opportunity for legal gain at the expense of third parties while executing official duties or functions

Financial extortions from students or their parents in the form of presents to child-minders, teachers and tutors are widely spread in Russia. P. 2, Article 575 of the RF Civil Code allows to give presents to teachers and child-minders if their value does not exceed five minimal wages. This regulation contains the potential for corruption. A similar regulation in regards to public officials has already been recognised as corruptive and is to be excluded from the Civil Code. Nevertheless, a mere exclusion of the above practices from the RF Civil Code is not sufficient; there should be a ban on any kind of gifts to the above-mentioned categories, regardless of their value, so that the people will start to associate this activity as an offence.

In this regard the following amendments and additions of Article 575 of the RF Civil Code should be introduced:

- To remove P. 2 and 3 from Article 575 of the RF Civil Code;
- To add Part Two to the Article 575 of the RF Civil Code stating:
 - “No gifts are allowed, regardless of their value:
 - To public officials in connection with performing their job or their duties and functions;
 - To the employee of healthcare, educational, social security and other similar institutions by citizens that are subjects to medical treatment, are kept, trained or educated in the above-mentioned institutions, as well as by parents (authorised representatives), spouses and relatives of these citizens”.

The scope of discretion

According to P. 10, Article 33 of the RF Law “On Education” the expertise requirements for licensing educational activities cannot exceed **average statistic parameters** for the territory where the educational institution is registered.

There is no definition of “average statistic parameters” given in the Law itself or in other legal documents. It is also not clear what body is entitled to determine this average parameter or set up a methodology for its establishment. Under these circumstances the expertise requirements for licensing can be either excessive or under-

1. Gazeta, 23.11.2005.

stated, which stipulates a large scope discretion on the part of the expert committee.

VI.

The corruption risk assessment of the legislation on education enabled us to find a wide range of corruptive factors in the RF Law "On Education" and in the RF Federal Law "On Higher and Postgraduate Education". Therefore, we can conclude that the current legislation on education is in need of reforms.

There are several ways to bring the current legislature in line with the demands of the modern Russian society, including corruption implications.

The first option is to adopt RF Education Code. It would allow for a comprehensive way to address legal regulation problems in education and would substantially reduce the risk of legislative gaps and law collisions. However, putting this code together will take a long time.

The second option is to amend the existing laws. This is the way that the Minister of Education and Science Mr. A. Fursenko intends to take, pointing out the necessity for a "more rapid development of the socially-oriented federal legal acts", meaning the amendments and additions to the RF Law "On Education" and Decrees of the RF Government.

In spite of the fact that some amendments to existing legislation aimed at reducing corruption risks in education were proposed in this paper and, this version is far from being optimal. The current RF Law "On Education" was passed in 1992 in

the period of transition to the market economy and is outdated, both politically and economically, though it has been amended 28 times. For this reason it seems reasonable to initiate the development of a new law on education.

The proposed legislative measures for eliminating corruption risks in legislation regulating education are as follows:

- The words "commercial organisations" in Paragraph 1, Article 426 of the RF Civil Code should be changed into "profit- and non-profit making organisations".
- Part Two of P. 1, Article 16 of the RF Law "On Education" should be adopted in the following way:

"No testing or other competitive forms of selection violating rights of citizens to education are allowed in the process of admission to state and municipal educational institutions at the pre-school, primary general, basic general, secondary (complete) general and primary professional education levels."
- To add P. 11 to Article 41 of the RF Law "On Education", stating:

"An educational institution shall present an annual report on spending extra funding, listed in P. 8 of this article, by means of its publication in the media or distribution to the students and (or) their parents (authorised representatives)."

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- To remove P. 2 and 3 from Article 575 of the RF Civil Code;
- To add Part Two to Article 575 of the RF Civil Code stating:

"No gifts are allowed, regardless of their value:

 - To public officials in connection with performing their job or their duties and functions;
 - To the employee of healthcare, educational, social security and other similar institutions by citizens that are subjects to medical treatment, are kept, trained or educated in the above-mentioned institutions, as well as by parents (authorised representatives), spouses and relatives of these citizens."
- Remove P. 10, Article 33 of the RF Law "On Education".

The prevention of corruption in public procurement: good practice in Europe

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To seek to identify what could be described as “good practice in Europe” in the context of preventing corruption in public procurement is probably both too optimistic and too facile. It assumes that there is a defined set of common tools which are and can be applied successfully in the fight against corruption. It is true that there are a number of identified measures that can be taken to reduce corruption but it would be a mistake to believe that the same tools can be used indiscriminately in every context. It would also be a mistake to assume that using such measures will, of themselves, eradicate corruption in the round. Procurement regulation can be an effective weapon in the fight against corruption but it is only one part of the armoury. Corruption needs to be addressed much more broadly.

It has become commonplace to assume that public procurement and corruption go hand in hand as if corrupt practices were an inevitable consequence of the procurement function within government. Whilst there is little doubt that corruption can and does flourish in the context of public procurement, there is nothing inevitable about the phenomenon and it is important not to treat as an inevitable consequence of the procurement function what is essentially an avoidable by-product of such an activity. A ‘theological’ or ‘crusading’ approach to the eradication of corruption may, in the case of procurement, do as much harm as good. This paper is, therefore, about balance. There is a balance to be struck between the possibilities for fighting corruption inherent in the regulation of pro-

urement and the limits of those possibilities. It is about striking a balance between the need to curb the inappropriate use or misuse of discretion in the hands of procurement officers and allowing those same officers to exercise the professional judgement for which they were recruited and trained.

Corruption flourishes in the public sector where opportunities exist to exploit the possession of authority and discretion. Thus, bribes are often extracted by officials which have the power to grant licences (such as business or operating licences) or to impose or withhold penalties (such as in the event of breaches of health and safety laws). This paper identifies how, in the context of the procurement function, such opportunities can arise. In economic terms, such opportunities arise essentially as a result of the agency relationship which characterises the purchasing activities of government: procurement is conducted by civil servants acting as agents on behalf of the government.

By identifying the opportunities for corruption inherent in the procurement function, we will be able to consider the ways in which the administrative procedures of procurement regulation are used (and how they cannot be used) to close off those opportunities and to apply disincentives. The ability of procurement regulation to combat corruption depends on the ability of the regulator to identify the opportunities created by the procurement function and to close off that opportunity by applying a disincentive.

Motivation is also a critical element, i.e. determining why those opportunities are taken. It may be out of necessity or of greed, for example, but the common feature is that the official will expect to benefit in some way from exploiting the opportunity, either by receiving money or money’s worth. It is a question of self-interest and corruption will continue to take place so long as the official can get away with it. In economic terms, the officer will remain corrupt so long as he can continue to expect to profit from the transaction, i.e. to the extent that the benefit exceeds the costs (in this case, the risk and effect of discovery). Successful anti-corruption measures will thus lower the expected gains and increase the expected penalties.

The effects of discovery are usually, though not always, outside the scope the procurement regulation. Penalties, for example, generally fall within the remit of the criminal authorities (the public prosecutors or specialised anti-corruption agencies) but will also crucially depend on broader issues such as a country’s historical treatment of corrupt practices, the quality of the judicial authorities, the scope and strength of the enforcement institutions. The probity of the officials will also depend on the quality of the civil service rules and authorities and the measures taken to deal with miscreant officials.

On the other hand, the probability of having penalties imposed is a consequence of detection of the corrupt practice and of the degree of the risk of discovery. Corruption is a gamble for the corrupt official and the greater the risk of discovery (and pen-

alties) the less likely he is to engage in corrupt practices. It is here that procurement regulation comes into its own since the regulation can both reduce the opportunities for corruption and increase the risk of detection. These efforts are based largely on the imposition of transparency requirements which enable the actions of the procurement agents and others to be verified in a way which ensures responsi-

bility and accountability through the application of enforcement mechanisms.

This paper will consider the various ways in which procurement regulation, notably in Europe, has sought to achieve these goals. It will also, however, address the issue of excessive or inappropriate regulation which will often have the effect of creating inefficiencies in the procurement process. The result will be to increase the

costs of procurement to the public purse (maybe significantly) whilst producing very little added benefit to the fight against corruption. In the end, the balance to be struck is between the actual benefits, tangible and intangible, to be achieved through procurement regulation and the costs of doing so.

Procurement as an opportunity for corruption

In broad terms, governments consist of both politically elected and non-elected members. The non-elected members make up the bureaucracy or apparatus of government and it is they who are, in most cases, responsible for the efficient functioning of government. Whilst the elected members make the policy decisions of government on the basis (it is hoped) of which they were elected, it is the bureaucracy which carries out those policies in concrete form and ensures that the whole apparatus is in a position to fulfil the routine and policy tasks assigned to it. Procurement decisions are, absent any political interference, largely made and carried out by the bureaucracy, specifically by procurement agents within the bureaucratic hierarchy. From an economic point of view, government can conveniently be divided into two: the government (represented by the politicians) and the bureaucracy (represented by the government's procuring agencies). These stand in an agency relationship, the government as principal, the bureaucrat as agent.

As two distinct actors, the interests of principal and agent may not be identical and are likely, over time, to diverge. The danger is that the goal of the agent may not be to maximise social or economic welfare (the government's presumed goal) but to maximise his own personal benefit or that of his department's, *i.e.* increased personal

income or departmental budget, better working conditions, job prospects etc. The agent's goals are thus not necessarily co-extensive with those sought by the government. The issue for procurement regulation becomes one of control over the agent in an attempt to realign the goals or at least to provide incentives to ensure that the agent performs in accordance with the goals of government.

The possibility for the agent to extract personal gain from the procurement process arises from the position he is given within the bureaucracy to exercise discretionary authority. The relative independence of the procurement officers both from central government and from each other vests them with an often large degree of discretionary authority to award procurement contracts. The supplier who seeks to influence the procurement process by way of a bribe will seek to exploit this relative independence and to induce the agent to place his own interests before those of the government whom he represents. Care needs to be taken, however, in assessing the incidence of corruption in procurement. Anti-corruption crusaders tend to see every questionable procurement as the result of corruption even if, in reality, this is just a question of incompetence. In developing and transition economies especially, procurement reforms are a relatively recent phenomenon and there is little ex-

perience and training of modern procurement techniques. "Bad" procurement is not always the result of bad intentions: it could just be the result of incompetence.

The ability of the agent to act in his own interest is based on the fact that he holds information which is not available to the principal. There is, in economic terms, an "informational asymmetry". He holds information related to the process, the bidders and the products. He is, therefore, at an informational advantage in respect of the principal and will be able to use this advantage for, *inter alia*, personal gain. The agent holds this information because he is in the "front line". It is the agent that specifies his requirement through the technical specifications or standards. He is the one who selects the process or procedure to be used. He is the one that invites the tenderers and receives their tenders. He is the one that evaluates those tenders and makes the decision to award the contract. The ability of the agent to benefit from the procurement process arises essentially because he has more information over all of these aspects of the procurement than his principal. The agent can manipulate this information and dissimulate it or conceal it from the principal in such a way that the agent is able to affect the outcome of the procurement process whilst, at the same time, keeping the principal in the dark.

Using procurement regulation in the fight against corruption

In the traditional vertically integrated bureaucracy, control over the bureaucracy is often seen in terms of direct supervision or monitoring. Direct supervision will often involve oversight by hierarchically superior officials and, in the case of procurement, frequently implies the existence of internal

audit systems (mostly *ex post*) and, at a more direct level, tender or procurement committees. In other cases, supervision may be carried out by independent government agencies. Where the bureaucracy has departed from the governments regulatory requirements, the remedy is to impose

sanctions on the non-compliant bureaucrats. The threat of such sanctions also operates, however, as an incentive for future compliance and may be seen as pro-active deterrence. Apart from the question of the effectiveness of sanctions and the likelihood of detection, the main difficulties

with implementing effective compliance by way of direct supervision or monitoring are time and cost. In all but the smallest of procuring entities, governments purchase huge amounts of goods, works and services for public consumption; huge in terms of both breadth of purchases and number of contracts. To monitor each and every contract in anything but the most superficial of ways would require an enormous team of competent experts in many different technical fields. Even if such a team could be found, the exercise would be very costly in terms of the number of employees needed and the amount of time expended. It would also be hugely inefficient since, in order to detect instances of deviation, such a team would need to review 100% of cases, even where problems may be identified in a much smaller percentage of cases.

Regulation as a form of imposing administrative procedures on the bureaucracy may assist in overcoming these difficulties whilst preserving political control over the process. By setting out in advance the parameters of the procurement process, the political principals define the institutional and procedural environment within which the procurement agents make decisions and thereby limit their range of feasible policy options. By controlling the process rather than by defining the outcome, political leaders are able to assure compliance without specifying, or even necessarily knowing, what substantive outcome is most in their interest.

Procurement regulation operates by setting out the process and requirements that the officers need to follow. In so doing, it reduces the scope for unlawful action, ensures discretion is exercised objectively and improves detection of unlawful behaviour. It does so in a number of ways.

Procedural requirements

All modern systems of procurement regulation operate by imposing the use of preferred procurement procedures on the procurement officers and allowing alternative procurement procedures only in well defined circumstances. Sometimes, such alternative procedures are permitted only on the basis of a prior authorisation which implies an element of prior superior control. Apart from the additional time and cost involved in such a procedure and the frequent bottlenecks occasioned by it, such a procedure will often fail to transfer responsibility and therefore accountability

from the political to the technical sphere (above) and, from the point of view of the fight against corruption, merely introduces (rather than removing) a further incentive for corruption.

The most frequent preferred procedure relied upon is the open or competitive bidding system, generally based on sealed bids. Competition acts as a discovery procedure allowing different suppliers to communicate the prices at which products are available. Requiring competition is, therefore, a mechanism used by the regulator to ensure that the procurement officer is led to opt for the lowest price commensurate with the stated requirements. In the case of a readily available and homogenous product for which there is a private market (approximating a state of perfect competition), the opportunities for corruption are reduced because prices are known (or easily identified) and comparable. In competitive price sensitive markets, it is difficult for the agent to 'pull the wool' over the principal's eyes. Bribes may be eliminated by using a sealed bid system whereby the bids are made public after the lowest bidder has been identified. Such a system would introduce contestability, which may otherwise be missing, at least between the participants in the tender procedure.

However, price is rarely the only factor other than in cases of mundane, off-the-shelf purchases or routine works. There is a need to consider other factors such as quality, durability, long-term economic benefits, contractual terms etc. Indeed, most purchases will be of differentiated products. Here, it is the agent that is likely to possess greater information and knowledge than his principal and it is the agent who has the upper hand. These elements of the evaluation process are simply not as visible or verifiable as the prices offered in competitive markets. Assuming there is an incentive for bidders to resort to bribery, the agent will, in the absence of specific regulation, be able to deal with the bidders in a way that allows him to identify suitable quality/price packages whilst ensuring that the most suitable one is also the one which provides him with the most advantageous personal incentive (bribe).

It is partly for this reason that procurement regulation not only imposes the use of specific procedures but also controls the choices made by the agent in respect of the bidders to be entertained and the criteria to be applied in the evaluation of bids. To ensure that the agent's discretion is used properly, the principal will set out the per-

mitted parameters and framework within which the agent is permitted to operate and needs to be able, if the need should arise, to verify that the agent has indeed acted within those parameters. In order to verify the agent's actions, the principal needs to know what the agent has done and needs to be able to access both the decisions of the agent and the information upon which those decisions were based. In other words, the principal will use the tool of transparency to provide for the verifiability of the agent's actions against the framework of the regulation.

Transparency

The imposition of transparency requirements is a critical component of the principal's administrative control for it is only when the actions of the agent are transparent can they be verified. Unless it is possible to verify the agent's actions, there will be no means of holding the agent accountable. There may be many reasons why the government principal will want to verify the actions of the agent. Generally, its interest will be to ensure that it knows what its agent does in terms of procurement in order to satisfy itself that the agent is acting in the interests of his employer, is achieving the goals set by his employer, does not make a personal benefit from any procurement transaction and otherwise conducts the procedure in an efficient manner. For international regulators, transparency is also a mechanism used to ensure that the benefits of competition are made available to all of those tenderers who are entitled to benefit under the international system at issue. In the context of the fight against corruption, transparency is a vital tool precisely because it makes visible what can be only too easily concealed. Transparency requirements make it more difficult to be corrupt and provide a disincentive by reducing the opportunity for extracting or receiving bribes.

The transparency tool can be used extensively in procurement regulation to provide disincentives against corrupt practices. It may be used throughout the whole process from the initiation of a given procurement procedure right through to the contract administration phase where, for example, variations (to delivery times and price) may be permitted only when made in writing and on the basis of explicit provisions and formulae contained in the contract. These are verifiable. The mechanisms adopted are initially based on the

publicity provisions of the procurement regulation which normally requires technical specifications as well as selection and award criteria to be made known in advance. These operate in various ways.

Publicity

The requirement to advertise procurement procedures or at least solicit bids from a minimum number of tenderers will ensure that procurement agents are not able simply to contact those tenderers with whom they would prefer to deal. From the anti-corruption perspective, this prevents the agent from dealing only with those tenderers who are prepared to pay a bribe and widens the pool of tenderers, thereby making it less likely that only tenderers interested in offering a bribe will be selected. The transparency of the procedure itself is enhanced by additional requirements that requests for information be made only in writing and that all responses and clarifications be sent in writing to all the tenderers simultaneously. Most systems of procurement regulation will also prohibit negotiations or discussions between purchaser and tenderer during the course of the procedure in anything other than permitted sole source or 'negotiated' procedures and only where they do not concern price or other fundamental terms and conditions of the tender or contract documents. The requirement either to notify the tenderers of the successful tenderer or to publish a contract award notice will also serve to alert tenderers to the possibility of corruption where the outcome is not consistent with expectations. This is particularly helpful in those systems which employ the practice of holding public bid openings at which bid prices are read out. Unexpected deviations between bid prices and the prices accepted in the award decision will assist in the disclosure of intervening shenanigans.

Technical specifications

In the case of technical specifications, procurement regulations will often set out in relatively strict terms what may be acceptable. Such an approach is necessary because it is all too easy for an agent to define the requirements and/or technical specifications in such a way as to favour

particular tenderers. There is a general preference for the use of performance, output or functional specifications as opposed to design or descriptive specifications. This enables a description of the items to be procured to be defined in terms of their intended use rather than by reference to specific products, makes or sources or to particular manufacturing processes which could have the effect of favouring or eliminating specific tenderers. There will be circumstances where this is not always possible and it may be necessary to define products in such a way that a specific manufacturer or service provider is readily identified. Where this is inevitable, all systems of procurement regulations require the agent to state explicitly that equivalent products will also be accepted. The use of objective and recognised standards may also be employed.

Qualification

In respect of selection or qualification criteria, procurement regulations tend to follow a common path although with different degrees of formality. The task is essentially to ensure that the potential bidders are properly qualified and, to that end, all systems of procurement regulation set out objective qualification criteria against which bidders may be judged. These will usually relate to three aspects of qualification: the suitability of the bidder as a trustworthy company; the bidder's economic and financial standing denoting its ability to complete the proposed contract; and the bidder's technical capacity and resources.

More and more frequently, provisions relating to probity are being introduced to the extent that the issue of a tenderer's professional conduct will cover previous acts of corruption. Indeed, in a number of systems, previous such convictions could lead to the penalties of debarment or blacklisting and thus become conditions of eligibility. The use of debarment, and the difficulties associated with it, is discussed under the heading of penalties below. However, there is also a strong argument to suggest that the system of "white-listing" under which potential tenderers would be obliged to prove that they have not

been convicted of any such offences in the past in order to be eligible for participation could overcome the problems associated with debarment.

The transparency of these various qualification criteria are vouchsafed not only by the requirement to make them public at the very outset but also by the requirements to expand on them to all tenderer's in writing (where questions have been raised) and to provide to tenderers rejected on any of the stated grounds with the reasons for their rejection.

Award criteria

In so far as award criteria are concerned, transparency is applied in a similar way to ensure that the criteria to be applied by the agent are known. Thus, the procuring entity will be required to state in the notice and/or tender documents all the criteria it intends to apply to the award of the contract. In general terms, the award criteria applied in most procurement systems can be divided into two: (1) the lowest price and (2) price which is evaluated together with a number of other criteria which will be set out in the bidding documents.

The difficulty and opportunity for abuse comes in with the interpretation and application of the second criterion. In some systems, the emphasis is placed on the need to assign monetary values to the criteria employed in order to avoid subjectivity and manipulation. Thus minor deviations or differences in the bids are to be assessed in terms of their economic impact will be translated into quantifiable monetary terms according to specified formulae. In this way, the procurement entity can bring such factors as operating cost, maintenance cost, performance and endurance under consideration in an objective manner. Other systems rely on point or weighting systems which are more susceptible to manipulation. Here, additional evaluation criteria are generally included in a non-exhaustive list and will be subject to a further clause requiring any additional criteria not contained on such a list to be applied in an objective and non-discriminatory manner.

Accountability

The decentralisation of procurement responsibility to procurement agents, the

hallmark of modern procurement systems, brings with it a commensurate need for ac-

countability. This has implications at several levels.

Responsibility and accountability

The twin pillars of responsibility and accountability provide a guarantee of probity but can be undermined in the context of procurement. Taking away the decision-making responsibility of the agent by, for example, subjecting critical decisions like the choice of procurement procedure to prior authorisation, takes the responsibility for that decision away from the agent and places it with a third party who may not be accountable for that decision. More often than not, the authorising body is a regulatory authority which is not answerable to the procurement review bodies. In countries where corruption is systemic and having created a further opportunity for corruption, it should come as no surprise that such systems are often abused by those very authorising bodies set up to control the actions of the agent.

The same may be said for the existence of hierarchically superior tender committees or central procurement units which operate in a similar way to absolve the agent of responsibility and accountability. Whilst the imposition of collective decision-making through tender committees is often imposed on grounds of ensuring greater compliance and combating corruption, it may well lead to less responsibility and accountability, especially where, as often happens, the procurement agent responsible for the procurement is not even a member of the tender committee. Apart from increasing the potential for higher level corruption, this mechanism can lead to bottlenecks and uninformed procurement decisions wholly removed from the reality of the product market in question.

Control mechanisms

From the anti-corruption perspective, the purpose of procurement regulation may be seen as an attempt to monitor and control the activities of the agent in such a way as to minimise the way in which the agent may be persuaded to misuse his discretion and the information he possesses for his personal gain. Traditionally, this was done by way of direct supervision. As indicated previously, the costs and time involved in direct supervision make this an inefficient

Monitoring compliance

Transparency is used to ensure accountability which will be vouchsafed through a supervisory process. This is done by way of ensuring that the considerations taken into account (relating to qualification of bidders and the setting of specifications, for example) and which have been made transparent (above) are also objectively verifiable. Thus, the bases upon which bids are evaluated must be clear and precise and must be capable of *ex post* assessment. There will still be discretion in the hands of the agent (the engineer must be able to decide what is necessary for a particular works) but it will be capable of verification, though that ability to verify will depend on the capacities of the monitoring and enforcement authorities.

The specific tools used to guarantee accountability in procurement are the provisions relating to recording, reporting and the mechanisms for review and control. Before the objectivity of the process may be verified through review procedures, however, it is necessary to be in a position to assess the performance of the agent. The procedures used, the specifications chosen and selection and award criteria applied can all be monitored through the application of the transparency requirements discussed above. However, further transparency measures are required to discover how they were applied by the agent. These are provided through recording and reporting.

Apart from requiring that all files and documents related to the procurement procedure be kept for a stated period following the execution of the ultimate contract, the regulation will also usually impose specific requirements as to the taking of minutes. In most cases, these will apply to bid opening procedures, evaluation reports and award decisions. Procure-

ment regulations also often require the grounds for choosing certain procurement procedures to be recorded. Access to such information will assist in identifying those cases in which the reasons are not properly substantiated and where agents have sought to manipulate their discretion to favour certain tenderers, for example where they have opted for sole source contracting.

Impartiality

Procurement regulation will also seek to reduce instances of potential conflicts of interest in the context of procurement and will generally impose provisions with regard to impartiality and confidentiality. In some cases, procurement rules will require participants in the procurement process (notably those connected to the evaluation process) to sign declarations guaranteeing their impartiality. Sometimes, these declarations will also refer to the absence of bribes or participation in collusive practices. Whilst such declarations have a valuable and immediate dissuasive and preventative effect, their legal utility is that they may be used, in the context of legal proceedings where it is found that the declarations are inaccurate, to demonstrate dishonest intent and/or misrepresentation. Provisions used to ensure that no conflicts of interest arise include the prohibition on procurement officers from participating in contract award procedures where they have any connection (family, social or financial) with any of the tenderer's; the requirement for such officers to declare themselves ineligible; the requirement for such officers to sign declarations to that effect; or the prohibition on the engagement of any government employee as part of any tender (as expert, for example).

and ineffective system of control. To monitor each and every contract in anything but the most superficial of ways would require an enormous team of competent experts in many different technical fields. Even if such a team could be found, the exercise would be very costly in terms of the number of employees needed and the amount of time expended.

It is for this reason that modern systems of procurement regulation rely on the twin

pillars of responsibility and accountability and on external and independent enforcement mechanisms to impose accountability based on complaints brought by the tenderers themselves. Tenderers are aware of the procedures employed, are able to identify potential breaches more easily and have greater interest in correcting breaches which may be to their disadvantage.

Review

Most countries have in place mechanisms and procedures for review of the acts (and omissions) of administrative bodies and other public entities in the exercise of their procurement functions. These may have been established specifically for disputes arising in the context of procurement or they may be part of the general mechanisms and procedures for review of administrative acts.

Broadly, the review mechanisms will include a complaint to the procuring entity itself, followed by an action (or appeal) before an administrative body (either hierarchical or independent) and judicial review. In most reforming countries, it is the second tier (administrative) review which is the most interesting and which gives rise to the most debate. It is an important debate, however, because the time and inefficiency involved in pursuing judicial review in some reforming countries and the frequent distrust of the judiciary (sometimes also corrupt) means that administrative review is likely to be the only speedy and reliable method of recourse. Here, the debate centres on the question of the independence of the administrative body since, even if an appeal would ultimately lie to the courts, it is recognised that such an appeal will not be heard in time to address the issues in a realistic fashion. Political interference is also of primary concern when the review mechanism is operated by hierarchically superior review bodies or even by regulatory bodies which are appointed by the government. In these cases, their independence is put into question.

The review mechanism needs to be effective and rapid and most systems give tenderers broadly three avenues of attack: an injunction (interim measures and/or suspension) to prevent an infringement, the possibility of setting aside (annulling) a particular procedure or award, including the right to remove unlawful specifications, and, finally, damages. These remedies are provided within tight time limits which will ensure speedy action and resolution. It is of little assistance if disputes regarding public expenditure for goods, works and services intended for public consumption and, therefore, their execution are held up indefinitely.

Financial penalties

Some countries also go so far as to impose financial penalties for breaches of the procurement law. As a general mechanism, such penalties often attach to any breach of the procurement regulation regardless of whether that breach is also corrupt. There are a number of possible objections.

The penalties may be applied either to the procuring entity as a whole (as the budget holder) or to the procurement agent. These have strong intuitive appeal as deterrents but their effects are far from clear. In the case of a penalty imposed on the procuring entity, for example, the fine itself is paid to another government entity (or government funded entity such as a court). It is not, as in the case of damages, paid to the person (i.e. tenderer) harmed by the infringement. The result of such a fine on the procuring entity could, however, be disastrous. Given that procurement budgets are generally granted based on estimates which are then reduced by appropriations committees or parliament (and probably by the Treasury also), it may be that after paying the fine there is no longer sufficient budget to proceed with the procurement as planned or at all. No doubt the procuring entity would wish to avoid this, if only to maintain its budget for the following year but the only people who are really harmed by this are the public who were expecting, for example, the construction of a new hospital.

Where fines are imposed against the procurement officer then there may also be more generalised negative consequences. The possibility will certainly act as a disincentive to take on the position (especially where other civil servants are not subject to the same dangers) and could impede the creation of a professional procurement cadre: it is curious that, notably in reform countries, where new rules are introduced, where capacity is low, where training is generally insufficient, where no advice is given, where procurement officers are not offered increased salaries or conditions of employment, they should then be fined for making mistakes, fines which may often be greater than their monthly or even annual salaries.

The case is different if they have been found guilty of corruption, of course, but that is a different issue altogether. Fines imposed in the context of a procurement regulation are (or should be) imposed for breaches of the (administrative) procurement regulation and not as the result of

criminal activities. Where such activities are discovered, it is clear that they should be pursued either by way of disciplinary action or by the appropriate authorities (public prosecutor or anti-corruption authorities). These are entirely appropriate not only as a means of punishing the perpetrators but also as a deterrent.

As criminal penalties, however, they are subject to the procedures of the criminal courts and need to be prosecuted in those courts. The issues of discovery and the mechanism of prosecution are just as relevant in this context. Corrupt practices are easily concealed and discovering them requires the application of sophisticated investigative and forensic tools. The difficulties of proving corruption mean that it would be extremely difficult and probably inappropriate for contracting authorities to make these findings themselves. To take action based on a suspicion would be unwise and, where there are any other weaknesses in the armoury, largely ineffectual in combating systemic corruption.

Procurement regulations are generally a rather weak mechanism, however, for setting out avenues for criminal complaints. They have little to say about whistle-blowers and their protection. These fall within the jurisdiction of other legislation. What procurement regulations can do, on the other hand, are to set out the consequences of convictions for corruption for the implicated procurement officers and tenderers. In the case of the agent, this is more likely to result from the consequent disciplinary procedures but, in the event that the agent is not dismissed, the regulations can prevent his participation in executive decisions (from selection and evaluation to award). In the case of the tenderers, regulations permit the exclusion of tenderers convicted of such crimes from tender procedures under the qualification criteria and some systems also permit the use of debarment or blacklisting.

Debarment

Debarment or "blacklisting" (the practice of excluding certain bidders from procurement procedures either temporarily or permanently) is also a mechanism sometimes used to punish those engaging in corrupt practices. Thus, where bidders have been found guilty of paying bribes to public officers in return for favouritism in a procurement process, they may be excluded either from a given procedure or

from all government procurement procedures for a given time (usually depending on the gravity or frequency of the practice) or, less frequently, permanently. There is little doubt that such blacklisting provides intuitive appeal and satisfaction since the punishment for paying bribes is clearly seen and the perpetrators clearly identified. Success of the blacklisting system is generally equated with the number of those caught. This, however, really only demonstrates the success of the mechanisms employed to identify, investigate and prosecute individual instances of corruption. It does not necessarily indicate success in the eradication of corruption as a practice, especially in the case of systemic corruption.

In countries where corruption is not endemic, it may well be that blacklisting will have a positive impact since those few bidders which seek to corrupt otherwise innocent procurement officers will be identified and removed from a position from which they may cause damage. It may be similarly beneficial where there is a limited number of high value contracts awarded in circumstances which may be

tightly controlled (this explains why it is a mechanism favoured by the international development banks, for example). The opportunity for paying bribes is removed. However, in countries where corruption is entrenched in the public sector and where it is systemic, a certain degree of circumspection may be called for.

Apart from the obvious dangers of abuse of any blacklisting system which need to be addressed, it cannot always be assumed that public officials are the innocent victims of temptations offered by corrupt bidders. There will always be at least two parties to the transaction and a corrupting benefactor will require a willing beneficiary. Indeed, where corruption is systemic, it may be that no public contract will ever be awarded without the payment of a bribe. Here, the bidders are the victims, not the public officials who systematically extract the bribes. In such circumstances, the bribe merely becomes another of the many transaction costs and will be paid by any bidder wishing to win a contract, *whether or not* it would have won the contract without the bribe. It is perfectly possible that, even where a bribe is paid, the

'best' bidder will still win the bid since whoever wins will be forced to pay the bribe. Catching and blacklisting individual bidders (the most incompetent ones in concealing their activities) will merely remove one or more bidders from the equation and possibly deprive the purchaser of the most efficient or 'best' bidder. At the same time, it is unlikely that this would have any effect at all on the system which creates the incentive to bribe, *viz.* the requirement that bribes will always be paid. In such a situation, the satisfaction of knowing that a payer of bribes has been caught out does nothing to eradicate the systemic corruption and may even divert attention from its continuing existence.

It is unclear that debarment or blacklisting offers a *panacea* and, whilst it may be a critical tool in the fight against opportunistic corruption in a number of circumstances, its more general success has not yet been demonstrated and there are sufficiently cogent arguments to suggest that it may offer, in some circumstances, no more than cosmetic comfort.

Audit

Audit is one of the main forms of direct supervision over the procurement process. This includes both internal and external audit. The main disadvantage (other than those otherwise associated with all forms of direct supervision discussed above such as the impossibility of reviewing all contracts and the need to use sampling) is that this is generally conducted *ex post*. From the anti-corruption perspective, it is possible that clandestine activities will be discovered but the trail will be cold and the sanctions limited: auditors generally provide reports and make recommendations. From a procurement perspective, the findings of auditors are usually too late to make any difference to specific procurement procedures, although they may, where reports are sufficiently synthesised and comprehensive, provide an indication of particular weaknesses in the system. Attempts to overcome these disadvantages by

increasing the role of the audit function produces further problems: increasing the scale of the audit increases costs in terms of time and money; conducting *ex ante* audits generally leads to bottlenecks.

A further potential problem with auditing procurement is that the auditors not directly associated with the procurement function will lack the experience of procurement agents and are not necessarily qualified to make the assessments they seek to make. Whilst audit is also concerned with the correct deployment of expenditure and compliance with, for example, the prevailing procurement regulation (*compliance* audit), it cannot effectively control the quality of that expenditure (*performance* audit) in the same exercise. Even in conducting simple compliance audits, inexperienced auditors will merely apply a given rule without any understanding of why it is applied. In many

cases, the auditors may simply seek to "second guess" the qualified agents by replacing the agent's decision with their own. This is extremely dangerous since the successful implementation of the procurement function presupposes an in-depth knowledge of procurement procedures and market assessment (*e.g.* works, supplies and services contracts over an infinite number of goods and services requiring assessment of a variety of different suppliers and service providers). Performance audits may be useful where auditors are specifically trained to measure performance against a set of prescribed benchmarks such as the best value benchmarks of the United Kingdom's Audit Office but without such benchmarks and the ability and experience to apply them, performance audits are a dangerous tool in the wrong hands.

A note of caution

Since the procurement function only provides an opportunity (however attractive)

for corruption, procurement regulation can only seek to reduce or eliminate those

opportunities by removing the incentives for corruption. It cannot address all forms

of corruption and cannot address opportunities which do not arise in the procurement context. Whilst, for example, foreign goods which are to be sold to the government purchaser will need to cross the national border, thus linking the import to the procurement process, procurement regulation can do little to prevent the facilitation payments which may be extracted by corrupt customs officials. The opportunity for corruption arises because of the authority given to the customs officer to grant or withhold importation. It does not arise because the goods in question form the subject matter of a winning tender.

The existence of entrenched or systemic corruption means that it is exercised at all levels of the bureaucracy from the technical to the political. It may in fact be reinforced by the procurement regulation itself where that system allows for political interference in the procurement decision-making process through political approvals of award decisions or through centralised procurement subject to political control. This is a much deeper cultural problem and goes beyond opportunistic corruption, *i.e.* corruption based on seizing the opportunities for personal gain presented by, in this case, the procurement function. Where corruption is so entrenched, the

procurement regulations will in any event be ignored by the political superiors who hold the key to the career opportunities open to the lowly procurement agent. In such cases, the procurement regulations will simply cease to operate optimally. Agents will, realistically, be unable to resist the political pressure.

In looking at procurement regulation through the lens of the fight against corruption, the tendency to seek to impose very strict procurement regulation based on the argument that corruption is a serious problem has already been raised. Reformers rarely limit themselves to reducing the opportunities for corruption but go further by imposing regulations which eliminate any possibility for the procurement agent to exercise his discretion. The attempt to reduce the procurement function to a mechanical application of rules negates such an attempt and often results in a complete lack of discretion on the part of the agent. It is critical to remember that it is not the *existence* of discretion that is the problem but the *misuse* of that discretion. The result is likely to be a series of "bad" procurement decisions devoid of any judgement or skill on the part of the officer.

This approach is often exacerbated by the approach generally taken towards procurement training. The training is not so much limited by the time or money available but by the nature of the training itself. It is more often than not restricted to the teaching of the new rules and little else. Whilst these will generally be consistent with the tools described above and assist in the fight against corruption in the same way, it is also true to say that mere compliance with the rules does not necessarily lead to good procurement or clean procurement. It is not enough to teach the rules only. To build or develop real procurement capacity, training in the art of the practical aspects of procurement is required: in procurement planning, supply chain management, processing, contract management as well as the skills of tactical and strategic procurement. To fight corruption, much more generalised (*i.e.* across the whole civil service) ethical training is required. To further enhance the procurement function, probity and public expenditure management procurement officers need also to understand how to take responsibility for the decisions and be prepared to be accountable for those decisions.

Concluding remarks

There is no doubt that procurement regulation can play an important part in the fight against corruption and the tools used in Europe and described here demonstrate that it can be effective. Procurement is an activity which provides a number of opportunities which may be exploited by the corrupt. The agency relationship with its authority to decide and powers of discretion provide the opportunity; the informational asymmetries created by the agency relationship provide the means. By imposing administrative control over the process, the government principal can reduce the opportunities for corruption. Procurement regulation succeeds in this respect by applying procedural requirements and transparency requirements. The effect of these requirements is to reduce the opportunity for corruption by making the information relied upon in the procurement process (the tender documents, draft contract, technical requirements, selection and award criteria) available for all to see and, most importantly, by making it verifiable. The responsibility given to the pro-

urement agent can then be tested since it will be possible to hold the agent fully accountable for his actions.

This does depend, however, on the strength and impartiality of the enforcement mechanisms in place. Procurement regulation provides a means of detection, but enforcement mechanisms need to be in place to ensure that the corrupt officer loses his gamble, *i.e.* that the costs associated with corruption (the risk of being caught and the penalty to be paid) exceed the likely benefits. Review procedures brought by bidders will highlight the instances of corruption but it is the civil services rule which must provide for the disciplinary measures and the appropriate authorities which must prosecute criminal activity.

It is not enough to address only the rules to be applied. Blind adherence to a set of rules can result in incompetent (rather than corrupt) procurement but can also provide a shield for corrupt practices. The approach has to take on board the need to create a cadre of procurement agents who

are well versed in the conduct of efficient and ethical procurement in all its aspects. This is imperative because procurement agents need to have knowledge, skill and experience in order to exercise their professional judgement in awarding contracts. They must be able to exercise their necessary discretion wisely. Inadequate training may well lead to the incorrect use of discretion and could well contribute to the corrupt use of that discretion. The procurement function needs to be better professionalised in the public sector as well as controlled.

The answer is not to impose ever stricter regulations on the agent in the name of anti-corruption. In extreme cases, over-regulation erodes the ability of the agent to exercise his discretion to such an extent that he is incapable of making a proper procurement decision. Such forms of regulation have a serious negative effect on public expenditure because they will often condemn the government to inefficient and expensive purchasing and result in the purchase of outdated or low quality

products not fit for the purpose intended. The achievement of inappropriate regulation may be questionable successes in the fight against corruption at the expense of the promotion of inefficient procurement and increased waste of public funds.

By ensuring that procurement regulation is framed in a way which addresses those opportunities for corruption that are capable of being successfully addressed through such regulation, it will serve as an

important tool in the fight against corruption. Where that is not the case, it will provide a cosmetic and possibly politically astute statement of intention which will achieve little in real terms to reduce or eradicate corruption but which will increase the costs of procurement to the public purse and thereby defeat one of the main objectives of procurement regulation, cost savings to the government. To avoid losing the benefits to be expected

from effective procurement regulation, a balance needs to be struck between combating corruption and promoting professionalism in procurement. Equally important are the commitment of the government and the efforts made to develop capacity to provide proactive and ethical procurement officers capable of achieving the financial and economic benefits to be gained from transparent, efficient and competitive procurement.

Corruption risk assessment of the Russian legislation regulating state and municipal procurement

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1.

RF Law No. 94-FZ of 21 July 2005 “On placing orders for procurement of goods, rendering jobs and services for state and municipal needs” (hereafter – the Federal Law “On Placing Orders”) came into force on 1 January 2006, setting up a unified procedure for placing state and municipal orders. The law allowed to bring various systems of procurement on the federal, regional and municipal levels in line with the new unified rules.

The Federal Law “On Placing Orders” covers the areas of economic and administrative relations that are potentially more prone to corruption than others, since they deal with managing the budgetary funds. Such a sectoral legislative document should possess an additional anti-corruptive function. Thus, the Federal Law “On Placing Orders” should include regulations aimed at prevention of corruption.

The Federal Law “On Placing Orders” belongs to a “new generation” of Russian laws in the sense of anti-corruption re-

quirements. It proceeds from a broad understanding of anti-corruption legislation as a system of regulations, serving as a barrier to corruption and relying upon preventive anti-corruption legal acts.

One of the goals of this Law is to bring the RF legislation on state and municipal procurement in line with international regulations, also from the point of view of preventing corruption.

Thus the United Nations Convention against Corruption of 31 October 2003 specifies the anti-corruption requirements to regulating public procurement (Part 1, Article 9): establishment of a appropriate systems of procurement based on transparency, competition and objective criteria for decision-making.

These systems shall address, *inter alia*:

- The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of

contracts, allowing potential tenders sufficient time to prepare and submit their tenders;

- The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;
- The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not allowed;
- Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.

2.

Analysis of the Federal Law “On Placing Orders” showed that a great number of its regulations have anti-corruption nature and are able to provide preventive anti-corruption measures.

The regulations of this law can be considered preventive anti-corruption due to the following statements:

- a system of legal regulations, ensuring transparency and publicity of procurement procedures, including a legalisation of IT application was set up;
- provisions were made for: publicising in the official media, on the official web sites on the Internet with strict deadlines, placing an electronic version of tendering rules, submitting an applica-

tion electronically, holding electronic auctions, public access to data contained in the register of contracts and the register of unreliable suppliers on the official web sites on the Internet, etc. (the official web site should contain all data regarding the bidding progress – from the bidding announcement to

- information on the supplier to whom the contract was awarded);
- a clear legal regulation of the procurement mechanism is in place;
- introducing a bidding procedure in the form of a competition (open or closed) or an auction (open, including electronically or closed); exceptions are listed in the federal law itself (requests for quotations from the sole source on commodity exchanges);
- new forms of placing orders are legalised – auctions, requests for quotations with preliminary selection, procurement on commodity exchanges – in order to increase effectiveness of budget spending;
- the scope of participants is broadened: any legal entity regardless of its business legal structure, form of ownership, location or origin of capital and any individual, including entrepreneurs can take part in state or municipal contract bidding;
- participation of the authorised representatives of producers or trading organisations alongside with producers themselves is legalised;
- a complete list of requirements for all tenders is put together; the Principal has no authority to obligate tenders to affirm compliance with these requirements;
- a list of criteria for evaluating participants' applications is completed;
- defining possibility of cash cover of participants' applications and provision for state and municipal contract execution;
- stipulating a possibility of pre-trial appeal against actions of state and municipal Principals.

According to the data of the RF Ministry for Economic Development and Trade, the situation with placing orders is characterised by positive dynamics: "Analysis of comparable parameters of placing orders for the first half of 2005 and 2006 (according to the Federal State Statistics Service) indicates the 1.5 times growth of the

volume of state procurement (878 billion rubles compared to 575 billion rubles). The share of contracts signed as a result of tenders has grown by almost 8%. At the same time there is a 9% decrease of contract share concluded with a sole supplier. The statistic data for the second quarter of 2006 indicates a 3 times increase in savings compared to the first quarter. Another positive trend is that 86 subjects of the Russian Federation created official web-sites for placing information on state orders, 59 subjects (out of 71 that provided information) appointed official press for publishing information on placing orders, half of the subjects have successfully established special bodies authorised for placing orders and authorised monitoring institutions.¹

1. Draft report by Mr A.V. Sharonov, Deputy Minister for Economic Development and Trade at the Government session on 28 September 2006, entitled "On placing orders for procurement of goods, rendering jobs and services for state and municipal needs". <http://www.economy.gov.ru/wps/portal/>.

3.

Nevertheless, we have to admit that at this stage the Russian legislation on state procurement still remains contradictory and fragmentary with serious deficiencies. It creates prerequisites to corruption in the law-enforcement process. A number of norms bear potentially corruptive factors and risks. These norms create the additional conditions for corruptive relations in the area of state procurement.

We have to point out that a special methodology of assessing corruption risks in legislation, presented by a project expert Ms. E.V. Talapina (in the first place, the definition of corruption risks and the typology of corruptive factors) was used in this report. The feasibility of using this Methodology can be explained with a complex character of legislation on state and municipal procurement, including both public and private norms.

According to this Methodology, corruption risks are defined as an opportunity incorporated in a legal instrument to contribute to corruptive actions and (or) corruptive decisions in the process of implementing the above regulation.

The following corruptive factors can be traced in the legislation on state and municipal procurement:

Collisions of legal documents

First of all, we would like to point out contradictions in the two key legal documents, regulating state procurement – Federal Law "On Placing Orders" and the RF Budget Code.

The Federal Law "On Placing Orders" (Part 2, Article 1) sets up procedures for placing orders that must be applied for state and municipal procurement in all cases except when such goods, works and services are procured or rendered for an amount not exceeding the limit of the Central Bank for a cash deal between legal entities in the Russian Federation. Currently this limit is 60 thousand roubles.²

Articles 70-71 of the RF Budget Code, regulating expenses of budget-funded organisations contain imperative norms to procure goods, works and services on the basis of the state and municipal contracts for the amount exceeding 2000 minimal wages³ (as opposed to 60 thousand rubles, mentioned in Federal Law "On Placing Orders").⁴

2. According to Instruction No. 1050-U of the RF Central Bank of 14 November 2001.

3. At 1 May 2006 the minimal monthly wage is 1 100 roubles.

4. http://iv2.garant.ru/SESSION/S_frQk2Q5n/PILOT/990.0.

This contradiction is dangerous from the point of view of corruption. It raises legally irresolvable issues of the limits on spending the funds allocated to a state or municipal institution for procurement of goods (works, services) in order to keep this institution running.

This collision has not been legally resolved yet. For this reason the plenary session of the RF Supreme Arbitration Court adopted Decree No. 24 of 22 June 2006, which puts an obligation on a budget-funded organisation to carry out procurement procedures according to the Federal Law "On Placing Orders". The procedure depends, however, on whether procurement is made for the needs of the state or the institution itself. If goods, works and services are bought for the institution's own needs for the amount not exceeding 2000 minimal wages, it does not have to apply the procedures for order placement stipulated by the Law.

In fact, this resolution of the collision by the plenary session of the RF Supreme Arbitration Court increases the risk of corruption, since it "sanctions" deviations from the competitive law-stipulated procedures for the placement of orders. This situation makes it possible to return to the corruptive situation that existed before the Federal Law came into force, when orders

were artificially split in order to avoid competitive procedures.

The above collision has to be legally resolved. It seems reasonable to make amendments to the RF Budget Code to avoid contradictions with the statements of the Federal Law "On placing orders for procurement of goods, rendering jobs and services for state and municipal needs". The minimal contract amount that calls for applying Federal Law procedures to placing orders has to be defined.

We also have to point out contradictions of the Federal Law "On Placing Orders" to the Fundamentals of the RF Notary legislation.

The Federal Law "On Placing Orders" provides an opportunity for any tender to submit a tender application for a competition (Part 2 of Article 25) or an auction (Part 4 Article 35) in an electronic form). At the same time the Law obliges a bidder to present the originals or notarised copies of documents, e.g., an extract from the unified state register of legal entities or a notary sealed copy of such an extract; copies of ID (for other individuals); a certified Russian translation of the state registration documents for legal entities and private entrepreneurs in accordance with the legislation of a corresponding state (for foreign citizens).

These requirements of the Federal Law "On Placing Orders" cannot be met electronically since they do not correspond to the provisions of the Fundamentals of the RF Notary legislation, that foresee the exclusive use of hard copies and have no procedures for certifying electronic documents. Besides, the Russian legislation has no clear definition of what originals and copies of electronic documents are. The Federal Law does not clarify the situation in regard to the procedures on state and municipal procurement. This problem cannot be resolved either by using the general legislative norms, since the Russian legislation has no unified legal definition of an electronic document, its original and copy.

Thus, in practice the bidders cannot exercise their legal right to submit their applications electronically. This collision artificially limits the number of participants from different Russian cities and considerably reduces competition. Besides, the opportunities for legal protection of rights and interests of tenders are minimised as well. According to the requirements of the arbitrary legislation, all written evidence should be submitted to

the court in the original form or as a notary sealed copy (Part 8 Article 75 of the RF Code of Arbitral Procedure).

In this case several corruptive factors are "engaged" complementing each other: collision of legislative norms, imposing excessive demands on a person that prevent him/her from exercising his/her rights and gaps in regulation.

To eliminate these corruption factors it is recommended to design the amendments and additions to the Fundamentals of the RF Notary legislation and to adopt them. The more so, as notary sealed electronic documents are required not only in the sphere of state procurement. It seems reasonable to develop a unified format of an electronic document, its original, copies, as well as the legal status of a hard copy of an electronic document and, vice versa, an electronic copy of a paper document, etc.

There is an alternative (and a quicker) way of solving this problem. The requirement for notary certification of the electronic documents could be taken out of the Federal Law "On Placing Orders" if these documents bear an electronic digital signature according to the procedures, specified in the RF Law "On Electronic Digital Signature".

We should also point out the collisions of provisions within the Federal Law "On Placing Orders" itself. For example, Article 36 of the Law states that the auction committee considers applications for their compliance with the requirements stated in the auction documents, as well as the participants' compliance with the requirements stipulated by Article 11 of the Law. The period of consideration cannot exceed 5 days from the final submission date. It is difficult to keep this deadline as the data necessary to determine the participants' compliance with the requirements must be submitted to a Principal by the corresponding organisations or institutions within a 10-day-period. This regulation creates opportunities to avoid a thorough evaluation of participants for corruptive reasons.

Gaps in regulation, filling in legislative gaps with the help of the legal documents by the executive authorities

It seems feasible to analyse the state procurement legislation looking for such corruptive factors as gaps in regulation, filling

in legislative gaps with the help of legal documents issued by the executive authorities.

Article 16 of the Federal Law "On Placing Orders" states legal provisions for implementation of principles of transparency, publicity and accessibility of information on state procurement. Among the most important conditions is an obligation of the supreme government bodies of the Russian Federation, subjects of the Russian Federation and local administrations to identify the official web sites of the Russian Federation, subjects of the Russian Federation and local administrations to publish information on state procurement competitions. This obligation is imposed to provide equal and free access of stakeholders to information on state procurement tenders. The official web sites must also contain the list stipulated by the Law, which could also serve as a source of information on procurement. These are registers of state and municipal contracts and the register of unreliable suppliers.

However, law-enforcement practice faces a number of unresolved issues and problems of the procedural and the technological character. For example, the following issues need to be clarified: what is the procedure of placing information on the official web site; in what format this information should be presented; is it possible to refuse to place this information and if so, on what grounds; is it possible to remove information from the open access area and what should be the grounds of this removal; and, finally, what is the liability of the authorised web site provider.

In spite of the fact, that many official web sites are functioning already, no requirements have been developed so far for technological and software means of their operation. "The analysis of the dynamics of notification placed on the official web site of the Russian Federation indicates that the number of notifications has grown from 2 000 per month in February to 20 000 in September. The average daily number of visits has grown from 5 000 in January to 300 000 in September. Currently there are about 12 thousand state customers, distributors of state budget funds and specialised organisations registered on the web site".¹

The mechanism guaranteeing transparency, publicity and accessibility of information in the area of placing orders cannot fully operate if the above issues are not resolved. It is common knowledge that the lack of transparency of procurement pro-

cedures is a strong corruptive factor in the sphere of state procurement.

It is necessary to add here that the Law "On Placing Orders" leaves no opportunity for appealing against actions (failures to act) of the organisation authorised by an executive authority to maintain the official web site, although it does contain an anti-corruption provision on appealing against actions (failures to act) of a Principal, an authorised body, a specialised organisation, competition, auction or quotation committees.

The Law "On Placing Orders" does not provide any means of control over observing RF legislation in terms of placing orders by an authorised body for the official web site administration, which increases the risk of corruption. Though this type of control is exercised over a Principal, an authorised body, specialised organisation, competition, auction and quotation committees.

The Law fills in the above gaps by referring to sub-legislative legal documents. Thus, the RF Government must set up:

- procedures for using the official web sites and standards for technological, software, linguistic, legal and organisational provisions of access to the sites (Part 7, Article 16);
- procedure for contract registers and standards for technological, software, linguistic, legal and organisational provisions of access the official sites, containing these registers (Part 6, Article 18);
- procedure for the register of unreliable suppliers and standards for technological, software, linguistic, legal and organisational provisions for web sites, containing the register of unreliable suppliers (Part 11, Article 19);
- procedure of using the Internet web sites that carry out open electronic auctions and standards for technological, software, linguistic, legal and organisational provision of access to the sites (Part 4, Article 41).

We should point out that the above legal documents have not been adopted by the RF Government so far. This fact creates such a corruptive factor as **Failure to adopt a legal document (failure to act)**.

1. Draft report of the RF Deputy Minister of Economic Development and Trade Mr. A.V. Sharonov at the RF Government session on 28 September 2006, entitled "On placing orders for procurement of goods, rendering of jobs and services for state and municipal needs" <http://www.economy.gov.ru/wps/portal/>.

Excessive freedom of sectoral (sub-legislative) law-making

This factor makes it possible to regulate a number of important issues by sub-legislative legal documents.

Despite the fact, that the Law "On Placing Orders" regulates the procedures for placing orders in great detail, it still calls for adoption of a large number (over 20) of sub-legislative legal documents by the RF Government. It is justified in some cases, but it is important that the Law itself regulates the most essential issues.

Thus, it is completely justified that such specific issues as standards for technological, software, linguistic, legal and organisational provision of official web sites access can be regulated by the legal documents adopted by the RF Government.

Nevertheless, it should be a prerogative of the Federal Law rather than a Government regulation to determine such anti-corruption practices as possibility to appeal against actions (failures to act) of organisations authorised to maintain the official web site and to ensure that these organisations observe the RF legislation on placing orders.

It seems reasonable though to introduce the following additions to the Federal Law "On placing orders for procurement of goods, rendering of jobs and services for state and municipal needs" in order to eliminate the risks of corruption: Article 17 "Control over the observation of the RF legislation and other regulations of the Russian Federation on placing orders" and Article 8 "Ensuring protection of rights and legal interests of the bidders".

Definition of competence according to "may" formula

The Federal Law "On Placing Orders" contains some potentially corruptive regulations, determining competence of executive authority in terms of what they "may" do, leaving to interpret their right as an option rather than an obligation to abide by Law, thus possibly exercising this right depending on the corruptive conditions.

Such corruptive statements are typical of regulations, determining requirements to bidders.

A Principal or an authorised organisation can impose the following requirements in the process of placing orders: 1) bidders have exclusive rights to the objects of the intellectual property in the

event when a Principal purchases such a right; 2) no record of bidders in the register of unreliable suppliers (Part 2 Article 11).

A Principal, an authorised organisation, a competition or an auction committee have the right to dismiss a bidder at any stage of a competition or an auction if following facts were revealed: not authentic information contained in documents submitted by a participant, liquidation or applying bankruptcy procedures to a participating legal entity, suspending activity of a participant according to RF Code for Administrative Violations (Part 4 Article 12).

The indicated competence of a principal, an organisation, a competition or an auction committee based on the "may" formula creates the favourable conditions for corruptive deals and applying subjective criteria for the selection of bidders. In order to eliminate this corruptive factor it seems reasonable to determine the competence of a Principal, an organisation, a competition or an auction committee according to the "shall" formula.

These potentially corruptive provisions are also typical of regulations determining area of competence for federal, regional and local bodies authorised to exercise control over order placement (Article 17).

According to the Law, a federal executive body can carry out unscheduled monitoring in cases stipulated by the Law. Among them are the instances when the Principal commits actions (or fails to act) qualified as administrative violation.

If the audit reveals violations of legislation on order placement on the part of the Principal, an authorised body for such an audit has the right to:

- propose to the Principal (a regional public body or local authority) to eliminate the violation as well as to replace a member of a competition, auction or quotation committee who allowed this violation;
- obligate the Principal who is not a regional public body or local authority to rectify a breach as well as to replace a member of a competition, auction or quotation committee who allowed this law violation,
- appeal to a court or an arbitrary court to recognise the order as invalid.

In the event that the Principal ignores the proposals, an authorised federal authority can appeal to court in order to force the Principal to act in accordance with the RF legislation and to protect the rights and legal interests of bidders. It can also

demand to replace a member of the competition, auction or quotation committee.

If the Principal ignores the instructions, an authorised executive federal body can hold him responsible according to the RF legislation.

The listed legislative provisions demonstrate the considerable legal power (as opposed to duties) of the federal, regional and local executive authorities exercising control over order placement. This wide competence according to the "may" formula creates favourable conditions for corruption during audit and in case when violations are discovered.

In order to eliminate the above-mentioned corruptive factor Article 17 of the Federal Law "On Placing Orders" should be changed to determine the competence of federal, regional and local executive authorities in controlling order placement according to the "shall" formula.

Excessive demands on participants in the process of exercising their rights or duties

We can point out another corruptive factor in the Federal Law "On Placing Orders" – that is excessive demands on participants in the process of exercising their rights or duties.

The publication of all the information on the open competition required by the Law in the official press (including a complete list of goods, works or services), takes 20 to 300 pages, depending on a competition. According to Part 4 Article 41 of the Law the announcement of the open competition must include "the subject of state or municipal contract, indicating quantity of goods, volume of works or services rendered and brief specifications of these goods (works, services). The requirement to put this publication in the official press is problematic, considering that P. 3 of the

RF Government order No. 725-r of 3 June, 1998 on free publication of tender announcements became inoperative. The official press edition of the Russian Federation – press bulletin "Biddings" publishes announcements only on a paid basis.

Failure to fulfil this condition can be treated as a corruptive factor by an authorised control body executing of placement of orders.

For this reason when the stock-list exceeds 300 positions it is recommended in announcements about open competitions to list the groups of goods considering the specifics of institutions involved in cases; whereas the full list of goods (works, services) procured and their technical specifications should be listed only in the tender documentation.

It also seems reasonable to abolish the burdensome requirement of publishing protocols on order placement procedures in the official press as they are available on official web sites.

Conclusions and preliminary suggestions

Since the RF legislation on state and municipal procurement

- firstly affects the administrative and economic relations characterised by high potential for corruption,
- secondly is at the development stage,
- and thirdly, is able to reproduce corruption risks

it is necessary to carry out a constant targeted anti-corruption monitoring of legislation and law-enforcement practices. It seems relevant to establish a full-time expert group to carry out this monitoring.

Monitoring goals:

- identification of legislative provisions on state and municipal procurement that should be strengthened by the anti-corruption practices and preventive measures;
- identification of legislative acts with the potential corruption risk factors and create conditions for corruption in the sphere of state and municipal procurement;
- identification of other legislative regulations with corruption risk in the sphere of state and municipal procurement;
- identification of typical law-enforcement situations of implementation of state and public procurement where

corruptive regulations are used or can be used;

- developing proposals on introducing additions and amendments to legislation on state and municipal procurement in order to bring it in compliance with the anti-corruption requirements.

At present the following corruptive factors must be eliminated from the legislation on state and municipal procurement: collisions of legal documents, gaps in legal regulation and filling in these gaps with the help of the relevant legal documents adopted by the executive bodies, excessive freedom of sectoral law-making, definition of competence according to the "may" formula, excessive demands on participants in the process of exercising their rights or duties.

The following recommendations can be suggested to eliminate these corruptive factors:

- To make amendments to the RF Budget Code to avoid contradictions with the statements of the Federal Law "On placing orders for procurement of goods, rendering jobs and services for state and municipal needs". To clearly identify the minimal contract amount that calls for applying Federal Law procedures to placing orders.

- To make amendments and additions to the Fundamentals of RF Notary legislation, legalising notarial procedures for electronic documents. In this respect it seems reasonable to develop a unified legal structure of an electronic document, its original and copies, as well as the legal status of a hard copy of an electronic document and of an electronic copy of a paper document, etc.
- As an alternative to making amendments to the Fundamentals of RF Notary legislation it is recommended to exclude from the Federal Law "On Placing Orders" the requirement of notary certification of electronic documents, if these documents bear an electronic digital signature according to the procedures, specified in the RF Law "On Electronic Digital Signature".
- Making provisions for an appeal against actions (failures to act) of organisations authorised to maintain the official web site; ensuring that these organisations act in accordance with the RF legislation on placing orders. Introducing the following additions to the Federal Law "On placing orders": Article 17 "Control over observance of the RF legislation and other legal documents of the Russian Federation on order placement"; and Article 8 "Ensuring protec-

- tion of rights and legal interests of bidders".
- Introducing changes to Part 2, Article 11 and Part 4, Article 12 of the Federal Law "On Placing Orders", formulating the areas of competence for a Principal, an authorised body, a competition or an auction committee according to the "shall" formula.
 - Introducing amendments to Article 17 of the Federal Law "On Placing Orders", formulating the areas of competence for federal, regional and local executive authorities, according to the "shall" formula.

Perspectives for the development of the corruption risk assessment methodology with regard to the analysis of legislation on public procurement of the Russian Federation

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The periodic evaluation of relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption,¹ provided for by the United Nations Convention, is carried out in different ways.

A recent report entitled “Administrative and Regulatory Reform in Russia: Addressing Potential Sources of Corruption”, prepared by the World Bank, analyses the experience of combating corruption by reviewing rules and regulations in three countries.² Each of these countries has developed certain strategies in this work. In Mexico it is institutionalised regulatory review. In Finland it is development of better regulations. In Latvia it is a participatory approach to designing regulations.

Perhaps the variety of approaches shows the novelty of the task itself. The history of purposeful search for solution and solving it is fairly short. Obviously, it will take some more time to find, test and recognise the most viable ways of its solution.

This search is carried out in Russia as well. The methodology on corruption risk assessment (anti-corruption expertise) of legal acts and regulations has become one of these solutions. The distinctive feature

of this methodology is revealing groups of corruptive factors, recognised as the most typical “legal” sources of corruption. This methodology has been successfully tested.

However, from the very start the question of its implementation limits has been raised. Specifically, are there any significant peculiarities of corruption risk assessment in different spheres of legislation? Is it applicable to different areas of legal regulation? Does it work in regard to the existing legal regulations and their drafts? Does it work in regard to laws and sub-legislative acts? Should therefore special methodologies for revealing corruption risks be developed?

Actually, the current version of this methodology is a result of addressing two of these issues. Originally it was meant to reveal corruption factors in legal acts. Later, when tested on sub-legislative acts, certain peculiarities were discovered. They were taken into consideration in the current version of methodology, which reflects both general requirements for legal regulations and specific requirements in regard to corruption risk assessment of sub-legislative acts.

The search for answers to these questions continues.

The joint project of the Council of Europe, the Russian State Duma anti-corruption Commission and the European Commission entitled “Development of legislative and other measures for the prevention of corruption” aims at taking practical measures to decrease corruption factors in

the Russian legislation at the federal level, and also to continue the search for the most effective technologies for this work. One of the goals of this project is to further develop methodologies for assessment and elimination of corruption risks in the legislation.

Consequently, the project experts who were to analyse corruption risks in the Russian legislation in specific areas – public procurement and education – were not limited to choosing or designing a certain methodology to carry out this analysis.

They were not directed to use an existing methodology. On the contrary, their task was to assess the situation and to choose, develop or complete the methodologies, reflecting the peculiarities of a given area of regulation. Indirectly, this practice helped to evaluate the coverage and application of methodology dealing with anti-corruption expertise of laws and regulations, used by the experts of RF State Duma anti-corruption Commission.

In fact, the experts had to define the perspectives for developing the methodology on anti-corruption expertise of laws and regulations based on the current results, or expand it with new methodologies.

In the case of the law on procurement for state and municipal needs it was decided to involve two experts (the main and the additional ones) to carry out this analysis independently from each other to ensure greater reliability of the results.

1. See the United Nations Convention against Corruption, Chapter II, Article 5.

2. World Bank Report No. 36157-RU: “Administrative and Regulatory Reform in Russia: Addressing Potential Sources of Corruption”. Policy note. 1 October 2006. Poverty reduction and economic development Unit. Department of economy and poverty alleviation. Europe and Central Asia.

Such an approach (an expert assessment of a legal instrument by two independent experts) is foreseen by the methodology on corruption risk assessment of laws and regulations.

The main expert was free in searching, choosing and completing the most adequate and effective methodology for analysing the federal law on state and municipal procurement.

The additional expert had to carry out the analysis strictly in accordance with the traditional methodology on corruption risk assessment of laws and regulations (anti-corruption expertise).

If the main expert had suggested a new (different) or a modified methodology for analysing corruption risks in legislation, this duplication would have allowed to compare the results and effectiveness of the two methodologies in order to pick up one of two or to make a synthesis of both.

If the main expert had used a traditional methodology of anti-corruption expertise, his previous experience and a fresh look on the methodology would have helped him/her to reveal its weaknesses as well as the ways for its further development and improvement.

In any case, the expert assessment made by two experts independently should help to increase the reliability of assessing corruption risks in Russian legislation on state and municipal procurement.

The results are presented below.

According to the assignment, the main expert evaluated the need for developing additional technologies of analysis. She had a vast experience in general legal expertise of legislation. She had no previous experience in practical implementation of the methodology of the anti-corruption expertise of laws and regulations, which could have predetermined her choice in favour of the methodology.

Nevertheless, judging by the report prepared by the main expert on the corruption risk assessment in the RF legislation on state and municipal procurement, she did not find any reasons for searching or designing a different technology (methodology) for such an analysis. The choice was made in favour of the methodology of anti-corruption expertise. According to the main expert, "the possibility and expediency of using the Methodology is explained by the fact, that the legislation, regulating state and municipal procurement is complex in character and contains both public and specific acts."

As a result, the main expert carried out the analysis of corruption risks in the RF legislation on state and municipal procurement based on the methodology of anti-corruption expertise of laws and regulations traditionally used by the RF State Duma anti-corruption Commission.

This fact proves the universal nature of the methodology of anti-corruption expertise of laws and regulations at the current stage of anti-corruption technology development.

This is true, at least, in two areas – state and municipal procurement and existing Federal laws. The latter is particularly important, since this methodology has been used so far for anti-corruption expertise of draft laws only.

Thus, both experts used the same methodology, despite of the fact that one of them had a choice and a task to find something new and, possibly, more effective.

The comparison of expert reports (See Appendix 1, page 83) allows us to draw some conclusions on the perspectives (tasks) for development of the methodology of the anti-corruption expertise of legal acts.

For comparison the table "Evaluation of corruption factors and manifestations of corruption in a legal act", was traditionally used.

When the methodology is applied, the table is usually used for the following reasons:

- To ensure full coverage and systematic approach by an expert, that carries out the anti-corruption expertise. In the process of analysis, each statement of the regulation (or its draft) should be first of all checked for each corruption factor or other manifestation of corruption risks. Secondly, in the end the entire legal act can be checked for each corruption factor or other manifestation of corruption risks.
- To compare the results of the anti-corruption expertise, carried out by different experts; for external examination of reliability of the results of the anti-corruption expertise or corruption risk assessment of a legal act done by the developers.
- To make up a summary report on the results of anti-corruption expertise if it was carried out by several experts.
- The table is also used for training specialists and new experts in applying the methodology of anti-corruption expertise.

In this case the table gives us an opportunity to compare the results of two experts, who used the same methodology, but have a different experience in carrying out the general legal expertise and the methodology of anti-corruption expertise in particular. The main expert has a considerable experience in legal expertise and knowledge in the area of state and municipal procurement, but had no prior experience of using the methodology of the anti-corruption expertise of legal acts.

The conclusions based on the results of comparison are presented below.

Both experts discovered a certain number of factors of corruption in the law in question and concluded that there is a need to improve the law in order to eliminate these corruptive factors. According to the main expert, "The following corruptive factors are to be eliminated from the legislation regulating state and municipal procurement: collisions of legal acts; gaps in regulating and filling in legal gaps with the help of the regulations by the executive branch; excessive freedom of sectoral law design; definition of competence according to the "can" formula; excessive discretion of the person exercising his rights or duties". According to the second expert, "the general conclusion of the anti-corruption expertise: implementing the current version of the law gives an opportunity to miscreant public officials to conclude corruptive deals and to join corruptive agreements."

Out of 12 corruptive factors in the law pointed out by the main expert, 5 were also discovered by the second expert. Out of 100 corruptive factors revealed by the second expert, 5 were also found by the main one.

The further work on summarising both reports and making recommendations on the amendments to the law in order to eliminate factors of corruption – will allow to study the feasibility of revealing each corruptive factor discovered by the experts and to come to the conclusion on accepting or rejecting these factors.

However, regardless of the future conclusions, this comparison allows us to determine several points for development (ways of improvement) of the current methodology of the anti-corruption expertise of legal acts.

An obligation to examine each statement of a legal act to determine the presence of each corruptive factor should be established.

The same refers to an obligatory control procedure – the examination of presence of each corruptive factor in the entire legal instrument.

These requirements (mostly, the first one) are generally implemented *ex post*. To some extent they are a part of experts' training in practical use of the methodology of the anti-corruption expertise of legal acts.

Obviously, these requirements should be imposed by the methodology itself.

The previous experience and the comparative analysis of the results of anti-corruption expertise of the federal law on state and municipal procurement made by two experts demonstrate the strong influence

of the former legal practice on the expert assessment, especially if it lies in the area of the legal regulation under analysis. The larger this practice and the higher qualification of an expert in that area, the greater their influence on the analysis of corruption risks in a legal act. The expert naturally sees and highlights the corruptive factors that proved to be significant in his experience. And on the contrary – he leaves out those, which he did not come across or which seemed to be less important. Obviously, these circumstances influenced the work of the main expert. However, the corruptive factors that were not a part of the expert's prior experience or that are not used for the purposes of cor-

ruption today, could still become a part of this practice tomorrow.

The methodology for the anti-corruption expertise is primarily meant to identify all corruptive factors, regardless of whether they are currently used for corruption. The second expert was evidently guided by this statement.

The methodology of the anti-corruption expertise has been created as an instrument for discovering and eliminating all typical corruptive factors in all legal instruments to be analysed. This methodology becomes even a more effective instrument for reducing corruption risks of the Russian legislation as its anti-corruption requirements are reinforced.

Appendix 1. Comparative table of corruption risks assessment (anti-corruption expertise) of the Federal law "On placing orders for procurement of goods, jobs and services for state and municipal needs"

Table 1: Evaluation of corruptive factors and manifestations of corruption present in the legal act

		Corruptive factor, manifestations of corruption	Article in the legal act, in which a corruptive factor is discovered	
			Main expert	Additional expert
A	1	Scope of discretionary powers		Article 9 part 3; Article 11 part 2; Article 12 part 3; Article 12 part 4; Article 21 part 4 Par.10; Article 22 part 4 Paragraphs.14 and 15; Article 24 part 3; Article 26 part 7; Article 27 part 1; Article 28 part 2; Article 28 part 4; Article 28 part 6; Article 29 part 2; Article 31 part 1; Article 34 part 2; Article 35 part 8; Article 38 part 2; Article 40 part 1; Article 41 part 13; Article 45 part 3; Article 47 part 7; Article 50 part 1; Article 52 part 1; Article 55.1 part 1; Article 60 part 4
	2	Definition of competence according to "can" formula	Article 11 part 2; Article 12 part 4; Article 17	Article 7 part 9; Article 15 part 1; Article 17 part 4; Article 17 part 8; Article 17 part 12; Article 17 part 13; Article 28 part 5; Article 32 part 2.
	3	Excessive demands on the person to exercise his rights	Article 21 part 4	Article 11 part 1 п.1; Article 12 part 1 Par.1; Article 25 part 3; Article 25 part 6; Article 35 part 2; Article 51 part 2; Article 52 part 3; Article 57 part 6; Article 58 part 2; Article 58 part 3
	4	Abuse of applicant's rights		Article 25 part 9; Article 61 part 1
	5	Freedom of sub-legislative regulation	Article 16; Article 18 part 6; Article 19 part 11; Article 41 part 4	Article 2 part 2; Article 2 part 3; Article 4 part 2; Article 10 part 4; Article 11 part 3; Article 13 part 3; Article 13 part 4; Article 15 part 1; Article 16 part 7; Article 18 part 6; Article 19 part 11; Article 28 part 7; Article 30 part 1; Article 31 part 1; Article 39 part 1; Article 41 part 4; Article 45 part 4; Article 48 part 3; Article 56 part 2
	6	Juridical and linguistic corruption risks		Article 7 part 4; Article 34 part 3; Article 47 part 7
	7	Adoption of legal regulation "extra vires"		
	8	Filling in legislative gaps		

Table 1: Evaluation of corruptive factors and manifestations of corruption present in the legal act

		Corruptive factor, manifestations of corruption	Article in the legal act, in which a corruptive factor is discovered	
			Main expert	Additional expert
Б	9	Presence of a gap	Article 16; Article 18 part 6; Article 19 part 11; Article 41 part 4	Article 6 part 2; Article 15 part 2; Article 29; Article 37 part 2; Article 37 part 3; Article 41
	10	Lack of administrative procedures		Article 7 part 4; Article 7 part 10; Article 9 part 6; Article 11 part 6; Article 21 part 4 Par.12; Article 28 part 3; Article 28 part 15; Article 37 part 15; Article 38 part 3; Article 45 part 5; Article 52 part 9; Article 53 part 3; Article 54 part 6
	11	Lack of competitive (bidding) procedures		Article 42 part 5; Article 48 part 3; Article 55 part 2
	12	Lack of prohibitions and limitations for public officials		
	13	Lack of responsibility of public officials		
	14	Lack of control over public officials		
Б	15	False goals and priorities		
	16	Normative collisions	Article 1 part 2; Article 25 part 2; Article 35 part 4; Article 36 from Article 11	Article 8 part 2 from part 4 Article 11; Article 9 part 7; Article 9 part 7.1; Article 10 part 6; Article 11 part 2 Par. 2 from Article 19; Article 21 part 5; Article 26 part 2 from Article 22 part 4 P. 9, also Article 21 part 4 P. 9, 6, Article 22 part 4 P. 13, Part 2 Article 2
	17	"Imposed" corruption		
Г	18	Formal and technical corruption		
	19	Failure to adopt a legal act	(Article 16; Article 18 part 6; Article 19 part 11; Article 41 part 4) – remarks on the RF Government	
	20	Disrupting the balance of interests		Article 9 Parts 9 and 10
		Other corruptive factors		
		Violation of transparency condition		Article 30 part 5

The basis for the national anti-corruption strategy in the Russian Federation

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This document is prepared as a discussion paper of problems of developing a national anti-corruption strategy in Russia. It does not claim to be exhaustive and complete, nevertheless, it outlines the basic principles of developing a national anti-corruption policy, as reflected in the statements of the United Nations Convention against Corruption and in the anti-corruption

documents developed in Russia over the last ten years. For example, some provisions and principles that had originally been integrated into draft Federal laws “On combating corruption” (2002) and “The basics of anti-corruption policy” (2001) were also used in preparation of this document. Besides, numerous expert studies on the ways of combating corruption in Russia

and, namely, workshop materials of the joint projects of the State Duma anti-corruption Commission and the Council of Europe were used for the purpose of this document. It is assumed that these basics of the anti-corruption strategy will lay the foundation for further public discussion so that to by summer 2007 they underlie a detailed final document.

Preliminary statement

The fundamentals of an anti-corruption strategy in Russia consist of the following sections:

1. General statements

- 1.1. *Stating the problem*
- 1.2. *Definition of corruption*
- 1.3. *The objective of the strategy*
- 1.4. *The aims of the strategy*
- 1.5. *The principles of strategy implementation*
- 1.6. *The legal and regulatory framework of the strategy implementation*

1.7. The mechanisms of anti-corruption strategy implementation

2. Main areas of combating corruption in Russia

- 2.1. *A specialised anti-corruption body*
- 2.2. *Prosecution for corruption offences*
- 2.3. *Prevention of corruption*
- 2.4. *Anti-corruption education*
- 2.5. *Evaluation and monitoring of corruption in Russia*

3. High priority measures for implementing the anti-corruption strategy in Russia

- 3.1. *Creating a specialised anti-corruption body in Russia*

4. Risks at the stage of strategy implementation

5. Annex: Model plan for implementing high priority measures of the anti-corruption strategy in Russia

General statements

Stating the problem

Reaching the goals of sustainable and progressive development of Russia is impossible without a substantial reduction of corruption level on both the federal and the regional levels. At present corruption is a serious threat to proper functioning of

public authority, rule of law, democracy, human rights and social justice; it slows down social and economic development of Russia.

The official statistics, as well as the data, provided by NGOs, specialising in the relevant field, the results of scientific, sociological and criminological surveys, the data

provided by law-enforcement agencies, bodies of judicial statistics and mass media statements testify to the fact that corruption phenomenon affected the political and institutional, economic, judicial and law-enforcement, educational and instructional fields, as well as social welfare system, medical and investment spheres,

international trade, and seriously damages the state system of Russia itself.

The economic consequences of corruption are manifested in various ways. Bureaucratic delays of document preparation, inability of the state to ensure manufacturers' security, lobbying, protectionism, abuse of power, unfair competition, excessive regulation and state control affecting market economy and free competition mechanisms take the potential investors' confidence and reduce business initiatives, causing a raise of state project costs, reduction of economic effectiveness, increased evasion of taxes, lower rate of filling the state budget and development of shadow economy.

Social and political consequences of corruption are manifested in the functional, political and moral deterioration of federal and local authorities as a result of spreading the political corruption, and in the decrease of open and responsible political competence, impoverishment of population and escalation of social tension.

Corruption affects the activity of executive authorities causing lower quality of public administration; establishment of unofficial decision-making system; promoting closer ties between organised crime, public officials, corrupt politicians, etc.

Over the past few years corruption in Russia has become more systematic, which manifests in the following:

- the state policy and the decision-making process in public administration are influenced by private interests of people in power or close to power;
- income from "administrative rent", i.e. revenues received as additional informal payments for carrying out public authority functions constitute the major share of the public officials' income;
- corrupt behaviour is not publicly disapproved of, is considered acceptable and permissible;
- the executive authorities actively interfere with the activity of business entities and derive considerable non-budgetary income from this interference.

The anti-corruption strategy takes into consideration the whole range of corruption instances and is geared towards complete elimination of corruption and its prerequisites from the public administration, rather than correction of certain defects in the functioning of regional authorities.

The anti-corruption strategy is primarily focused on reasons and sources of corruption rather than on its manifestations, on concrete actions rather than on diagnosis, on systematic approach to all institutions rather than on selective measures.

The implementation of the strategy is carried out systematically and progressively on the entire territory of the Russian Federation, involving all public and municipal authorities.

The strategy takes into account as much as possible a specific corruption situation in Russia and relies upon continually renewed data in this area.

The strategy is a unified document with an open access for everyone and assuming public involvement in its completion and implementation, control and evaluation of its impact with due regard to capacities and resources of Russia.

Definition of corruption

Corruption is mainly a social phenomenon, which is often revealed as a specific offence, but generally cannot be fully described by definitions of the criminal law. For this reason the anti-corruption strategy considers corruption in the most general sense as any use of power or functions for the personal benefit.

This wording coincides with the working definition, given by the Council of Europe interdisciplinary group on corruption: "corruption is a bribery or any other type of behaviour of persons, entrusted with certain responsibility in public or private sectors, leading to poor performance of their job responsibilities and aimed at gaining any undue benefits for themselves or other individuals".

In the work on combating corruption it is advisable to use and implement to the fullest the provisions of the Russian legislation and the international anti-corruption documents, ratified by Russia.

According to the Council of Europe Civil Law Convention on Corruption, "corruption means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof".

The Council of Europe Criminal Law Convention on Corruption defines corrup-

tion according to the form of its perpetration – active and passive bribery.

Active bribery is "the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions".

Passive bribery is "the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions". According to the Criminal law Convention, these facts are referred to as corruption if committed by domestic and foreign public officials, members of domestic and foreign public assemblies, members of international parliamentary assemblies, international officials and also by officials of international organisations. Corruption is relevant for both public and private sectors.

The United Nations Convention against Corruption defines corruption of national public subjects as the "promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties". The United Nations Convention defines the following instances of corruption: bribery of national public officials, bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime and obstruction of justice.

The objective of the strategy

Reducing the corruption level in Russia by eliminating its causes, promoting intolerant attitude to corruption by co-ordinating efforts and resources of different public authorities and society and developing a common long-term anti-corruption policy in Russia in order to remove a threat to the legal and democratic state and the barriers to its economic and social development.

The aims of the strategy

General objectives

- Strengthening the trust of citizens to public and municipal authorities.
- Ensuring the rule of law as the main instrument of regulating the life of society and the state.
- Ensuring the transparency of functioning of public and municipal authorities, free access of citizens to information on the activities of public and municipal authorities.
- Strengthening the real political competition and decreasing the threat of weakening democratic institutions.
- Observing the principle of division of powers and their interaction strictly in accordance with the Russian Constitution and the legislation of the Russian Federation.
- Increasing tax revenue and strengthening the budget sphere.
- Strengthening market economy institutions through applying efficient competitive mechanisms.
- Improving the quality and availability of state and municipal services for citizens.
- Reducing the operational business costs, resulting in the increase of competitive capacities and decrease of costs for goods and services.
- Developing and strengthening civil society institutions.

Special objectives

- Identifying the principal areas of combating corruption in Russia by defining the priority measures for combating corruption, prosecution for corruption offences and anti-corruption education.
- Identifying specific high priority measures of strategy implementation.

Main areas of combating corruption in Russia

A specialised anti-corruption body

A specialised anti-corruption body is to be created in Russia for the purpose of co-or-

The principles of strategy implementation

General principles

- Rule of law, inevitability of criminal liability for committed crimes
- Presumption of innocence
- Equality of all citizens before the law and ensuring free access to justice
- Ensuring the basic rights and freedoms of citizens
- Transparency and accountability of public and municipal authorities for their activities.

Special principles

- Consolidation of legal and administrative anti-corruption mechanisms
- Partnership of public and municipal authorities with civil society institutions and private sector
- Priority of preventive anti-corruption measures
- Inadmissibility of limiting access to information about corruption instances, corruption risks and anti-corruption measures.

The legal and regulatory framework of the strategy implementation

This strategy is based on the provisions and requirements of the Constitution of the Russian Federation, Federal laws and codes of the Russian Federation, namely: the RF Criminal Code; the RF Code on Administrative Offences; Federal law No 79-FZ "On public civil service of the Russian Federation" of 27 July 2004; Federal law No. 94-FZ "On placing orders for procurement of goods, carrying out works, provision of services for state and municipal needs" of 21 July 2005; The medium-term Programme of social and economic development of the Russian Federation (years 2006-2008) (Order of the RF Government No. 38-r of 19 January 2006); the Action plan of the RF Government for 2006 on im-

plementing anti-corruption efforts in combating corruption.

The main tasks of this body are as follows: provision and co-ordination of efforts in combating corruption, co-ordination of efforts in prosecuting for corruption offences, developing the anti-

plementing the medium-term Programme of social and economic development of the Russian Federation (years 2006-2008); The concept of administrative reform in the Russian Federation for the years 2006-2008 (Order of the RF Government No. 1789-r of 25 October 2005); as well as the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption.

The mechanisms of anti-corruption strategy implementation

A special legal and regulatory framework is being developed in order to implement the high priority measures within the main areas of anti-corruption efforts in Russia.

All measures are carried out on the basis of common methodologies, obligatory for application on the federal, regional and local levels. At the same time Federal and regional authorities, municipal authorities, civil society organisations and institutions and private sector can be the subjects of methodology development. The methodologies for implementing the national anti-corruption strategy are subject to public discussion followed by the approval in accordance with the established procedure.

An individual action plan is developed for each strategy implementation measure, with an indication of specific activities, methodology, organisation or person in charge, timeframe for implementation and resources, necessary for specific actions.

Strategy implementation measures can be tested through pilot activities followed by the review of their results and, depending on the results, finalising the methodology for its mass implementation.

The list of activities on anti-corruption strategy implementation in Russia is not exhaustive. This list can be changed, revised and amended in accordance with the established procedure.

corruption policy measures, carrying out monitoring and evaluating the corruption level and effectiveness of implementing anti-corruption measures, as well as oversight of the execution of anti-corruption activities.

Prosecution for corruption offences

Prevention of corruption

Prevention of corruption in Russia will be carried out by means of identifying and eliminating conditions and reasons causing and provoking corruption. Corruption is in many ways a consequence of defects in decision-making processes and working procedures of executive and municipal authorities, as well as low ethics of some public and municipal officials. It is necessary to eliminate conflicts of functions, when public and municipal authorities exercise supervision, oversight and provide services at the same time. It is also necessary to strictly define the procedures of public regulation, to deprive officials of opportunities to make decisions at their own discretion and to depersonalise interaction of public servants with citizens and organisations (reducing the number of personal contacts while solving problems). The fight against corruption in regard to the activities of public and municipal authorities must be carried out with consideration of the key areas of administrative reform, namely by: regulating the functions of public and municipal authorities; improving decision-making procedures; reforming the system of selection, training and assigning staff; controlling the conflict of interests; improving the law-making procedure; introducing an obligatory anti-corruption screening of current legislation as well as draft laws by a specialised anti-corruption body; reducing administrative barriers; strictly controlling the transparency of real estate deals, privatisation, renting out State and municipal property.

Anti-corruption education

Considerable attention will be paid to forming a negative attitude to corruption in the society. Corruption must be regarded by society as a dangerous anti-social behaviour. In many cases corruption can be prevented, if citizens are more responsible in exercising their legal rights. The public must, first of all, be aware of the corruption risks and of their rights.

The goal of the anti-corruption education is to create such a pattern of public behaviour when people would choose a longer, but legal way, to solving their problem by bribing officials. For this purpose special training programmes for adults, students and pupils will be developed and implemented on the corruption risks, ways of fighting corruption and anti-corruption behaviour.

Involvement of the society will become an obligatory component of all strategy activities. For this purpose the following actions are planned: regular coverage on anti-corruption activities in mass media; informing the public on corruption risks in different areas; public hearings; regular and obligatory consultations with civil society organisations before taking important decisions, especially in public regulation and taxation areas.

The strategy includes measures on active media involvement, since it is a "natural" enemy of corruption. The main methods of promoting measures on combating corruption will include: continuous coverage of preventive measures in mass media and conducting public campaigns.

Evaluation and monitoring of corruption in Russia

In order to implement the strategy successfully it is vital to develop and introduce a system of evaluation and monitoring of the

corruption level in Russia. Performance indicators to monitor the results of the activities will be put in place and will become an integral part of the strategy.

A specialised anti-corruption body in Russia will perform monitoring and evaluation functions.

NGOs and independent institutions at the Federal and regional levels are enlisted to conduct surveys and to ensure an objective and impartial approach to developing monitoring and evaluation methodologies.

Monitoring and evaluation of corruption are based on the surveys to be carried out to discover and measure the following:

- perception by citizens of the level of corruption in public and municipal authorities;
- perception by public and municipal officials of the level of corruption in public and municipal authorities;
- perception by the subjects of the entrepreneurial activities of the level of corruption in public and municipal authorities;
- Federal and regional markets of corruption;
- corruption practices at the federal and regional levels;
- mechanisms of corruption actions;
- structure of corruption in Russia as a whole and in the regions;
- factors promoting corruption;
- effectiveness of implementing measures of the national anti-corruption strategy.

Corruption evaluation shall be carried out annually in order to follow the dynamics of development of corruption processes.

A detailed comprehensive survey of the level of corruption in Russia is necessary at the initial stage of the strategy implementation in order to make provisions for future monitoring of its effectiveness and for making necessary adjustments.

High priority measures for implementing the anti-corruption strategy in Russia

Creating a specialised anti-corruption body in Russia

A specialised anti-corruption body is set by adopting a special legal regulation, defining principles of its operation, tasks, functions, structure and principles of creating such a body. The same regulation intro-

duces a common legal concept of "corruption" into the Russian legal field, defines criminal offences regarded as corruption offences and gives a list of "public officials" legally liable for corruption deeds.

Introduction of the comprehensive legal concept of "corruption" into the Russian legal field by adopting a relevant legal regulation, followed by amending the

rest of criminal legislation, legislation on administrative offences, civil legislation, legislation on operational and search activities, judicial legislation, as well as legislation on public and municipal service.

The following criminal offences prohibited by the relevant Articles of the RF Criminal Code should be referred to in the special legal regulation as corruptive as a

result of introducing the common legal concept of "corruption" into the Russian legal field and as part of bringing the Russian legislation in line with the requirements of United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption:

- obstruction of exercising the electoral rights or the work of an election commission if done by means of bribery (Paragraph "a" of Part Two, Article 141), including the abuse of functions (Paragraph "b" of Part Two, Article 141);
 - illegal acquisition and disclosure of information related to commercial or banking secrets if done by means of bribery (Article 183);
 - bribery of participants and organisers of professional sports competitions and entertaining commercial contests (Article 184);
 - commercial tampering (Article 204);
 - foundation of a criminal association (a criminal organisation) (Article 210) for committing grave and felony crimes listed in Part One of the present Article and stipulated by Parts Two, Three and Four of Article 290, Part Two of Article 291, Part Four of Article 309 of the RF Criminal Code;
 - acceptance of a bribe (Article 290);
 - giving a bribe (Article 291);
 - provoking bribery or commercial tampering (Article 304);
 - bribery, compulsion to bear witness, to avoid bearing witness or to misinterpret if done by means of bribery (Article 309).
 - nonpayment of wages, pensions, scholarships, benefits and other financial provisions (Article 145¹);
 - fraud committed by a person
 - abusing his/her functions (Paragraph "c" of Part Two, Article 159);
 - misappropriation or squandering committed by a person
 - abusing his/her functions (Paragraph "c" of Part Two, Article 160);
 - embezzlement of high value items (Article 164), if done by means of fraud, misappropriation or squandering, also involving
 - abuse of authority;
 - registration of illegal deals with land (Article 170);
 - contraband committed by an official
 - abusing his/her functions (Paragraph "b" of Part Three, Article 188) with lucrative or other personal interests;
 - abuse of authority (Article 201);
 - abuse of authority by private notaries and auditors (Article 202) committed with a view of gaining benefits and advantages for themselves or for the third parties;
 - foundation of a criminal association (a criminal organisation) by a person
 - abusing his/her authority (Part Three, Article 210) for committing other corruptive grave and felony crimes listed in Part Two of the present Article and stipulated by Paragraph "c" of Part Two, Article 159; Paragraph "c" of Part Two, Article 160; by Article 164; Paragraph "b" of Part Three, Article 188; by Part Two, Article 203; Paragraph "c" of Part Two, Article 221; Paragraph "c" of Part Two, Article 226; by Parts Two and Three, Article 285; Parts Two and Three, Article 286 of the RF Criminal Code;
 - embezzlement or extortion of nuclear substances committed by a person
 - abusing his/her authority (Paragraph "c" of Part Two, Article 221);
 - embezzlement or extortion of weapons, ammunition, explosive substances and explosive devices committed by a person
 - abusing his/her authority (Paragraph "c" of Part Two, Article 226);
 - embezzlement or extortion of drugs or psychotropic substances, committed by a person
 - abusing his/her authority (Paragraph "c" of Part Two, Article 229);
 - abuse of functions (Article 285);
 - exceeding one's authority (Article 286) with lucrative or other personal interests;
 - appropriation of powers of an official (Article 288) with lucrative or other personal interests;
 - illegal involvement in the entrepreneurial activity (Article 289);
 - forgery by an official (Article 292);
 - obstruction of legal entrepreneurial activity (Article 169) with lucrative or other personal interests;
 - legalisation (laundering) of money or other property from crime proceeds (Article 174), if this money or property was obtained as a result of committing any crime listed in Parts One and Two of the present Article;
 - purchasing and sales of property deliberately obtained by criminal means (Article 175), if purchasing and sales of property was deliberately obtained as a result of committing any crime listed in
- Parts One and Two of the present Article;
- monopolistic activities and limitation of competition (Article 178) with lucrative or other personal interests;
 - abuse of authority in issuing securities (Article 185) with lucrative or other personal interests;
 - exceeding the authority by employees of private security and detective services (Article 203) with lucrative or other personal interests;
 - obstructing authorities from exercising justice and preliminary investigation (Article 294) with lucrative or other personal interests;
 - instituting criminal proceedings against an unquestionably innocent person (Article 299)
 - with lucrative or other personal interests;
 - illegal exemption from criminal liability (Article 300) with lucrative or other personal interests;
 - illegal detention, taking a person into custody and keeping under custody (Article 301) with lucrative or other personal interests;
 - forcing to bear witness (Article 302) with lucrative or other personal interests;
 - falsification of evidence (Article 303) with lucrative or other personal interests;
 - pronouncement of deliberately unjust sentence, decision or any other judicial act (Article 305) with lucrative or other personal interests;
 - giving deliberately false evidence, expert conclusion or translation (Article 307) with lucrative or other personal interests;
 - illegal activities in regard to property subjected to inventory, arrest or confiscation (Article 312) with lucrative or other personal interests;
 - concealment of crime (Article 316) without advance commitments to concealment: foundation of a criminal association (a criminal organisation) (Article 210) for committing grave and felony corruptive offences, as well as crimes stipulated by Part Four, Article 290 of the RF Criminal Code.

As part of bringing the Russian legislation in line with the provisions of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption the amendments to the RF Criminal Code

should be introduced in order to set up stricter sanctions for corruption offences.

As a result of introducing a common legal concept of "corruption" into the Russian legal field and as part of bringing Russian legislation in line with the provisions of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption it is necessary to specify positions of "public officials" liable for corruption offences:

- all persons holding public positions in the Russian Federation as indicated in the index of public positions of the Russian Federation;
- persons holding top, chief, leading or senior positions in public organisations in accordance with the current Index of public positions of the Federal public service;
- persons holding positions stipulated by the Charter on municipal level;
- officials of the RF Central Bank, its institutions and branches, as well as of State non-budgetary and pension funds;
- representatives of all levels of legislative authority;
- officials of public bodies of control and oversight;
- officials and other servants of interstate entities, if they have a status of public servants of the Russian Federation according to international treaties;
- officials and other employees of international organisations, foreign officials, having this status according to national legislation of their respective countries;
- other persons not mentioned in the Index of public positions of the Federal public service, having special military ranks and carrying out their functions in entities and institutions governed by military service legislation (entities, organisations and institutions of the RF Armed Forces, the RF Federal Border Control Service, the RF Ministry for the Interior, Federal government communication and information services, Federal Security Services, RF foreign intelligence service, the RF customs, the RF tax police, bodies of
- criminal executive system, Prosecutor's office);
- magistracy (justices of the peace);
- arbitral and peoples' assessors;
- representatives of the Russian Federation in the governing bodies of open joint-stock companies, in relation to which a decision was made to use the

special right of state participation in management ("golden share") as well as in the governing bodies of joint-stock companies having their shares in State property;

- heads of commercial and non-profit organisations with managerial functions;
- arbitrary managers;
- persons registered by the set out procedures as candidates to the legislative and executive authorities of the Russian Federation, the subjects of the Russian Federation or to the local authorities;
- persons entrusted with internal control over the activities of credit institutions employees, professional participants of securities market and other persons, acting on the market of the financial services.

According to the requirements of the United Nations Convention against Corruption it is necessary to introduce a legal concept of "illicit enrichment of public officials" into the Russian legal field and make the relevant amendments to the RF legal regulations. Strict criminal liability measures should be initiated for illicit enrichment.

It is necessary to make legal liability provisions for corruption offences, according to which any damage caused by a corruption offence to a legal person, an individual entrepreneur and other citizens should be fully reimbursed in accordance with the civil legislation.

A complete analysis should be carried out in regard to conformity of the national legislation with international anti-corruption standards and relevant changes should be entered into the Russian legislation.

A law should be developed and adopted on State protection of victims and other persons, assisting to criminal process in order to ensure proper protection of citizens and legal persons, involved into the process of prosecution for corruption offences.

A set of measures should be developed in order to improve the level of social welfare and social security for employees of public, municipal, law-enforcement and other bodies involved in fighting corruption, as well as a set of measures to ensure the necessary financial and technical provision of the relevant bodies.

The Council of Europe Civil Law Convention on Corruption should be signed (re-signed) and ratified.

The OECD Convention on Combating Bribery of Foreign Public Officials in Inter-

national Business Transactions should be signed and ratified.

A programme of evaluation and monitoring of corruption in Russia should be developed and adopted, including the tools for assessment both corruption itself and effectiveness of anti-corruption measures. Developing the methodology for evaluation and monitoring of corruption should be carried out by a specialised anti-corruption body, involving civil society institutions as well as independent organisations selected on the competitive basis.

It is necessary to make legal provisions for obligatory screening of all legal regulations and draft laws of the Russian Federation for corruption risks (anti-corruption expertise of legal acts).

The anti-corruption expertise of legal acts is based on the methodology that was developed and tested at the federal level and is applied to all newly adopted legal regulations as well as, stage by stage, to the whole legislative regulatory framework. The schedule of anti-corruption expertise of the current legal acts of the executive public bodies should be developed and approved by a specialised anti-corruption body based on the proposals of the executive public bodies issuing the respective legal acts. The schedule must be published in the regional mass media. Screening for corruption risks (expertise) of draft legal laws of the executive bodies should be carried out at the stage of preparation and consideration of each legal regulation.

It is necessary to make legal provisions for full access of citizens to information on the activities of the executive and municipal bodies in Russia. A law should be developed and adopted, regulating the procedure for providing information to the citizens on activities of the public bodies.

A law should be developed and adopted, regulating lobbying activities in the Russian Federation in order to create a legal field eliminating opportunities for corrupt mechanisms for lobbying of draft laws, contradictory to the interests of citizens and the State.

It is necessary to ensure strict observance of the provisions of the Federal law No. 94-FZ "On placing orders for procurement of goods, carrying out works, provision of services for state and municipal needs" of 21 July 2005. The monitoring of observance of the law requirements should be carried out by the relevant public authorities of the Russian Federation, involving a specialised anti-corruption body. The

information on results of the monitoring should be published in mass media.

It is necessary to develop and implement a comprehensive programme on identifying potentially corrupt areas in the activities of executive public bodies, to set up a system of control over public servants in these areas as well as to develop and introduce the methodology evaluating corruption risks of public service positions.

It is necessary to develop and implement a system of administrative regulations, clearly defining procedural parameters for the functioning of public and municipal authorities.

It is necessary to develop and implement a programme of continuous internal anti-corruption diagnostics in the institutions operating in potentially corrupt areas.

It is necessary to develop and implement a set of measures, ensuring strict observance of public civil servants of responsibilities, restrictions and prohibitions for civil service, requirements to the rules of conduct of a civil servant, including those in the area of resolving conflicts of private and public interests, as stipulated by the Federal law No 79-FZ "On public civil service of the Russian Federation" of 27 July 2004. The monitoring of observance of the law requirements should be carried out by the relevant public authorities of the Russian Federation, involving a specialised anti-corruption body. The information on results of the monitoring should be published in mass media.

Legal provisions should be made to the basic principles of personnel policy in Russia. They will provide for:

- adopting special requirements for persons, seeking to fill positions in the public bodies or other significant public positions in accordance with the set out procedure;
- adopting special requirements for persons, holding positions in the public bodies or other significant public positions in accordance with the set out procedure;
- imposing legislative bans on persons, holding positions in public bodies and positions of public service to directly or indirectly interfere with activities of different commercial or non-profit organisations, or to take part in management of these organisations, including a ban for a certain period of time to take positions in commercial or non-profit organisations that were directly or indirectly connected with their duties;
- making regulatory lists of public positions access to which is closed or limited for persons previously convicted for corruption offences.

It is necessary to legally impose an obligation on the public officials to provide declarations of income, property, economic and business interests and conflicts of interests. A more thorough legal regulation should be ensured in relation to work performed by public and municipal servants for another employer and restrictions imposed in those instances. It is necessary to develop and adopt a legal act, regulating the procedure of declaring income, property, economic and business interests and conflicts of interests by public officials, as well as a methodology for monitoring and checking the information provided.

It is necessary to develop and implement a comprehensive programme aimed at informing the public on the level of corruption in Russia and anti-corruption activities in the executive bodies. Within this programme a requirement will be imposed to publicise the results of all surveys pertaining to evaluation of corruption in Russia, as well as of all anti-corruption legal acts and the current information on activities of a specialised anti-corruption body.

It is necessary to develop and implement a comprehensive programme aimed at forming intolerance to corruption instances and explaining to the citizens, public servants and entrepreneurs the main points of international and the federal anti-corruption legislation.

This programme will include publishing information materials on what corruption is; its influence on social and economic development of the country; specific damage it causes to the society as a whole and each citizen in particular; anti-corruption measures stipulated by international, federal and regional legislation and the way these measures can influence the corruption situation; as well as conducting public informational events for different target groups: public and municipal servants, employees of budget-financed organisations, students and young people, entrepreneurs, other groups of citizens.

It is necessary to develop and implement a systematic programme of ethical education for "public officials". This programme provides for training of all "public officials" on public service ethics, including elements of legal education.

Risks at the stage of strategy implementation

The current strategy cannot be fully implemented under the following circumstances: lack of political will at the highest level of executive and legislative authority to implement the Strategy; absence or ineffectiveness of the specialised anti-corruption

body; inclusion of excessively ambitious activities into the anti-corruption programme, which cannot be fulfilled; prevailing of legislative and law-enforcement measures over preventive actions; leaving some areas, which are out of reach

of anti-corruption measures; absence of protection mechanism for persons ensuring implementation of anti-corruption measures; lack of civil society's involvement or non-participation in implementing and monitoring the Strategy.

Annex: Model plan for implementing high priority measures of the anti-corruption strategy in Russia

No.	Activities	Persons in charge	Timeframe
1.	Creation and functioning of a specialised anti-corruption body		
1.1.	Development of a legal act, regulating the structure and functions of a specialised anti-corruption body		

No.	Activities	Persons in charge	Timeframe
1.2.	Adopting a legal act, regulating the composition and functions of a specialised anti-corruption body		
1.3.	Establishing a specialised anti-corruption body		
1.4.	Developing and adopting an action plan for a specialised anti-corruption body for the years 2007-2010		
1.5.	Forming divisions for the specialised anti-corruption body in order to implement high priority measures of the regional anti-corruption strategy in accordance with this plan		
1.6.	Conducting public discussions of the action plan of a specialised anti-corruption body based on the results of the first year of its operation		
1.7.	Publishing a progress report of a specialised anti-corruption body on the results of the first year of its operation		
2	Carrying out analysis and monitoring of corruption in Russia		
2.1.	Developing a programme of analysis and monitoring of corruption in Russia		
2.2	Developing a methodology for comprehensive evaluation of corruption in Russia according to the following indicators: - level of perception of corruption in public and municipal administration by citizens; - level of perception of corruption in public and municipal administration by public and municipal servants; - level of perception of corruption in public and municipal administration by the subjects of entrepreneurial activities; - structure of corruption markets; - structure of corruptive practices; - structure and mechanisms of corruption deals; - structure of corruption; - factors promoting corruption		
2.3	Organising a tender for conducting a comprehensive survey of corruption and for some other relevant surveys on the subject		
2.4	Conducting a comprehensive survey of corruption based on the approved methodology		
2.5	Carrying out a presentation and a public discussion of the comprehensive corruption survey results		
2.6	Developing a methodology of focus corruption surveys in public bodies and making a plan for these surveys		
2.7.	Carrying out focus surveys of corruption in public bodies		
2.8.	Publicising the results of focus corruption surveys in public bodies and conducting departmental and public discussion of the results		
2.9.	Developing a methodology of monitoring the effectiveness of anti-corruption measures		
2.10.	Developing a plan of surveys within the framework of monitoring the effectiveness of anti-corruption measures		
2.11	Conducting annual comprehensive surveys of corruption; presentations and public discussions of their results		
2.12	Conducting annual focus corruption surveys in public bodies; their presentations, public and departmental discussions		
2.13.	Conducting annual monitoring of effectiveness of anti-corruption measures, its presentation and public discussion		
2.14.	Publicising annually the results of the comprehensive corruption survey, focus corruption surveys in public authorities and monitoring of effectiveness of anti-corruption measures		
3	Expert evaluation of legislative acts and draft legal acts for corruption risks.		

Corruption and anti-corruption strategies in health systems: an overview of the issues and policy solutions

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Executive summary

Corruption in healthcare is widely acknowledged as one of the most serious and damaging forms of corruption. The scale of public resources devoted to healthcare, the specific characteristics of healthcare provision and the need to entrust such provision to essentially private actors creates an envi-

ronment that is especially vulnerable to corruption. This paper identifies the key types of corruption in healthcare, with particular reference to transition countries such as the Russian Federation, and points towards some specific policy solutions that have been identified or pursued to tackle

such corruption. The paper stresses the point that without the basic parameters of the healthcare system being well designed, such measures are unlikely to be successful.

Corruption and healthcare – the issues

Healthcare systems provide a public good though actors (doctors and other medical personnel, pharmaceutical companies) that are, more often than not, essentially private. Healthcare is provided to persons (patients) who are subject to systematic uncertainty concerning when they will need to consume healthcare, and by definition possess less information than providers (doctors) concerning their healthcare needs. These conditions of systemic uncertainty, asymmetric information and large numbers of widely dispersed actors¹ make necessary extensive government regulation of the healthcare sector – from the need to ensure some level of free access to healthcare, to the registration of drugs, approval of their prices and the management or supervision of the system by which healthcare is financed. Last but not least, healthcare consumes vast amounts of public money – generally between 5% and 15% of government revenues. These factors taken together create a context that is potentially highly prone to corruption.

1. Savedoff and Hussman (2006).

Key actors

The subject of corruption in healthcare is a broad and complicated one. Corruption in healthcare systems may appear in a wide range of forms, from informal payments by patients in return for routine hospital treatment, to the use of medical personnel and facilities for election campaign purposes. The diagram in Annex 1 (page 98), presented by Savedoff and Hussmann (2006), provides an overview of the main actors within a healthcare system and suggests types of corruption that may occur between those actors.

As the diagram usefully depicts, there are six main actors:

- The government **regulator** primarily approves the registration of drugs and medical devices (equipment), decides which medicines are paid for by the state (or to what extent each medicine is financed by the state and to what extent paid for by patients), and approves the prices of medicines and equipment.
- The **payer** finances the provision of healthcare – from purchase of drugs to

payment of doctors for services they provide. In most countries, there will be two types of payers – public and private.

- The **provider** designates the entities that provide medical care – i.e. hospitals, doctors, nurses and other medical staff.
- **Patients** receive medical care from providers
- **Drug and equipment suppliers** (pharmaceutical companies) provide drugs, other medicines and medical equipment to providers.
- **Other suppliers** provide goods and services of a nature that is not specific to healthcare; these may be of any nature ranging from buildings to computer equipment.

Main forms of corruption

The diagram identifies a considerable number of types of corruption that can occur between various actors in the healthcare system. The following is a list (certainly not exhaustive) of types of

corruption, classified according to the actors between which it occurs.

Government regulator – Payer

- bribery of regulators to overlook mismanagement of public health insurance funds;
- collusion in embezzlement of health-care funds between regulators and officials responsible for management of healthcare funding (health ministry officials or health insurance company officials).

Government regulator – Drug/equipment supplier

- bribery of regulators to secure registration of drugs/medical equipment;
- bribery of regulators to secure placement of drugs/medical equipment on list of drugs and equipment financed from public funds.

Government regulator – Provider

- bribery of government inspectors by medical establishments/doctors to overlook non-compliance with health-care standards and norms.

Payer – Provider

- bribery of health ministry or health insurance company to overlook or collude in reimbursing medical facility with more funds than it is entitled to.

Provider – Drug/equipment supplier

- provision of advantages to doctors by pharmaceutical company in return for doctors prescribing or over-prescribing particular drugs or medical equipment.

Provider – Patients

- informal payments to doctors by patients in return for provision of medical care to which patients have a right;
- informal payments to doctors by patients in return for access to above-standard medical care.

This list (and this paper) does not tackle the issue of corruption involving "other suppliers", but assumes that this is an area that should be sufficiently dealt with by standard public procurement regulation, including the use of the most advanced procurement techniques such as electronic

procurement.¹ It also does not deal with ID fraud or understatement of income by patients, as these are not corruption in the sense of an exchange between patients and providers – as opposed for example to bribes provided in order to ensure that such practices are overlooked. Neither does it address other possible forms of corruption, such as bribery in hiring personnel by medical establishments (sale of positions).

Instead, this contribution focuses particularly on a subset of the list above, namely three main areas of corruption that have been most discussed in the literature and particularly in the context of transition countries. These are the following:

- informal payments to doctors by patients in return for medical care to which they are formally entitled;
- corruption of the health regulator by pharmaceutical companies in return for registration of drugs and medical equipment and placement of drugs on the list of essential drugs that are wholly or partly financed by the state;
- corruption of doctors and medical establishments by pharmaceutical companies in return for prescribing or over-prescribing their drugs or in drug procurement.

These areas of corruption are selected for four main reasons. First, according to the available sources of information these are widespread or serious forms of corruption in healthcare in transition countries (see *Healthcare corruption in transition countries* below). Second, informal payments to doctors by patients have been identified in surveys as a types of corruption that is systemic in many transition countries. Third, the selection, categorisation and service delivery of drugs and medical equipment are almost certainly the largest single clear category of healthcare spending; according to evidence cited by Viann, governments typically allocate 20%-50% of the health budget to drugs alone.² Fourth, as Viann also argues,

These areas not only account for large losses in resources, but also have the most direct effects on health in terms of reductions in quality of care and access to services, especially for poor segments of the population.³

Healthcare corruption in transition countries

There is widespread evidence that corruption in the healthcare systems of transition countries is a major problem, and systemic in countries of the former Soviet Union. According to the results of surveys cited in 2006 Transparency International Global Corruption Report, informal payments to doctors by patients are equal to 84 per cent of total health expenditure in Azerbaijan, 35%-40% in Georgia and 56% in the Russian Federation.⁴ According to other survey evidence, in CIS countries more than 60% of citizens reported making informal payments, with the figure rising to over 90% in Armenia.⁵ The New Europe Barometer surveys of the Centre for the Study of Public Policy conducted in 2004 found that 93 per cent of Russians rated their health system as very bad or not so good, and findings of the survey across countries showed a correlation between ratings of healthcare quality and general perceptions of corruption in the country.⁶

There is also ample evidence that corruption in other areas of the healthcare system than payments by patients to doctors is a major problem in Russia. Against a background of major leakages from the health budget (see *Lessons for the Russian Federation*, page 97), corruption in the system of healthcare financing has recently yielded a major scandal after top officials in the Federal Mandatory Health Insurance Fund were arrested on suspicion of accepting bribes from regional branches of the insurance fund and from pharmaceutical companies.

1. A World Bank study on an electronic procurement bidding system implemented in Chile stated that the system led to "tremendous savings and helped increase access of the poor to essential medicines ...". Clare Cohen and Montoya (2001), p. 1.

2. Evidence cited in Viann (2002), p. 78.

3. Viann (2002), pp. 29-30.

4. Allan, Davaki and Massalios (2006), p. 64.

5. Viann (2002), p. 20.

6. Rose (2006), p. 40-41.

Overall healthcare system design: financing and incentives

Before discussing how the three areas of corruption listed above should be tackled, it is essential to realise that measures to tackle corruption in healthcare cannot be isolated or “tacked on to” overall healthcare policy. For corruption to be effectively tackled, it is necessary for a healthcare system to

- establish clear and publicly reiterated goals and commitments
- establish clear mechanisms and rules for achieving those goals and commitments
- include a system of financing which enables these goals to be achieved in practice within the financial constraints.

In other words, the system must be designed in such a way that it is actually feasible for healthcare to be allocated according to the official rules. Systems in which there

is a large gap between i) the healthcare to which citizens are formally entitled, and ii) the actual capacity of the system to provide healthcare up to the formally acknowledged standard are much more vulnerable to corruption. One of the clearest examples is healthcare in the former Soviet Union. The USSR was the first country in the world to guarantee constitutionally the right of all citizens to the provision of all healthcare for free. However, the system never provided sufficient resources for this standard of provision to be implemented in practice, and from the 1970s the proportion of GDP devoted to healthcare fell. Moreover, the system was designed in a way that biased healthcare provision in ways that wasted resources on certain types of care (particularly in-hospital treatment) at the expense of other types (especially primary care). One of the main

consequences of these systemic factors was the *de facto* institutionalisation of informal payments by patients to doctors or medical facilities as a means for obtaining care to which patients were formally entitled.

A full discussion of issues of healthcare design is far beyond the scope of this contribution. The point that needs to be underlined is the importance of putting in place a system whose principles of allocation of care and reimbursement of costs are clear, transparent and internally consistent. Whatever the type of system that is chosen, for example whether it tends towards universal public provision or more towards the participation of citizens in direct payment for frontline services, if it does not satisfy these standards it will yield incentives that create direct or indirect pressure for corruption.

Key areas of corruption

This section discusses the three areas of corruption selected by this paper for particular focus, and outlines the most important measures that have been identified to tackle them.

Informal payments

Informal payments for medical treatment are defined by Lewis as “payments to institutions or individuals in cash or in kind made outside official payment channels for services that are meant to be covered by the public health system.”¹ They are a widespread phenomenon in all post-communist transition countries, and – as underlined above (*Healthcare corruption in transition countries*, page 94) – appear to be systemic in countries of the former Soviet Union. While a legitimate debate continues about whether small post-hoc gratuities constitute corruption, it is simply assumed here that all informal gratuities or payments constitute corruption or encourage a context in which healthcare is conditional on the provision of such payments.

As Section 3 underlined, in healthcare systems that aspire to the provision of more services than the healthcare budget can finance, informal payments are likely

to arise as a mechanism by which patients obtain care to which they are formally entitled – and which doctors are thereby motivated to provide in return for additional payments.

One solution to the problem of informal payments that is often advocated is the introduction of official charges as a means of “formalising” informal payments. While introducing charges may be a way of increasing revenue to redress the balance between formal and real entitlements to care, the introduction of official charges should not be taken as a panacea for dealing with informal payments. While such payments may make patients less willing to pay doctors “under the table”, they may not make doctors less willing to demand such payments, in the absence of improvements in their own situation. Moreover, such reforms must be very careful to monitor their effects on lower income segments of the population.

This leads to an additional common underlying cause of informal payments, which is inadequate remuneration of doctors and other medical personnel. According to Ensor and Duran-Moreno doctors in OECD countries generally receive incomes between 2.5 and 4 times the national average wage, whereas doctors in eastern European countries generally

are paid no more than the average wage.² The tendency of less rich countries to remunerate doctors disproportionately to the professional commitment and standards expected of them, combined with the ease with which they may extract payments from patients, yields obvious lessons for anti-corruption policy. In addition to the basic need to ensure that the healthcare system does not promise to provide more than its funding will sustain, doctors and other key medical personnel should be remunerated such that their official income does not lag radically behind their “target wage” – in lay terms, the income to which they feel entitled.

The paradox of countries where informal payments are widespread, however, is that both “adequate remuneration” of doctors *and* the introduction of official charges may both be politically infeasible. Where such solutions are partially implemented, other specific measures to prevent corruption are also essential. The most important of these can probably be divided into two types: measures to maximise transparency and the establishment of functioning complaint mechanisms.

1. Lewis (2000), p. v.

2. Ensor and Duran-Moreno (2002), p. 115.

Two types of transparency

Mechanisms to increase transparency are a fundamentally important anti-corruption mechanism in all areas of healthcare provision. In the context of informal payments, there are two main types of transparency measure. First, a clear statement of patients' rights and active provision of information on these rights can act as an important bulwark against informal payments for treatment to which patients have a right.

Second, more specific measures to provide information on the provision of care in practice can be very useful. A good example of this is a pilot scheme implemented in Croatia in 2004-2005 to tackle corruption by publishing waiting lists for treatment such as operations.¹ Hospitals were obliged to disclose to patients lists showing them their position in the waiting list and make such lists available at medical facility reception desks. Patients who did not wish their identity to be disclosed were listed by number instead. According to preliminary evaluations of the scheme it had a significant impact.

Complaints mechanisms

While measures to increase the transparency of healthcare provision are vital, they may be ineffective if patients are not able to seek redress for misconduct or bribe-seeking by medical personnel. In the open waiting lists policy implemented in Croatia, TI Croatia established a hotline to monitor the project, and received more than 90 calls relating to waiting lists in one hospital in the first few months.

Corruption of the health regulator

The nexus between pharmaceutical companies and the state regulator is one of the clearest points of vulnerability to corruption in a healthcare system. The state regulator (for example the Food and Drug Administration in the USA or the Czech State Institute for Drug Control) registers the drugs produced by pharmaceutical companies and decides which of those drugs will be provided to patients at public expense ("essential drugs"). The regulator also carries out other tasks which may also be affected by corruption, such as supervision of clinical studies, although these are not discussed here.

1. Vian (2006) p. 55.

Measures to prevent corruption involving the regulator and pharmaceutical companies may be split into two main types:

Criteria and procedures for drug registration and selection

The activities of drug selection committees are a target *par excellence* for corruption, as their decisions carry huge commercial implications for pharmaceutical companies. In order to reduce the discretion of selection committees – or, viewed differently, to allow them to decide on the basis of sound analysis and objective criteria – a number of mechanisms have been proposed and implemented.

Drug registration criteria and procedures

The World Health Organisation has defined a set of minimum criteria for a transparent drug registration process:²

- a list of all registered pharmaceutical products and an information system for the registration process of pharmaceutical products which include a defined minimum level of information, such as the product description (including the generic name and a summary of product characteristics), the name of the manufacturing company, the date of the registration, and the name and contact information of the company registering the medicines;
- written procedures on how to submit and assess applications for registration of medicines products, describing the process to follow and the fees required;
- a standard application form for submission of applications, which is publicly accessible and readily available at a government office or on a web site;
- a formally established and operational committee responsible for registration of pharmaceutical products composed of professionals with technical skills, which meets on a regular basis;
- the existence of a mechanism whereby once decisions are made, the responsible committees provide official written documents for all decisions regarding applications, explaining the reasons for rejection if necessary.

Selection of "essential drugs"

The inclusion of a drug on the list of drugs that are provided for free – that is, are paid for or at least partially subsidised from the public health budget – may be seen as the

2. WHO (2006), p. 8.

ultimate prize for a pharmaceutical company, essentially guaranteeing the prescription of the drug for the relevant medical conditions, and reimbursement at taxpayers' expense.

For these reasons, a key anti-corruption mechanism is the promotion of essential drug lists based on objective criteria. The WHO criteria for selection of drugs for inclusion on EDLs should be seen as a minimal standard. These are: relevance to the pattern of prevalent diseases; proven efficacy and safety; evidence of performance in a variety of settings; adequate quality, including bio-availability and stability; favourable cost-benefit ratio in terms of total treatment cost; and preferences for drugs that are well known to have good pharmaco-kinetic properties.³ According to Clare Cohen, Australia and Canada have successfully improved the objectivity of drug selection processes through the application of "pharmaco-economics" or outcomes research, which uses cost-benefit, cost-effectiveness and cost-utility analyses to compare the economics of different pharmaceutical products, or to compare drug therapies with other medical treatments.⁴

A minimal condition for the approaches outlined above are rules and procedures to ensure the professionalism and independence of selection committees:

Drug selection committees must be composed of impartial persons with the appropriate technical skills. Their members must be obliged to declare any conflicts of interest, and meetings should be regular and well publicised so that the public can observe proceedings. Minutes of meetings should be posted on the Internet and decisions clearly justified. In the event of a potential breach, an appeal process must be in place that ensures due process.⁵

In addition to such measures, it may be useful for regulators to apply strict rules governing contacts and meetings between employees of the regulator and representatives of pharmaceutical companies – for example a ban on such meetings on the premises of the regulator or company unless accompanied by a designated official from the regulator, duties of both regulatory employees and pharmaceutical companies to declare other meetings, and so on.

3. Clare Cohen (2006), p. 81.

4. *Ibid*, p. 80-81.

5. *Ibid*, p. 81.

Corruption of doctors and medical facilities by pharmaceutical companies

Influence by the pharmaceutical industry on the healthcare practices of doctors and medical facilities is an area in which there is increasing evidence of corruption. This subsection covers corruption involving the provision of benefits to doctors in return for prescribing or over-prescribing particular drugs, and of procurement staff in return for manipulation of drug prices or procurement of excessive quantities of drugs. Clare Cohen cites research that identifies a correlation between the frequency of doctors' contacts with pharmaceutical companies and their prescription of drugs produced by the same companies. Regulatory authorities in the United States and United Kingdom have both moved recently to tackle undue influence of companies on the medical profession.¹

Corruption of doctors

Doctors need some contact with pharmaceutical companies in order to obtain necessary information about the drugs or devices those companies supply. However, such contacts can very easily grow into unhealthy relationships which distort treat-

1. See for example United Kingdom House of Commons Health Select Committee (2005); Kassirer (2006).

ment patterns and prescription practices in particular. Measures to restrict undue influence by pharmaceutical companies include the following:

- self-regulation and codes of ethics approved and enforced by pharmaceutical companies themselves and their trade associations – on the principle that restriction of all companies is more advantageous for all than no restriction;
- formal restrictions on marketing and promotion activities by pharmaceutical companies within medical facilities;
- bans or restrictions on promotion of particular medicines and drugs by doctors within medical facilities;
- conflict of interest provisions for doctors which rule as inadmissible business relationships or positions by which they benefit from the activities of pharmaceutical companies (for example share ownership or consultancy contracts);
- in particular, banning of trips by doctors paid for by pharmaceutical companies, for example to conferences in exotic locations;
- monitoring of prescription practices of individual doctors by medical facility oversight committees or citizen boards.

Needless to say, unless doctors have been educated at medical school about the standards to which they should adhere and why, the chances of preventing corruption

will be much lower. Moreover, as Williams notes, "[U]nless all interested parties cooperate to address conflicts of interest in healthcare, it is unlikely that progress will ever be achieved."²

Corruption in procurement

This paper does not tackle the issue of procurement in healthcare comprehensively. This subsection only raises briefly the issue of procurement of drugs and medicines, and specifically quantities of drugs purchased and their prices. Again, in addition to the standard application of rules and oversight systems for procurement, measures to increase transparency may have a big impact. In Argentina, the government implemented a policy of monitoring the prices hospitals paid for medical supplies and then distributing this information among all hospitals. Prices of the monitored supplies fell immediately by an average of 12% and stayed below the initial purchase prices for the whole time the policy was implemented.³ There are no convincing arguments why such prices should not be made public entirely, as they are in the Chilean procurement system mentioned above (page 94, footnote 1).

2. Williams (2006), p. 96.

3. Viann (2006), p. 52. Viann also refers to a drug price monitoring tool developed by the WHO and Health Action International that can be used by other organisations to monitor prices.

Lessons for the Russian Federation

This section outlines very briefly some lessons that might be drawn for reform of healthcare in Russia. The Russian healthcare system currently lies at a major crossroads. In the early 1990s reforms were initiated to replace or supplement direct state financing of healthcare with financing by health insurance companies – in particular the Federal Mandatory Health Insurance Fund (FMHIF) and its territorial branches, with regulations also allowing private insurers to form. A payroll tax to finance the insurer was set at 3.6% of earnings. However, to cut a long story short, the reform was never fully implemented, and while citizens continued to be guaranteed formally extensive free healthcare, the system continued to be massively underfunded; Tragakes and Lessof (2003) cite arguments that the payroll tax would have to be doubled to 7% for the system to provide the services it guarantees on paper. Ac-

cording to the WHO, in 2003 Russia spent \$167 per capita on healthcare – compared to around \$3 000 in Germany and France⁴ – and funding of primary care in particular has been especially inadequate.

It is worth citing at some length Tragakes and Lessof's summary of the situation as of 2003:

Roughly a decade after the introduction of the initial health insurance legislation, the healthcare financing system in the Russian Federation is still in a state of flux and beset with difficulties. The financing and purchasing mechanism envisaged by the law has not yet been fully implemented in any of the regions... The only component of the planned system which at present functions mostly as expected is the role of the territorial funds in payroll tax (premium contribution) collection... As for the remaining components, they show a com-

bination of old and new financing elements, with enormous regional variations in the pace of transition and relative success of implementation... In some regions the new financing system has not been implemented at all; in other regions the system has been implemented only in some rayons.... Full insurance and coverage of the population has nominally been accomplished, even though payment for this coverage, whether by insurance companies, territorial fund branches, or local health authorities in the case of the non-working population, is far from complete.⁵

Not surprisingly, such a system has not come close to fulfilling the need for rational health system design outlined above (*Overall healthcare system design: financing and incentives*, page 95). Not surprisingly, the system has helped to perpetuate the phenomenon of widespread

4. Moscow Times, 4 December 2006.

5. Tragakes and Lessof (2003), p. 77.

informal payments – the persistence of which is documented above (*Informal payments*, page 95). Moreover, reports cited by Ensor and Duran-Moreno in 2002 suggested that up to 30% of the federal health budget was not accounted for, i.e. does not reach its intended destination.¹

The FMHIF has been responsible for managing the state DLO program, launched in 2005, which finances and administers the provision of medicines to pensioners and other citizens on a low income. During 2006 the Fund has been increasingly under attack as delayed payments to distributors led to widespread shortages of essential drugs. Against this background, in December 2006 a major scandal broke in which the Director of the FMHIF, his deputies and heads of several departments were arrested and charged with organised corruption and abuse of power. The officials were accused of accepting bribes from the FMHIF's territorial branches, pharmaceutical companies and suppliers, with analysts assuming that the

1. Ensor and Duran-Moreno (2002), p. 113.

bribes were provided to secure a place for pharmaceutical companies in the DLO scheme.² If confirmed, this scandal would confirm that corruption involving the most senior healthcare officials and pharmaceutical companies has been rife.³

The National Health Project

An ambitious healthcare reform launched by President Vladimir Putin in September 2005 created the new National Health Project, which is to channel major increases in funding (recent media reports appear to suggest something like a doubling of funds) into higher salaries for general practitioners and nurses, new equipment for clinics and four new high-tech health centres in major cities. In addition,

2. Global Insight, "Corruption Scandal Unfolds with Arrest of Russian Mandatory Health-Insurance Fund Chief"; <http://www.globalinsight.com/SDA/SDADetail7563.htm>.

3. The scandal has been compounded by news that the Interior Ministry is investigating possible embezzlement of tens of millions of dollars intended to pay for children's holidays at health resorts. (*Moscow Times*, 11 December 2006).

tion, the number of specialists is planned to be as much as halved and priority focused on primary care and prevention.

The ambitious nature of the National Health Project is striking, and if implemented as planned it might be expected – by addressing the current shortages in the system – to have a significant effect on the incidence of informal payments, although there have been complaints about unfair criteria for selecting personnel eligible for salary increases. However, it is not clear whether the Project embodies a clear vision of the system for financing healthcare. The FMHIF has not been abolished or altered by the reform, although the Project is taking over financing of many of the drugs in the DLO system that were financed by the Fund. Perhaps most urgently, it is not clear whether the spending envisaged by the Project is being implemented as planned; a recent media report cited clinics close to Moscow who claimed not to have received any of the promised new equipment.

Conclusion: the need for comprehensive analysis-based reform

This paper has outlined the main approaches and measures for tackling corruption in healthcare, and has emphasised the primary importance of rational and consistent healthcare system design and financing along with a number of specific anti-corruption policies. As far as the Russian Federation is concerned, the de-

velopments summarised up to now suggest is that if massive increases in funding of healthcare are not accompanied by root-and-branch reform of the entire healthcare financing system along with the process of registration and selection of medicines, much of the money might end up in different locations than those for which it was

intended. Given the evidence on corruption and leakages from the healthcare budget proper research should be carried out on the flows of funds within the healthcare system – for example through Public Expenditure Tracking Surveys – in order to identify risks and design (or at least adjust) reforms accordingly.

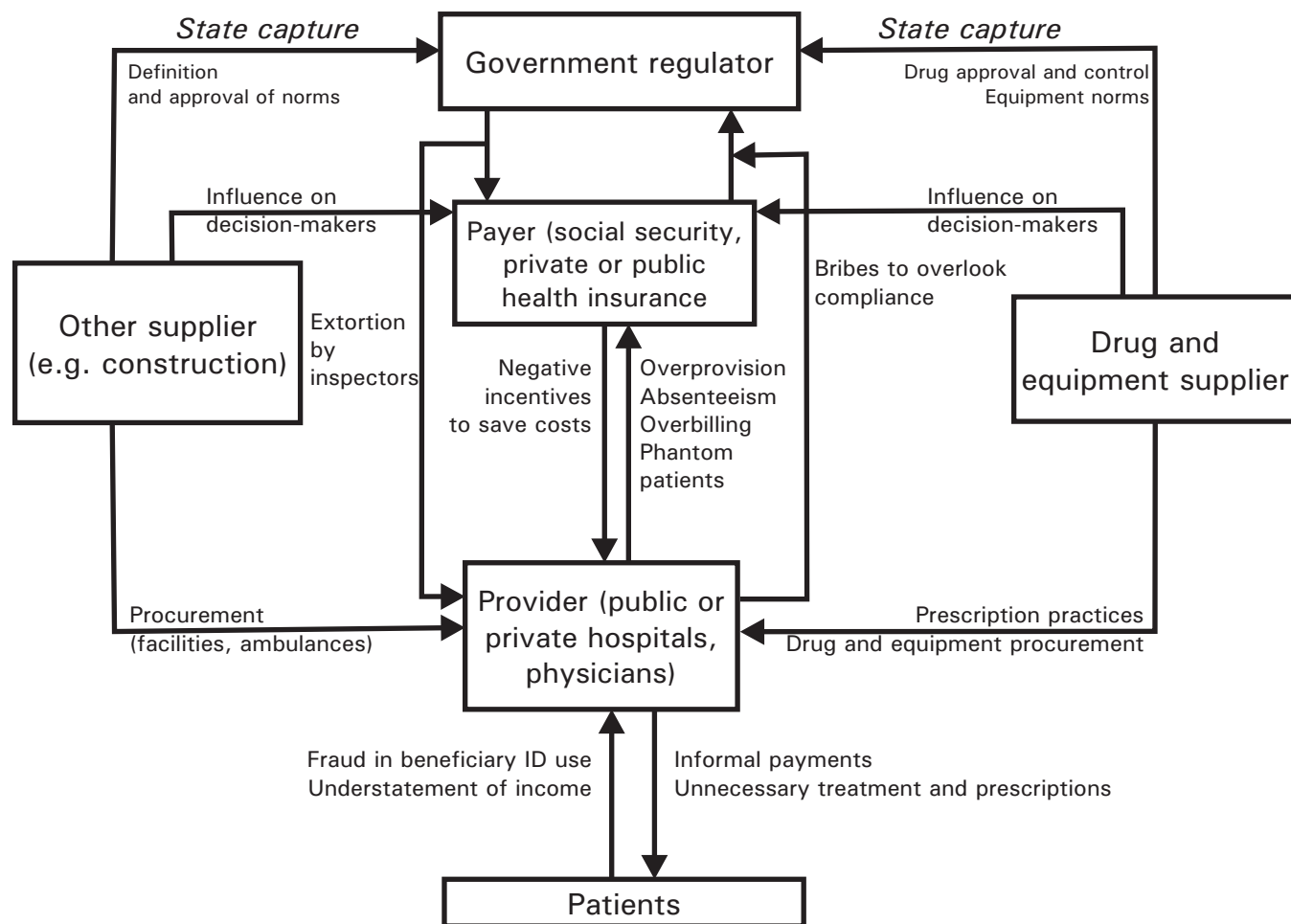
Annex 1: Actors in the healthcare system and corrupt linkages between them

See chart on following page.

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Table 1: Five key actors in the health system



Source: Savedoff and Hussmann (2006), p.7.

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Joint report on corruption risk assessment of the legislation in the sphere of healthcare

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Summary conclusion

In the Russian healthcare system the corruption is most evident in two areas:

- public procurement of medical drugs and medical equipment;
- providing medical services in healthcare institutions.

At the same time the relations in the healthcare system are not regulated by a single codified act, but rather – by a wide range of regulatory legislative acts: federal laws, orders of the RF Government, as well as legislative acts issued by the Ministry of healthcare and social development of the RF – orders, letters, etc.

According to the methodology of assessing legislative acts for corruption risks

(Centre for Strategic Development, World Bank, 2006) and based on the enforcement practice, the Basics of the RF legislation on the citizens' healthcare dated 2 July 1993 were reviewed with reference to the RF Civil Code and the Programme of state guarantees in providing free medical care to the RF citizens for 2007 approved by the Order of RF Government #885 dated 30 December 2006.

The goal of the review is to identify the statements in the legal regulation, creating directly or indirectly incentives for corruption.

The summary conclusion was put together based on the results of anti-corruption

evaluation of the above-mentioned legislative acts prepared by the two project experts – Candidates of juridical science L. Sannikova and E. Talapina – independently of each other. The document contains the conclusions agreed by the experts, at the same time preserving their individual value. Their peculiarities should be taken in consideration while preparing legislative proposals on removal of the corruption risk factors identified in the healthcare legislation.

Scope of discretionary powers

Article 5. Authority of the federal government bodies

Article 6. Authority of the regional government bodies

Article 8. Competence of the local authorities

As the areas of competence of legislative and executive bodies are not distinguished in the above-mentioned articles, there is a big chance for arbitrary interpretation and transferring regulation of the general relations to the sub-legislative level, which can also lead to duplicating the competence. This is qualified as unreasonably wide discretionary powers.

Article 13: Providing medical care in the institutions of the municipal healthcare system can also be financed by the mandatory medical insurance and by other sources in accordance with the RF legislation.

In the absence of a legislative act this unspecific provision (the part about "other sources") can be interpreted quite broadly, especially as financing issues are resolved.

Article 34: Providing medical assistance (medical examination, hospitalisation, observation and isolation) without the consent of a citizen or his/her authorised representative is allowed in regard to persons with illnesses, which are of danger to the others, suffering serious psychiatric disorders, or persons

committing socially dangerous acts, in the order stipulated by the Russian legislation.

Such category as persons committing socially dangerous acts can be interpreted quite broadly (committing an administrative offence is also socially dangerous) and subjected to arbitrary isolation based on this article. Thus, according to Article 13 of the FL "On psychiatric help and guaranteeing the citizens' rights on its provision"

"measures of compulsion of the medical character are applied following a court decision in respect of the persons, suffering serious psychiatric disorders and committing socially dangerous acts, on the basis and in the order stipulated by the RF Criminal Code and the RF Criminal and Procedure Code."

So the measures of compulsion in medical care are allowed only in regard to the persons who have committed criminal offences.

Article 41: The citizens suffering from socially significant diseases, the list of which is defined by the Government of the Russian Federation, receive medical and social help and are guaranteed clinical observation in the relevant institutions for the prevention and treatment for free or on preferential terms.

On the issue of payment for medical care an alternative, which is not linked to anything, is given – whether to provide it for free or on preferential terms (the amount of privileges is not specified, either).

In all these cases the discretionary powers provoke opportunities to use them for corruptive purposes.

Presence of a legal gap

Article 15: Licensing of the medical and pharmaceutical activity is carried out in accordance with the RF legislation.

With this reference the law moves away from laying the foundation for licensing – licensing conditions, grounds for refusal in issuing a license, etc. This gap is filled by by-laws – the Order of the RF Government #499 "On approving the Statement on licensing of the medical activity" dated 4 July 2002.

Article 25: In case of disagreement with the conclusion of the Physical evaluation board, military men, the citizens, who are subject to the draft and enlisted as contractors, have a right for an independent medical examination in accordance with article 53 of these Basics and (or) for an appeal against Physical evaluation board's conclusions in legal form.

Carrying out an independent medical examination and the procedure for registering its conclusion is a gap filled by using discretionary powers. Besides, several corruption risk factors are combined here. According to Article 53 of the Basics, the Statement on the independent medical examination should be approved by the RF Government, but it is not (rejection of a regulatory legislative act). According to p.9 of the Statement on the Physical evaluation board approved by a Government Order dated 25 February 2003, a citizen can appeal against a conclusion made by the

Physical evaluation board (aircrew medical review board) to the Physical evaluation board (aircrew medical review board) of a higher standing or to court. No independent examination is envisaged (a conflict with the Basics).

Article 31. The right of citizens to information about health condition

The procedure for receiving the information by the citizens is a gap. The Basics of the legislation make no provisions for a mechanism, guaranteeing the citizens' access to this information (whether a citizen should sign upon receiving the information, whether it should be documented, etc.)

Article 44: Control over the quality of medical drugs, immunobiological drugs, disinfectants and medical supplies is exercised by a federal executive body, responsible for exercising public control and supervision over circulation of medical drugs; and by a federal executive body responsible for control and supervision in the area of human sanitary and epidemic well-being.

The functions of control are given to the public bodies, which exercise them at their discretion (the control procedure is regulated by the acts of the Federal Service for the Supervision of Public Health and Social Development, i.e. by the supervising body itself with the help of by-laws). The Statement on the Federal Service for the Supervision of Public Health and Social Development has no mention of any supervising authority in this area.

Article 56: Control over the quality of medical care provision is exercised by a federal executive body; its competence includes exercising state control and supervision in the healthcare system, if not stipulated otherwise by a federal law.

See the previous comment.

Article 57: The right for practicing folk medicine is given to the RF citizens, who have received the certificate of a folk practitioner issued by the healthcare executive authorities of the subjects of the Russian Federation.

The status of a folk practitioner's certificate and the possibility of receiving it are both the gaps.

Excessive freedom of sub-legislative rule-making

The Basics of the legislation contain a large number of blanket provisions. The rule-making authority of the RF Government is established – Article 18, Article 21 p.1, Article 36, Article 40, Article 41, Article 42, Article 51, Article 52, Article 54, Article 64; authority of federal executive bodies – Article 21 p.3, Article 24 p.1, Article 25, Article 29, Article 36, Article 37, Article 39, Article 40, Article 41, Article 46, Article 48, Article 49, Article 54, Article 59, Article 63; authority of the government bodies of the RF subjects – Article 24 p.1, Article 24 p.4, Article 24 p.3, Article 41, Article 42, Article 59, Article 63; authority of the local government bodies – Article 63, Article 64.

The validity of transferring the regulation to a sub-legislative level should be checked in every case.

Excessive requirements imposed on a person exercising his/her right

Article 18: The procedure for providing medical care to the persons without citizenship and to the refugees is defined in accordance with the legislation of the Russian Federation.

Reference to the legislation (which is non-existent in this area) is considered as an excessive requirement imposed on the persons without citizenship and on the refugees, blocking them from exercising their right.

Article 29: Persons in detention ... have a right to medical care as necessary in the institutions of state or municipal healthcare at the expense of the relevant budgets.

The provision gives no clear guarantees for free medical care, as it is left to the discretion of relevant people in authority (it is not even specified what these people are) – as necessary.

Article 39: First aid is provided immediately to citizens where urgent medical intervention is required (accidents, injuries, poisoning, other conditions and illnesses).

The way this provision is stated can lead to the breach of citizens' right for medical care. As it is applied in practice, the refusals to provide first medical aid can occur. One of the options to solve this problem is to define a list of diseases and situations,

when the assistance is provided urgently (if such a list can be made). Another option is to specify the subjects having a right for first medical aid (but only as any subject applying, regardless of whether he/she has a medical policy). Still another is to establish liability for a refusal to provide first medical aid.

Absence of administrative procedures

Article 19: This information is provided by public and local government bodies in accordance with their authority through the mass media or directly to citizens.

The procedure for providing information to the citizens is missing.

Article 20: Children, teenagers, students, disabled and retired people, doing the physical training have a right to free medical checks.

The procedure for exercising the right to which the medical control provision corresponds is missing.

Article 24 p.1: For healthcare purposes the persons under age have a right for a regular medical check-up and treatment in health centres for children and teenagers in the order stipulated by a federal executive body, regulating legal relations in the healthcare system and under conditions defined by the authorities of the subjects of the Russian Federation.

The absence of procedures for exercising the right for clinical examination adds up to unclear division of administrative actions between federal executive and regional authorities – a joint regulation has to be adopted, regulatory or individual?

Article 29: The procedure for providing medical care to persons detained, serving a sentence in the form of restraining liberty, arrest, imprisonment, being in places of confinement or under administrative arrest is defined by a federal executive body, regulating legal relations in the healthcare system jointly with interested federal executive bodies.

The procedure for administrative co-ordination of federal executive authorities' actions is missing.

Article 49: The medical evaluation of citizens' temporary disablement in

state or municipal medical institutions can in some cases be entrusted to a person having secondary medical education degree in accordance with a decision of the regional executive bodies in charge of healthcare.

What is meant by "some cases" and how are the activities of public bodies and a medical institution co-ordinated?

Article 52: A citizen or his/her authorised representative has a right apply to a body, appointing forensic medical or forensic psychiatric medical examination concerning inclusion of an additional specialist of the relevant profile into the expert commission with his/her consent.

The procedure for considering an application, its gratification or refusal?

Article 58: The consulting physician has a right to refuse observing and treating a patient, subject to agreement with a relevant official ...

What is the procedure for agreement?

Article 62: Professional medical and pharmaceutical associations participate in ...

The procedure for such participation is a key issue in this provision, which is not described exhaustively.

Article 63: The procedure for re-training, improving professional knowledge of medical and pharmaceutical workers and assigning qualification categories to them is defined in accordance with these Basics by the federal and regional executive bodies in the area of healthcare jointly with professional medical and pharmaceutical associations.

What is the mechanism for co-ordinating the actions of public bodies with professional organisations?

Juridical and linguistic corruption risks

Article 24 p.5: obtaining necessary information on health condition in the form accessible for them.

The interpretation of accessibility is quite subjective according to a professional view. See also comments to Article 31.

Article 61: Disclosing patient confidentiality without the consent of a citizen or his/her authorised

representative, if there are grounds to believe that the harm to the citizen's health was done as a result of unlawful acts.

The provision allows for a subjective approach – practically any harm to health can be assumed to result from unlawful acts.

Absence of responsibility for violations

This factor refers to responsibility of any official, professional or a legal entity. At the same time the responsibility of a medical institution for its employee's actions is not directly stated in the Basics of RF legislation on the citizens' healthcare and can only be defined based on the general rule in Article 1068 of the RF Civil Code: "Responsibility of a legal entity or a citizen for the damage caused by its employee".

In some cases the Basics give references to the criminal legislation:

Article 35: Illegal performance of artificial insemination and embryo implantation entails criminal liability stipulated by the RF legislation.

Article 37: Illegal performance of medical sterilisation entails criminal liability stipulated by the RF legislation.

The Criminal Code does not contain special provisions for such liability (it is possible to qualify it as doing harm to health, but it would not exactly reflect the essence of these provisions, aiming to single out a special subject of violation).

In others – the responsibility of medical workers is declared, but its forms, scope, basis and conditions are not specified:

- p. 6 Article 58: The consulting physician bears responsibility for inadequate performance of his professional duties **in accordance with the RF legislation;**
- p. 1 Article 68: If the violation of citizens' rights in the area of healthcare occurs as a result of inadequate performance of professional duties by medical and pharmaceutical workers, doing harm to the citizens' health or their death, the restitution is made in accordance with **Part One, Article 66 of these Basics;**
- p. 1 Article 66: If harm to the citizens' health is done, the guilty persons must make a restitution to the victims **in the amount and order stipulated by the RF legislation.**

Definition of competence according to “may” formula

Article 34: Compulsion measures of the medical character may be applied to persons committing socially dangerous acts on the basis and in the order stipulated by the Russian legislation.

See the comments to the same article under “scope of discretionary powers” factor. The order of applying compulsion measures depends on the discretion. The Criminal and Procedure legislation is to blame here also, as it needs revision from the point of view of human rights.

Presence of conflicts between legal norms

The title and contents of Article 44 contradict to each other (internal conflict).

Article 56: Prohibiting to carry out private medical activity is executed by a decision of a body having issued a permit for such an activity or by a court decision.

Prohibition on carrying out an activity is an administrative punishment, which can only be imposed by a court decision (Article 3.12 of the RF Code of Administrative Offences).

Absence of bidding (auction) procedures

In the Basics of RF legislation on citizens’ healthcare the provisions for bidding (auction) procedures in the healthcare system are missing – e.g., placing state order for providing some types of medical services.

Rejection of a regulatory legislative act

P. 5 Article 40 states that financial covering of activities related to providing specialised medical care by specialised federal medical institutions, the list of which is approved by the RF Government in accordance with these Basics is an expenditure obligation of the Russian Federation. Up until this time the list of specialised federal medical institutions is not approved by the RF Government. At the same time a list of specialised federal medical institutions within jurisdiction of the Federal agency on healthcare and social development, the Federal medic-biological agency and the Russian Academy of Medical Science is approved

by the Order of Ministry of healthcare and social development # 220 dated 29 March 2006 (this order falls under the corruption risk factor “adopting a regulatory legislative act by an executive body “beyond competence”). In practice it led to the fact that in the specialised federal medical institutions financed from the federal budget but not falling under Order #220 patients were charged for those types of specialised medical care, which according to the Programme of state guarantees in providing free medical care to the RF citizens, should be provided for free in the specialised federal medical institutions.

The presence of this list is important as the programmes of state guarantees of free medical care to the RF citizens for 2006 and 2007 point out plainly that the specialised medical care including hi-tech care is provided in federal specialised medical organisations at the expense of the federal budget. Consequently, the Russian citizens have a right to claim free provision of certain types of specialised medical care. However, in order for them to exercise this right, a list of federal specialised medical organisations is necessary.

Article 43: The procedure for applying methods of diagnostics and treatment specified in Parts 2, 3 of this article as well as using medical drugs, immunobiological drugs, disinfectants including those used abroad is defined by a federal executive body, regulating legal relations in the healthcare system.

Only the procedure for using medical drugs is adopted. All the others fall under rejection of regulatory and legislative acts and resolving issues individually. The same refers to p. 17 Article 5 (establishing a procedure for conducting medical evaluation), p. 5 Article 6 (establishing a procedure and scope of social support to certain groups of people in the area of medical and social care as well as provision of medical drugs).

Violating the principle of legal information transparency

P. 4 Article 20 states that the guaranteed scope of free medical care is provided to the citizens in accordance with the Programme of state guarantees of free medical care to the RF citizens. The Programme of state guarantees of free medical care to the RF citizens, which is adopted annually does not specify the types and the scope of the medical services provided for free. Consequently, the Russian citizens are not aware

of the types and scope of the first medical and sanitary aid that they could receive for free at a medical institution in their locality.

The list of the specialised (hi-tech) medical services provided in accordance with the Programme of state guarantees in providing free medical care to the RF citizens for 2006 was approved by the Order of the Ministry of healthcare and social development # 220 “On providing hi-tech types of medical care at the expense of the federal budget in federal specialised medical institutions within jurisdiction of the Federal agency on healthcare and social development, the Federal medic-biological agency and the Russian Academy of Medical Science in II-IV quarters of 2006” dated 29 March 2006.

This Order is of high importance to the RF citizens, as in 2006 for the first time the hi-tech medical care (e.g., aortocoronary bypass) was included in the list of medical services provided to the citizens for free at the expense of the federal budget. However, it was not registered at the RF Ministry of Justice, as the officials of this Ministry did not think it needed state registration (Letter of the RF Ministry of Justice N 01/3397-E3 dated 27 April 2006). The Order of the Ministry of healthcare and social development # 220 was published only in a specialised journal “Healthcare”. Therefore, the conclusion is that the citizens needing hi-tech medical care for saving their life are not provided access to the information, which is vitally important to them.

In order to ensure the right of citizens for information about the free medical care, it is feasible to specify the obligations of the federal and regional executive authorities in the area of healthcare as well as municipal healthcare authorities concerning provision of such information to citizens both through media and individually – during a consultation in a medical institution.

Apart from the corruption risk factors listed above, it is noteworthy that as medical institutions provide paid medical services, incentives for corruption are created by applying *chapter 39 of the RF Civil Code* “Provision of paid services”. *P. 2 Article 782 of the RF Civil Code* stipulates the possibility of the provider’s unilateral refusal to fulfil the contract terms. In practice this provision leads to the citizens’ constitutional rights being violated.

By the Definition of the RF Constitutional Court No. 115-O dated 6 June 2002

the contract on providing paid medical services (medical care) was recognised as a public agreement in accordance with p. 1 Article 426 of the RF CC. The Constitutional Court also determined that an obligation to make a public agreement also means inadmissibility of the provider’s unilateral refusal to fulfil it. The Court’s legal view is not reflected anywhere in the existing legislation.

Thus, as a result of anti-corruption expert evaluation of the Basics of the RF legislation on citizens’ healthcare dated 2 July 1993, the following corruption risk factors were found: scope of discretionary powers, presence of legal gaps, excessive freedom of sub-legislative rule-making, excessive requirements for a person, absence of administrative procedures, juridical and linguistic corruption risks, absence of re-

sponsibility for violations, defining competence according to “may” formula, presence of conflicts between legal norms, absence of bidding (auction) procedure, rejection of a regulatory legislative act, adopting a regulatory legislative act by an executive body “beyond competence” and violating the principle of legal information transparency.

Joint report on corruption risk assessment of the legislation in the sphere of education

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Summary conclusion

The Federal law “On Education” of 10 July 1992 and the Federal law “On Higher and Postgraduate Professional Training” of 22 August 1996 were selected as the main subjects of anti-corruption expert evaluation (corruption risk assessment). In the course of the anti-corruption evaluation, the related provisions of the RF Civil Code and the Rules of providing paid educational services approved by the Order of RF Government No. 505 dated 5 July 2001 were also reviewed.

The methodology of assessing legislative acts for corruption risks (Centre for

Strategic Development, World Bank, 2006) was used during the anti-corruption evaluation. The goal of the analysis is to identify the provisions in a legal regulation, creating directly or indirectly incentives for corruption or having a potential to do so.

The summary conclusion was put together based on the results of the anti-corruption evaluation of the above-mentioned legislative acts prepared by the two project experts – Candidates of juridical science L. V. Sannikova and E.V. Talapina – independently from each other. The document contains the conclusions agreed by the ex-

perts, at the same time preserving their individual value. Their peculiarities should be taken in consideration while preparing legislative proposals on removal of the corruption risk factors identified in the legislation on education.

As a result of corruption risk assessment the following corruption risk factors were identified in the Federal law “**On Education**” dated 10 July 1992 and the Federal law “**On Higher and Postgraduate Professional Training**” dated 22 August 1996.

Absence of responsibility for violations

The RF Law “On Education” makes no provisions for specific measures of liability of educational institutions and officials for breaching the rights of students and pupils or other illegal actions; no effective mechanism inflicting inevitability of punishment for law violations is in place (*p. 3 Article 4; p. 7 Article 51; p. 3 Article 32*). This drawback is also found in the FL “On Higher and Postgraduate Professional Training” (*p. 2 Article 3*).

Excessive freedom of sub-legislative rule-making

The RF Law “On Education” has a big number of provisions giving authority to

the RF Government to adopt by-laws: *p. 7 Article 5, p. 3 Article 7, p. 3 Article 10, p. 5 Article 12, p. 2 Article 13, p. 4,5 Article 16, p. 1 Article 20, Article 28, p. 1 Article 33, p. 1 Article 34, p. 3 Article 35, p. 3 Article 41, p. 2 Article 42, p. 10 Article 50, p. 3 Article 52.1, Article 53 p. 2.*

Other provisions give rule-making power to public bodies (federal, regional and local) – *p. 1 Article 7, p. 2 Article 13, p. 8 Article 15, Article 28, Article 29, Article 31, Article 33 p. 1, Article 33 p. 9, Article 34 p. 1, p. 4 Article 41, Article 52.2 p. 2.*

Resolving a wide range of issues is placed within the competence of the founders. The functions of the founder of the federal educational institutions established by the RF Government are carried out by the RF Ministry of education and science. Consequently, the Ministry’s acts regulate some important issues of educa-

tional activity, which should be governed by a law.

For example, *in accordance with p. 1 Article 16 of the RF Law “On Education” the procedure for admission to public educational institutions of higher professional educational (higher education institutions) of the RF established by federal executive bodies is defined by the Order of the Ministry of education #50 dated 14 January 2003*, although this issue should be regulated by a law as it has to do with citizens exercising their constitutional right for education.

The FL “On Higher and Postgraduate Professional Training” also contains many blanket provisions regarding the authority of the RF Government (*p. 3, 6 Article 5, p. 8 Article 6, p. 4,6,7 Article 10, p. 6 Article 11, p. 3 Article 16, p. 4 Article 19, p. 3 Article 21, p. 2 Article 24, p. 2 Article 33*).

There are also provisions with the authority of the federal executive body (p. 9 Article 6, p. 2 Article 7, p. 3 Article 8, p. 2 Article 11, p. 4 Article 15, p. 3 Article 16, p. 4 Article 17, p. 2 Article 20, p. 5 Article 23, p. 3 Article 24). At the same time the federal executive bodies and the federal bodies governing the education are distinguished and so are their powers.

Such a large number of reference and blanket provisions allow to characterise the laws on education as being of framework and declaratory nature. The mechanism of exercising citizens' rights in education is not clarified by these pieces of legislation.

Scope of discretionary powers

The powers of public bodies are defined quite vaguely – "ensure", which in practice allows for a wide range of interpretations – from passive co-ordinating or approving role to active interference with the activity of educational institutions (p. 1 Article 14, p. 1,5 Article 15 of the RF Law "On Education").

The powers of local authorities are declarative and can be exercised discretionally: *the local authorities organise and coordinate* (p. 5 Article 18 of the RF Law "On Education").

Licensing powers can be used as discretionary ones, as p. 13 Article 33 of the RF Law "On Education" suggests only one result of the licensing activity in case there are no grounds for a negative conclusion: *a founder may appeal to the court regarding a negative conclusion on the result of expert evaluation and a following refusal to issue a license to an educational institution.*

Insufficient separation of competence between the legislative and executive bodies in Article 28, 29 of the RF Law "On Education", defining competence of the RF and its subjects. On the more important issues the legislative level of regulation should be imposed by the law itself.

Implementation of national and regional components of public educational standards in higher and postgraduate professional training by a higher education institution on the contract basis with a relevant regional executive authority creates incentives for corruptive deals on the contract terms (p. 4 Article 5 of the FL "On Higher and Postgraduate Professional Training").

Giving discretionary powers, namely, the initiative to conduct a performance

review – makes it possible to apply them to selected (or on the contrary – unfavourable) institutions and creates incentives for corruption (p. 6 Article 10 of the FL "On Higher and Postgraduate Professional Training").

Definition of competence according to "may" formula

The competence of public bodies and public officials is defined by such terms as "may", "has the right to" in several provisions of the RF Law "On Education" (p. 6 Article 30, p. 23 Article 33, p. 6 Article 37, p. 1 Article 38), as well as the FL "On Higher and Postgraduate Professional Training" (p. 4 Article 7, p. 9 Article 16).

Several corruption risk factors are combined in the provision of p. 4 Article 47 of the RF Law "On Education": *the founder or the local authorities may suspend until court decision the entrepreneurial activity of an educational unit, if it is to the detriment of its educational activity stipulated by the charter.*

The presence of "may" formula justifies a possibility for the arbitrary rule, also of corruptive nature, in relation to an educational institution. It appears that a decision on suspending the entrepreneurial activity should be within the competence of court or otherwise an exhaustive list of reasons for suspending the entrepreneurial activity of an educational institution should be put together.

Besides it describes alternative powers of the public authorities and individuals (if the founder is an individual); the procedure for suspension is unclear (time limits, decision-making procedure); the activity may not be suspended.

In accordance with p. 2 Article 19 of the RF Law "On Education" *on request of the parents (authorised representatives) a founder of the educational institution may allow admission to educational institutions for studying at an earlier age.*

The provision makes it possible to give a permission (or to refuse) without any legitimate reasons. Thus a factor, which is more typical for public authorities than individuals, can be applied to this situation. In light of further elaboration of the Methodology and its application to the civil relations, this factor can be called "giving a right infringing upon the equality of the sides".

Presence of conflicts between legal provisions

In the RF Law "On Education" there are two contradictory provisions dealing with confiscating property of an educational institution: an imperative – p. 2 Article 43 and a discretionary one – p. 6 Article 39. Consequently, while considering property confiscation of an educational institution a public official, acting on behalf of the property owner (public or municipal institution), can use his/her discretion, which can lead to a corruption offence.

P. 7 Article 12 of the RF Law "On Education" and p. 3 Article 18 of the FL "On Higher and Postgraduate Professional Training" contradict to p. 3 Article 55 of the RF CC. A warrant cannot be issued to an affiliate, a branch or a structural subdivision, as they have no legal status, which is clearly stated in p. 3 Article 55 of the RF CC. Giving authority to structural subdivisions of the educational institutions ambiguously expands their property autonomy, which creates potential for abuse by their managers.

P. 5 Article 47 of the RF Law "On Education" contradicts to Article 3.12 of the Code for Administrative Offences. P. 5 Article 47 gives a founder or a local authority a right to suspend until court decision the entrepreneurial activity of an educational unit, if it is to the detriment of its educational activity stipulated by the charter. However, according to Article 3.12 of the Code for Administrative Offences suspension of activity is an administrative punishment, which can only be imposed by a judge.

Juridical and linguistic corruption risks

In p. 10 Article 33 of the RF Law "On Education" the term "average statistic indicators" is used, which is not explained further in the law. As it is a baseline concept for conducting assessment in licensing educational activity, it can be interpreted differently by law enforcers and thus be used for corruptive purposes.

It also remains unclear, which body is responsible for calculating the average statistic indicator or introducing methodology for its calculation. Under these circumstances the requirements of the assessment can be both overstated and understated, which also causes the wide scope

of the expert committee's discretionary powers.

Presence of a legal gap

The RF Law "On Education" is generally of framework nature. The consequence of the legislative decision is absence in these laws of the legal mechanisms for exercising educational entities' rights. The rights of the subjects participating in the educational activity are declaratory as the rights of some do not correspond to the duties of others.

For example, in chapter V "Social guarantees of exercising citizens' rights for education" the duties of educational institutions and educational workers are not established or regulated. Consequently, the citizens' rights for education established in this chapter are left without the proper legal provision.

Among the gaps in legislative regulation of educational activity is also the absence in these laws of the mechanisms for exercising the citizens' right for equal access to education.

One of the elements of such mechanism can be set up by recognising the contracts for providing educational services as a public agreement. It would allow to make provisions of Article 426 of the RF Civil Code applicable to them. They stipulate the following:

- an obligation of a service provider to make a contract with each one who applies on equal terms;
- a possibility to apply to court, forcing the other side to make a contract as the counterpart unreasonably refuses to sign it.

According to p. 13 of the Rules of providing paid educational services an educational institution is obliged to make a contract for providing paid educational services, if it has a capacity to provide a relevant service, without preferring one customer to the other. However, the Rules do not make provisions for applying to court with a demand to force an educational institution to make a contract with a customer as a consequence of the educational institution's refusal to sign it.

The laws on education do not stipulate some essential parameters and conditions for providing paid educational services: the procedure for carrying out paid educational activity, nature of paid educational services, contract terms laying the basis for such an activity, etc. (Article 45 of the RF Law "On Education" and Article 29 of the

FL "On Higher and Postgraduate Professional Training").

The mechanism for providing paid educational services is regulated by a by-law – Rules of providing paid educational services approved by the Order of RF Government #505 "On approval" dated 5 July 2001. At the same time the Rules regulate providing paid educational services in a very general sense, leaving the same gaps (e.g., p. 26 of the Rules is a gap in the procedure of exercising control). The main corruption risk factor in these Rules, however is filling the legal gap with an executive authority's regulatory legislative act.

The presence of these gaps causes some corruptive instances related to illegal charges of students and their parents:

- setting a separate fee for passing or repeating tests and examinations;
- imposing charges by way of tutoring, when the tutor is actually the teacher him/herself;
- providing additional paid educational services in the timeframe when the classes of the standard educational curriculum should take place, thus depriving a pupil of an opportunity to turn them down.

The procedure for exercising control over observing the license terms by an educational institution (p. 14 Article 33 of the RF Law "On Education") is a gap in the law, which can be filled by both the regulatory acts of the supervising body and by its practical activity based on discretion.

Issuing a license for carrying out educational activity is not regulated by a law (p. 7 Article 33 of the RF Law "On Education"). This gap is filled by a by-law – Order of RF Government #796 "On approving the Statement on licensing educational activity" dated 18 October 2000. However, according to p. 11 Article 28 of the RF Law "On Education" establishing a licensing procedure is within the competence of the Russian Federation (not the executive branch). Generally, it seems that the basics of licensing in education should be established by a law.

Rejection of a regulatory legislative act

P. 4 Article 7 of the RF Law "On Education" stipulates adopting a federal law, establishing the main principles of public educational standards for the primary general, basic general, secondary (complete) general education levels, as well as the procedure for their development and approval.

However, at present the development of educational standards is regulated by the RF Government, which delegates many functions to a federal executive body. So in defiance of the law provision, the regulation takes place on a lower level and a regulatory legislative act of an adequate level is not adopted. It blocks implementation of p. 5 Article 43 of the RF Constitution, according to which the Russian Federation establishes federal public educational standards, supports different forms of education and self-education.

There are no legislative acts, regulating the procedure for giving state educational credit to the citizens and its repayment as stipulated by p. 16 Article 28 of the RF Law "On Education". It predetermines "individual" approach to giving state educational credits and, consequently, corruption.

P. 5 Article 5 of the RF Law "On Education" makes provision for adopting federal laws, which define for the federal public educational institutions the categories of citizens entitled to social support, as well as the order and scope of its provision, however the provision is not implemented to a full extent. The specific measures of social support are only stipulated by the FL "On Higher and Postgraduate Professional Training" (p. 3, 3.1 Article 16). In regard to the students of other educational institutions no social support measures are envisaged on the level of federal laws. It appears that it could block implementing p. 2 Article 43 of the RF Constitution, which guarantees free access to the pre-school, basic general and secondary professional education at the public and municipal educational institutions and enterprises.

P. 6 Article 28, 34 of the RF Law "On Education" stipulates adopting federal laws, defining a procedure for establishment, re-organisation and liquidation of the federal public educational institutions.

These provisions are not implemented on the federal level.

Absence of public control over the activity of an educational institution

According to p. 8 Article 41 educational institutions have a right to receive additional finances, also as voluntary donations and special-purpose contributions from individuals and legal entities. In practice however "voluntary donations of individuals" often mean voluntary-compulsory charges imposed upon the parents.

One has to admit that monetary charges in educational institutions are mainly caused by insufficient financing and cannot always be regarded as corruption offences. There is no corruption, if the money is spent exclusively for the needs of the educational institution. However, as a legal mechanism of control over the money use is missing, the incidents of abuse on the part of the heads of educational institutions are not rare.

In order to prevent the possible abuse, it seems practical to obligate an educational institution to inform the students and (or) their parents about the way the additionally attracted resources are spent by publicising or providing them with a copy of the annual financial report.

Excessive requirements imposed on a person exercising his/her right

Putting excessive barriers to entering educational institutions of all levels is a major corruption risk factor. Nowadays testing (or other forms of selection) is introduced for admission to educational institutions practically everywhere. It is an additional barrier, no matter how good the intentions are. Consequently, an act of corruption becomes a way to overcome it.

For this reason it is necessary to legally forbid conducting all admission tests and using their results as a condition for entering public and municipal educational institutions on the pre-school, general and primary professional education levels.

Absence of auction (bidding) procedures

The FL "On Higher and Postgraduate Professional Training" makes provisions for **state support** in training specialists for priority areas of scientific research as part of higher and postgraduate professional education (*p. 5 Article 1*).

The way the state support is distributed is not defined. Presumably, it should only be based on bidding procedures and the law needs to openly state that.

Absence of administrative procedures

The FL "On Higher and Postgraduate Professional Training" does not specify the procedures for agreeing establishment of affiliates of the federal public educational institutions (*p. 3 Article 8*); and for the scientific council's decision on introducing the position of the President of a higher education institution (*p. 3.1 Article 20*).

The procedure for approving the Statement on performance review committees and their membership is not defined (*p. 4 Article 12 of the FL "On Higher and Postgraduate Professional Training"*).

The following procedure is not clear: how executive bodies, executive-administrative entities of city districts and scientific councils of higher education institutions consider and utilise recommendations given by civil society organisations and public associations in the system of higher and postgraduate professional training (*p. 5 Article 15 of the FL "On Higher and Postgraduate Professional Training"*).

Thus, as a result of anti-corruption expert evaluation of the Federal law "On Education" the following corruption risk factors were identified: absence of responsibility for violations, excessive freedom of sub-legislative rule-making, scope of discretionary powers, defining competence according to "may" formula, juridical and linguistic corruption risks, presence of legal gaps and conflicts between legal norms, rejection of a regulatory legislative act, absence of public control, excessive requirements for a person exercising his/her right, absence of bidding (auction) and administrative procedures.

An expert opinion on “Guidelines to experts on the initial assessment of a legislative act for corruption risks” and recommendations for approaches to prevent corruption in the legislative process

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Introduction

This paper briefly summarises the opinion of the expert on the Guidelines adopted by the Russian State Duma anti-corruption Commission for the screening of legislative acts for provisions that increase the risk of corruption (‘corruption risk assessment’). According to this opinion, while the methodology is an extremely useful tool for in-

corporation into the legislative process, some problems remain. In particular:

- the objectives of the methodology described in the Guidelines should be clarified;
- the non-determinant nature of “corruption risk factors” should be stressed;
- the structure of the Guidelines should be made more logical;

- the typology of “corruption risks” to be identified in legislative acts should be reorganised so that risks are separated into logical sub-groups.

In addition, some criticisms of and/or recommended changes to specific parts of the typology are offered.

Objectives and the nature of “corruption risk factors”

Paragraph 1.1 of the Guidelines defines the objectives of the methodology as

to identify the most typical and formalised instances of manifestation of corruption in the text of a legislative act. By corruption risks we mean a potential integrated in legal provisions to contribute to instances of corruption while implementing those provisions.

It is firstly recommended to state that the Guidelines are for application both to draft legal acts *and* legal acts already in force.

Second, the methodology as it stands implies that wherever one of the listed “risk factors” is found in a draft law, it should be assumed that the risk of corruption will be higher. However, there may often be exceptions, where a listed “factor” does not in the

specific context increase the risk of corruption. It is therefore recommended that the methodology states that corruption risk factors are constituted by provisions that *may* increase the risk of corruption (see below).

Second, the methodology currently appears to be oriented towards identifying provisions in a legal act that will facilitate corruption in the implementation of the act – for example, provisions that provide excessive discretion to officials, that in turn encourages them to use such discretion to extort bribes. However, and as recognised by the World Bank in particular, one of the major forms of corruption in post-communist countries is “state capture” – the designing of laws to legalise corruption itself. For example, as a result of corruption

during the legislative process, a law might legalise a monopoly of production in a particular sector of the economy. In its current form, the methodology does not contain a “corruption risk factor” that covers such a case. Due to the importance of such “corrupt” legal acts, it is therefore recommended to state the objectives of the methodology as to:

- identify provisions in a legal act or draft legal act that will or may *legalise* the provision of benefits to particular individuals or groups without any clear public interest justification;
- identify provisions in a legal act or draft legal act that will or may encourage or facilitate corrupt behaviour (such as bribery) during the implementation of the legal act;

- provide recommendations to modify the draft legal act or other legal acts and provisions in order to remedy these findings.

The typology of corruption risk factors should be altered accordingly. The acknowledgement that a law may be designed to legalise corruption as well as facilitate

illegal corruption links the methodology to a different problem identified during this project – corruption within the legislative process itself. Corruption may occur (or be facilitated) not only as a result of poor laws, but may also be a key factor in the very process of drafting laws. It is therefore recommended that in parallel with the appli-

cation of the methodology to draft legal acts, the separate recommendations of the expert concerning corruption within the legislative process are considered and implemented as appropriate to the Russian context.

Structure of the Guidelines

The present overall structure of the Guidelines is not very clear, and it is recommended to clarify it by adopting the following structure, containing the contents as from the current Guidelines as

modified according to the other recommendations in this opinion.

1. Objectives and Principles: include current 1.1, 1.3 and first paragraph of 1.4

2. Definitions of terms: current 1.2, 1.4 (bullet points), 1.5,

3. Typology of corruption risk factors: current sections A-D.

4. Structure of corruption risk assessment report.

Detailed comments on the contents of the typology

The Guidelines provide an extensive and to a large extent adequate description of corruption risk factors to be identified. However, the expert has the following specific comments and recommendations on the content of the typology.

Mixing together different corruption risk factors

The typology does not adequately distinguish different types of risk factor or individual risk factors themselves. For example, Subsection 2.1 mixes together problems of reference provisions, excessive discretion and the imposition of excessive requirements for persons to fulfil their rights. Likewise, section 2.2 mixes together the problem of excessive discretion being allowed to regulatory authorities to determine the rules governing their own activity on the one hand, and the problem of where primary legal norms are contained in delegated legislation/by-laws. It is strongly recommended to reorganise the typology according to the recommendation in *Organisation of the typology of corruption risk factors* below, page 111.

The need for discretion: section 2.1

While the typology rightly underlines excessive discretion as a key corruption risk factor, the expert believes that the material in the second half of section 2.1 should be

clarified to underline that primary legal acts should contain all *procedural rules* for the exercise of powers (for example a licensing process), while it is acceptable and indeed necessary for detailed criteria (such as licensing conditions for a particular sector) to be laid down by relevant authorities, although in line with broad principles of fairness, etc.

Conflicts between legal norms: section 2.3

It is recommended that the material in section 2.3 is clarified to identify this corruption risk factor as "the presence of a conflict between provisions of the act and other legal norms that is not clearly resolved neither by existing legal provisions for the resolution of such conflicts nor judicial precedent".

Allocation of rights rather than duties: section 2.4

Section 2.4 states that public officials should only be granted discretion to take or not take certain actions in cases "of an exceptional character ... strictly linked to certain, legally defined conditions ...". In the expert's opinion this statement is too strong, as there are many situations even in processes such as the revocation of a license where discretion will be necessary. It is recommended to term the corruption risk factor defined in this subsection as "al-

location of authority to an officials or authorities to take or not take specific actions, without the statement of clear criteria by which such a decision should be made."

"One window" principle: subsection 2.4.3 (should be 2.5.3)

The expert is not sure whether the one window (or one-stop-shop) principle is accurately described in this subsection, and recommends that this is checked. It is also not clear whether the material on the 'one window' principle should be here, and it is suggested that it would be better to describe why the existence of parallel duties/powers creates a risk of corruption.

Unjustified regulation: Section 2.7

Section 2.7 identifies as a corruption risk factor the establishment of excessive requirements on persons exercising their rights. It is suggested that an additional prior corruption risk factor is added here, which is excessive regulation, or regulation without a clear public interest justification. An example of this is the requirement of a license for persons to carry out economic activities that have no justification for being subject to licensing; this is a different corruption risk factor, as the establishment

of excessive requirements for persons to exercise their rights refers to the licensing process itself.

In addition, it is recommended that the last sentence of first paragraph plus second paragraph are included in the section of the Guidelines on Objectives and Principles, as the point expressed may apply to all corruption risk factors.

Absence of specialised detailed bans: Section 2.9

In its current wording Section 2.9 is very unclear and needs clearer explanation. It is

not clear whether it simply refers to conflict of interest provisions, or goes further.

Responsibility for violations: Section 2.10

Responsibility for violation of provisions of a law may apply to a public authority, not just individual officials. Indeed, this should be the case if persons exercising their rights are to be afforded effective redress. It is strongly recommended that this corruption risk factor is reworded to refer to "responsibility of public officials or public authorities".

Control mechanisms: Section 2.11

It is strongly recommended that the material in this section is divided into two separate areas of corruption risk factors: access to information on the one hand, and control mechanisms on the other, as suggested in the suggested revised structure of the typology below.

Organisation of the typology of corruption risk factors

The typology is currently structured in a way that does not adequately distinguish between different types of corruption risk factor and different individual factors themselves. It is important to keep different corruption risk factors distinct, both to ensure the clarity of the corruption risk assessment report and to enable. In particular, it is suggested to adopt a structure such as the following. The main headings are supplemented by suggested individual corruption risk factors, most of which are drawn from the existing Guidelines, but some of which are suggested additions.

- The use of different terms within the same draft legal act to refer to the same phenomenon

Conflicts of legal provisions

- Conflicts of provisions of the draft legal act with other legal acts in force which are not resolved by existing legal provisions for the resolution of such conflicts.
- The presence of primary legal norms within a draft regulatory act (by-law)

Allocations of powers, competencies and duties

Faulty reference provisions

- Reference – in order to set a rule or determine criteria – to legislation or regulation that is not specified
- Reference – in order to set a rule or determine criteria – to legislation or regulation that does not exist

Other

- Establishment of parallel duties

Rules and criteria for implementation

Unjustified regulation

- Provisions that impose regulation without a public interest justification for such regulation

Excessive discretion

- Allocation of authority to a regulator or executive body to determine rules/criteria governing procedures which that same body is responsible for implementing

- Allocation of authority to apply a provision (take decisions) without imposing clear criteria for such a decision
- Failure to state clear deadlines for decisions
- Establishment of excessively long deadlines
- Allocation of authority to institution to extend deadlines without restriction or duty to provide a clear justification for such extensions
- Establishment of non-exhaustive, ambiguous or subjective grounds for an authority to refuse to conduct certain actions (for example process an application or request)
- Failure to require competitive procedures for the allocation of contracts, licences, concessions etc

Establishment of excessive requirements for persons to fulfil their rights

- Establishment of conditions which are generally very difficult to fulfil (for example requirement of costly verified documents that are not relevant to the matter).
- Conditions that are not listed exhaustively – i.e. allow for extra arbitrary requirements to be imposed upon persons by the public authority.

Access to information

- Absence or inadequacy of provisions and procedures to ensure that persons

Justification of legal act

- Lack of a comprehensive justification for a legal act
- Promotion by the legal act of the interests of particular groups or individuals, or damage to the interests of particular groups or individuals, without a public interest justification
- Inclusion of substantive provisions that are unrelated to the subject of the legal act
- Failure to provide a clear estimate of the cost and financial impact of the draft legal act

Ambiguous linguistic formulation

- Provisions in the draft legal act which have unclear or ambiguous meaning
- The use of terms or expressions which have not been used before

are informed of all their rights and duties relating to a draft legal act

- Absence or inadequacy of provisions to ensure access of persons to information they need to fulfil their legal rights or duties
- Absence or inadequacy of provisions and procedures to ensure that the general public has access to information on the implementation of the draft legal act

Control mechanisms

Supervision and control

- Failure of draft legal act or other legal acts to establish clear procedures for the supervision of the implementation of the draft legal act

Appeal and judicial review

- Absence or inadequacy of internal procedures or judicial procedures for appeal against decisions taken under the authority of the legal act

Responsibility and sanctions for violations

- Failure to establish clear responsibility of specific persons or authorities for violations of provisions of the draft legal act
- Failure to establish clear and proportionate sanctions for violations of provisions of the draft legal act

Structure of the corruption risk assessment report

The corruption risk assessment report should be structured according to a detailed template. The current Annex 1 may serve as a basis for the template, which should be based upon the revised typology

of corruption risk factors. It is recommended to make the template more detailed than the current template in Annex 1, having separate items/rows for every subsection of the typology. The tem-

plate should also be supplemented by a section for recommendations on specific changes recommended.

Recommendations for further action to assess and address vulnerabilities to corruption in the legislative processes of the Russian Federation

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A paper by the expert on corruption in the legislative process, presented at the RUCOLA 2 project meeting on 18 October 2006, argues that corruption of the legislative process itself is potentially a more serious problem than the presence of pro-

visions in laws that facilitate corruption, since the former is one of the main reasons why the latter emerge. The paper argued that in order to minimise the risk of corruption – and maximise the quality of draft legal acts – the legislative process needs to

be based on the six principles of institutionalisation, professionalism, collective decision-making, justification, consultation and transparency.

Screening the legislative process

Since the presentation of the expert opinion in October, a working group of a joint Council of Europe/European Union programme has issued a detailed Guide on lawmaking in the Russian Federation.¹ The recommendations of that draft are in line with the recommendations of this contribution. It is recommended that, taking into account the lessons and recommendations

of that Guide, the Duma anti-corruption Commission does the following:

1. “Lawmaking in the Russian Federation: Guide to the Preparation and Adoption of Legislation”, Council of Europe Working Group in the framework of the Joint Programme between the Council of Europe and the European Commission in the Russian Federation, on the basis of reports by experts: Mr Suren Avakyan (Russian Federation), Mr St John Bates (United Kingdom) and Mr Günter Schmidt (Germany).

- Conduct or commission an analysis (screening) of the entire Russian legislative process to assess the extent to which it conforms to the six principles, in particular the aspects elaborated in Section 2 of this contribution.
- Propose or initiate legislative or other changes to tackle deficiencies in the legislative process identified during the analysis.

Key points for analysis

In the opinion of the expert, the analysis of the Russian legislative process should focus especially on the following questions, which are derived or elaborated from the six principles:

- Is the legislative process described in sufficient detail in legally binding procedures describing what are the stages of law drafting and approval, who has what rights and duties at each stage, and other aspects of the process as described in the expert’s paper submitted to the October 18 Meeting of the RUCOLA 2 Working Group?

- Is there a duty – at least for important laws drafted by the Presidential Administration or relevant Government (Federal or sub-national) – for a draft outline proposal to be drafted and submitted for public discussion prior to the issue of a detailed draft?
- Is transparency built into every stage of the legislative process, involving
 - Publication of the draft law at every significant stage, *inter alia* on the Internet?
 - Publication on the Internet of important dissenting opinions during discus-

- sions of a draft law within the Executive Branch?
- Publication on the Internet of all opinions on a draft law submitted by interest groups?
- Public access to the voting records of members of the relevant Duma?
- Is there a binding duty to provide a formal and substantial justification of a draft law, including an estimate of the financial and material impact of the proposed law (who benefits, who loses, how much will it cost) and a prohibition

- on the inclusion of provisions that are not related to the law and its objectives?
- Is the procedure for discussing and approving a draft law at each stage a collective one?
- Is there a binding and institutionalised process of consultation – both open (open to the public) and targeted at legitimate representatives of groups/parties affected by the draft law?
- Is the legislative procedure within the relevant Duma designed to minimise the ability of individual elected representatives from pushing through laws or changes to draft laws without discussion and scrutiny?
- Are all institutions involved in the process of drafting and approving laws sufficiently equipped with professional staff?
- Are officials of all kinds – both in the executive branch and elected representatives – who are involved in the process of drafting and approving laws subject to effective provisions on conflict of interest, duties to declare their assets and income, and codes of conduct/ethics?

Concluding comments

The results of the analysis should be used to yield concrete recommendations for changes in laws, rules and procedures governing the legislative process. The analysis may also yield other types of recommenda-

tions, for example to encourage the existence of organisations that mediate contacts between elected representatives and business organisations and work to improve the transparency of the legislative process.¹

1. A good example of such an organisation is the International Association of Business and Parliament, which *inter alia* operates in several former Soviet countries (<http://www.iabp.org/>).

Proposals on improving legislation on public and municipal procurement

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In order to eliminate corruption risk factors in the legislation on public and municipal procurement, introduction of the following amendments and additions to the legal acts regulating the sphere of public procurement can be recommended:

For the purpose of applying the alternative procurement procedures only in strictly regulated cases

To introduce the changes to Article 71 of the RF Budget Code eliminating the conflict with the provision of Article 1 of the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs”. To define the minimal contract amount, starting from which it is necessary to place orders to conclude such contracts, in accordance with the procedures stipulated in the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs”. Namely, if expenditure for procurement of goods, works and services is most likely to exceed the limit of cash payments among legal persons for one transaction in the Russian Federation allowed by the RF Central Bank, then such procurement is done on the state or municipal contract basis only which is concluded based on the results of placing an order.

For the purpose of providing openness and transparency of information on placing orders

To introduce an additional provision to Article 16 of the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs”, regulating the procedure for placing advertising information on the official web site. Among other things the provision should cover: the format of information placed on the web site; whether it is possible to refuse placing information and on what grounds; whether it is possible to withdraw information from open access and on what grounds; the responsibility of an authorised body administering the official website.

To add an article to chapter 8 on the protection of rights and legal interests of bidding participants, of the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs”. The article should make provisions for an appeal against actions (failure to act) of an authorised executive body in charge of the official web site.

To add to Article 17 on “Control over observing the legislation of the Russian Federation and other regulatory legal acts of the Russian Federation on placing orders” the provisions on the control over observing the RF legislation on placing orders by an authorised executive body responsible for the official web site.

For the purpose of attracting the largest possible number of suppliers and widening the circle of bidding participants from different regions

To give an opportunity to a bidding participant to fulfil his/her right to submit an application to a competition (p. 2 of Article 25) or auction (p. 4 of Article 35) electronically, excluding the notary certification requirement with regard to electronic documents, if they are signed with an electronic digital signature according to the requirements of the Federal law “On electronic digital signature”. To introducing the relevant changes into Article 25 and Article 35 of the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs”.

For the purpose of providing equal opportunities to the bidding participants, regardless of the discretion of a customer, an authorised body, a tender or auction committee

To make a legal provision in part 2 of Article 11 of the Federal law “On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs” that a customer or an authorised body shall set the following requirements when placing an order by means of holding an auction: 1) possession

by bidding participants the exclusive right for the objects of intellectual property, if a customer obtains the rights for the objects of intellectual property while carrying out state or municipal contracts; 2) absence of bidding participants in the register of unreliable suppliers.

To make a legal provision in part 4 of Article 12 of the Federal law "On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs" that a customer, an authorised body, a tender or auction committee shall dismiss a bidding participant from participation in a competition or an auction at any stage, in cases when the data provided proved to be inauthentic; a participant (a legal person) is under liquidation procedure or bankruptcy proceedings were initiated against the participant; if the participant's activities were suspended according to the regulations stipulated in the RF Administrative Offence Code.

To set an obligatory procedure in part 6 of Article 11 of the Federal law "On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs" for verification of compliance of the winner that placed an order with the requirements outlined in par. 2-4 of p. 2 and par. 2 p. 2 of the article.

To set the deadlines in working days: p. 3, Article 12; parts 3 and 4, Article 18; parts 4, 6 and 8, Article 19; parts 1 and 5, Article 21.

To make the legal provisions for the equal responsibility of a supplier (provider, contractor) and a customer for failure to fulfil or inappropriate fulfilment of the contract. To set forth part 9 of Article 10 of the Federal law "On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs" in the following way: "In case of exceeding the time limit by one of the parties for fulfilment of an obligation, provided by the state or municipal contract, the other party may claim the payment of forfeit (fine, penalty). The forfeit (fine, penalty) is calculated for each day of exceeding the time limit, provided by the state or municipal contract, starting from the day, following the deadline of fulfilling the obligation provided in the state or municipal contract. The amount of this forfeit is established as 1/300 of refinancing rate of the RF Central Bank valid for the day of payment. The party is released from paying the forfeit (fine, penalty), if it proves that the delay took place as a result of force majeure

or at other party's fault. To remove part 10 from this article.

For the purpose of improving control over observing the legislative requirements on state and municipal procurement

To introduce changes to the provisions of Article 17 of the Federal law "On placing orders" and to define the competence of the Federal executive body, an executive body of the subject of the RF and the local authority, authorised to exercise control in the sphere of public procurement according to a "shall" formula.

"If violations of the legislation on placing orders by a customer are revealed as a result of inspections, an authorised body in charge of control in the area of placing orders shall:

- send a proposal to the customer which is a public authority of the subject of the RF or a local authority to eliminate such violations and to replace the member of the tender, auction or quotation committee, who allowed for violating the legislation;
- give an instruction to the customer, which is not a public authority of the subject of the RF or a local authority to eliminate such violations as well as to replace the member of the tender, auction or quotation committee, who allowed for violating the legislation.

If cases when a customer did not take into consideration the proposals made, an authorised executive body shall take the case to court, claiming the compulsion to take action according to the RF legislation, ensuring protection of rights and legal interests of bidding participants and demanding the replacement of the member of the tender, auction or quotation committee.

If a customer did not follow the given instructions, an authorised federal executive body shall apply liability measures in accordance with the RF legislation".

For the purpose of simplifying the order placement procedures, ensuring transparency and openness of the procurement procedure, including legalisation of using

IT, promoting competition when placing orders

A separate chapter 3.1 of the Federal law "On placing orders for procurement of goods, carrying out works and provision of services for state and municipal needs" should be devoted to the legal construction of an electronic auction: "Placing orders by means of holding an open auction in electronic form".

This chapter should include a number of articles with the following provisions:

An open auction in electronic form on an Internet website should be carried out according to the procedure stipulated by the relevant chapter of the law.

To carry out an open auction electronically there should be foreseen the same legislative opportunities and rules as for holding an open auction without using information and communication systems.

In this regard it seems reasonable to eliminate such a limitation as prohibiting an electronic auction, if the starting price of a state or municipal contract exceeds five hundred thousand roubles; to make a regulation regarding both the starting date and time and the deadline of registration of bidding participants of an open auction that is held electronically. It seems reasonable to set the end of registration before the beginning of an electronic auction, by changing the current regulation providing an opportunity for a bidding participant to get registered before the end of an open auction. The announcement on holding an open auction in electronic form shall be placed on the official web site no later than twenty working days before the registration deadline. It is also possible to apply to an electronic auction a regulation on the establishment by a customer or an authorised body the requirements of providing an application form for the participation in auction.

A separate article of the law should make provisions for the eligibility of a bidding participant in an open electronic auction, including the main requirements to the registration procedure on the web site.

The access procedure should include submitting an application in electronic form by a bidding participant within the timeframe defined in the auction announcement, as well as registration of each application submitted before the deadline. The application is submitted by filling in a registration form on the web site. It should

contain all the obligatory data stipulated by the law.

The access procedure should also include provisions for creating (automatically or in any other way) an access key or other means of identification to grant access for a bidding participant to work in the system for holding electronic auctions.

Upon receipt of a filled in registration form, the system sends a notification on its registration or refusal in registration ac-

ording to the procedure described in the announcement of the open electronic auction.

Article 41 (p. 5) of the law makes a state or municipal customer accountable for ensuring reliability on the software used for conducting open electronic auctions. In this regard the legal construction of an open electronic auction should be corrected in the way that would give an answer to the following practical question,

whether this regulation implies that a customer should own the system for conducting open electronic auctions and perform technical support by his own means.

In this respect, it seems reasonable not to consider the issue of ownership, but rather establish a civil responsibility on a state or municipal customer if unreliable software is used for conducting open electronic auctions.

Proposals on improving legislation on public and municipal procurement

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As the conclusion of the anti-corruption expertise indicates, the Federal law “On placing orders for procurement of goods, carrying out works and providing services for state and municipal needs” contains both preventive anti-corruption measures and a number of corruptive factors. In general, the following should be mentioned:

- Some procedures are described in the law with insufficient detail, which, in some cases, gives too much scope for the customer’s actions.
- Insufficient separation of powers of a customer, an authorised body, a specialised organisation and a committee. Practically everywhere throughout the text of the document these terms are used as synonyms, which does not correspond to the reality. In some cases these entities enter into administrative relations that require a stricter regulation; in other cases they enter into civil law relations that allow for variety. These peculiarities are not reflected in the law which leaves space for ambiguous interpretation in practice. For example, according to Article 4, a budget receiver (a spending unit) acting as a customer falls under the law only in case of placing an order from the budgetary funds; if non-budgetary resources are used, tender procedures can be avoided, although in practice it has double meaning.
- The full list of types of orders placed with the sole supplier without placing a tender according to Article 55 of the law is vaguely and unclearly defined, which allows when needed to “classify” any

order to that type (classified according to different criteria) to bypass the bidding procedure. As a result, the ultimate goal of the law – to make an auction the key form of placing public orders – is diminished.

The proposals on improving legislation based on the results of the completed anti-corruption expertise of the above-mentioned law can be divided into general and specific (concrete changes in the articles of the law). Thus, speaking about the general proposals it is necessary to clarify whether calendar or working days were meant throughout the text of the law; as well as to elaborate the procedure of electronic bidding – Article 37 p. 2, Article 41.

It is also necessary to make corrections to the use of authority, defined in the text as “may” or “shall” (Article 52 p. 9, Article 17 p. 4, Article 17 p. 8, Article 17 p. 12 and 13), setting an obligation to act in a certain manner.

The following corrections of the content are suggested:

- To establish an administrative liability for failure to preserve tender (auction) documents.
- To introduce a special pre-selection procedure (or to define the exact source of information – e.g. a register of already signed contracts) of persons who will receive a request for quotations – Article 45 p. 5 (*A customer should send a request for quotations to the persons who can realise the procurement of goods, carrying out works and provision of services, stipulated by the request of quotations, based on the ne-*

cessity to receive quotations from at least three such persons). Besides, an obligation of simultaneous sending out of requests for quotations should be set (the same refers to Article 53 p. 3).

- To set a procedure for altering the contracts for placing orders – e.g., Article 54 p. 6. A possible legal regime for such an “addition” to a public order is placing orders with the sole supplier. In this case the following wording of the regulation can be suggested: if a winner of requested quotations cannot fill the order in full, a customer also places the order with a participant, who appears the next on the list in the ascending order, according to the rules stipulated for placing orders with the sole supplier.
- To “change” par. 2, part 2, Article 11 to p. 5, p. 1, Article 11 – the absence of data on bidding participants in the register of unreliable suppliers should be an obligatory requirement to the participants.
- To set up a deadline for applications – e.g., a day prior to the date of bidding (taking into account the need to check the information provided in the application – 3-5 days). At the same time the provisions of Article 26, p. 2, Article 21 p. 4 p. 9 and Article 22 p. 4 p. 13 should be co-ordinated, eliminating any chance of submitting an application right before the auction.
- To introduce a procedure for verifying the data on the bidding participants (Article 12 p.1 p.1)

- To establish the legal basis for interaction between an authorised body and a customer. For this purpose Article 4 part 2 should contain more details (*The procedure of interaction between an authorised body and public and municipal customers should be established by the decision on the creation of such an authorised body*). It seems that this procedure for interaction has different modes, if we are talking about to customers that are not governing authorities. There is an open issue whether profit-making relations are possible in this context (a customer that is not a public authority transfers the right of having an auction to an authorised body on a contract basis?)
 - To transfer the powers of the federal executive body to the RF Government according to Article 13 p. 3.
 - To clarify the form of submitting documents (originals or copies, the procedure of their attesting), or it is possible to define such requirements in an information note – Article 25 p. 3.
 - To establish customer's obligation to take the case to court for recover losses as a result of refusal to conclude a contract – Article 29 p. 2.
- A number of corruption risks can be eliminated only by eliminating of the appropriate provisions of the law, in particular:
- Eliminating an opportunity for a participant to alter an application stipulated in p. 9 of Article 25.
 - Eliminating the statement on complaint recall (Article 61 p. 1).
 - Eliminating an opportunity to make changes in bidding documents (Article 24 p. 3).
 - Eliminating an opportunity to request clarifications from the participants after opening the envelopes (Article 26 p. 7).
 - Eliminating p. 6 of Article 57 and while introducing an "administrative" procedure for requesting documents when filing a complaint.
- Some instances of corruption can be eliminated by changing the respective articles of the law.

Corruptive risk	Current version	Suggested version
Article 15 p. 1:	Public customers shall place orders with the subjects of small business entities at the rate of 15% of the total amount of procured goods, carried out works and provided services, with the exception of cases when placing orders for procurement of goods, carrying out works and providing services is done for the needs of the state defence and security, according to the list established by the Government of the Russian Federation by means of holding auctions where these entities participate, public customers in cases of placing orders for procurement of goods, carrying out works and providing services for the needs of the state defence and security, and the municipal customers have the right to place such an order.	Public and municipal customers, excluding the cases of placing orders for procurement of goods, carrying out works and providing services for the needs of state defence and security, shall place orders with the subjects of small business entities at the rate of 15% of the total amount of procured goods, carried out works and provided services, according to the list established by the Government of the Russian Federation by means of holding auctions where these entities participate. In cases of placing orders for procurement of goods, carrying out works and providing services for the needs of state defence and security public customers have the right to place such an order.
Article 37 p. 2: Expanding the subordinate rule-making	The requirements to the system for the electronic bidding, are established by the Government of the Russian Federation.	The requirements to technological, software, linguistic and organisational means for electronic bidding are established by the Government of the Russian Federation.
Article 8 p. 2: Increasing the possibilities of limiting participation in placing orders	The participation in placing orders may be limited only in cases stipulated by this Federal law and other Federal laws.	The participation in placing orders may be limited only in cases stipulated by this Federal law, and in case of placing a state defence order or an order for procurement of material values to the government reserve – also by other Federal laws.
Article 11 p. 1 par. 1: Excessive requirements to a participant	Conformity of bidding participants with the requirements of the RF legislation, established for persons, that fulfil the procurement of goods, carrying out works and providing services, described as the subject of auctions.	Availability of a special permission (license) that a bidding participant must have in regards to the subject of auctions.

Corruptive risk	Current version	Suggested version
Article 58 p. 2: Imposing a burdensome duty on a bidding participant that can hinder an appeal	A bidding participant who files a complaint against actions (negligence) of a customer, an authorised body, a specialised organisation, the tender, auction or quotation committee, should also attach the documents, proving the validity of arguments.	A bidding participant who files a complaint against actions (negligence) of a customer, an authorised body, a specialised organisation, a tender, auction or quotation committee, should also attach the documents, proving the validity of arguments. In cases where he does not have the relevant documents, the Federal executive authority, an executive body of a subject of the RF, a local authority shall obtain them on demand from the customer, an authorised body, an specialised organisation, the tender, auction or quotation committee.
Article 12 p. 4:	In cases where the data provided in accordance with p. 3 of Article 25 or p. 2 of Article 35 of the present Federal law by a bidding participant proved to be inauthentic; establishing the fact of liquidation of the participant (a legal person) that had placed an order or bankruptcy proceedings were initiated against the participant (a legal person, a private entrepreneur); if suspension of the participant's activities according to the regulations stipulated in the RF Administrative Offence Code took place the customer, an authorised body, the tender or auction committee may dismiss such a participant form the bidding/auction at any stage.	In cases where the data provided in accordance with p. 3 of Article 25 or p. 2 of Article 35 of the present Federal law by a bidding participant proved to be inauthentic; establishing the fact of liquidation of the participant (a legal person) that had placed an order or bankruptcy proceedings were initiated against the participant (a legal person, a private entrepreneur); if suspension of the participant's activities according to the regulations stipulated in the RF Administrative Offence Code took place the customer, an authorised body, the tender or auction committee shall dismiss such a participant form the bidding/auction at any stage.

The law contains a number of blanket regulations that allow the Government or an authorised body to adopt the regulatory acts. In cases when it is impossible to regulate such issues at a legislative level, the implementation of these blanket regulations shall be under special control. In particular, the attention should be paid to: 1) the need for timely adoption of such acts, 2) the need for conducting an anti-corruption expertise of such acts, 3) anti-corruption expertise if changes are made in such subordinate acts (e.g., when the Government makes changes to the list of goods, works and services, provided on the basis of an auction – p. 4 of Article 10). In particular, in the performance of p. 3 of Article 11 of the Federal Law, the Government adopted the Decree No. 813 of 28 Decem-

ber 2006, which duplicated the law provisions (an additional requirement is available capacities), and transferred the authority of defining the lists of goods necessary for the country's defence to the departmental level. Thus, the regulation of the law is misunderstood and is not implemented towards solving the concrete issues at the Government level, but instead the decision making process goes lower down.

Besides, to eliminate the ambiguous interpretation of the articles' provisions:

- To design a procedure for giving grounds for the unilateral change of the scope of work (Article 9 p. 6).
- To make additions to the law or to adopt the governmental acts on the procedure of registering and provision of stipu-

lated privileges to the institutions of the criminal-executive system, associations of disabled persons as well as the subjects of the small business entities in the process of placing orders by means of holding an auction. While the statements of the law should be amended. For example, p. 3 of Article 37 (In cases when the notification on an open auction provides for privileges for institutions of criminal executive system and (or) associations of the disabled persons, the customer, the authorised body announces the presence of such participants just before the auction starts), since it is not only the presence of such participants that matters, but also a procedure of recording their privileges.

Expert opinion on the legislative proposals in the sphere of public procurement made by the Russian experts to the project

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I have been asked to review and comment upon proposals made by two Russian experts, namely N.I. Solovianenko and E.V. Talapina, for improving, from an anti-corruption perspective, the Federal Law on

procurement of 21 July 2005. I am at a slight disadvantage since I do not have a copy of the Law, although the experts' papers are mostly sufficiently comprehensive to make their proposals self-evident in

terms of the legislative proposals put forward. Where there is doubt as a result of translation, I will make that clear. I will consider the proposals in turn.

Proposals by Ms Solovianenko

The expert makes a number of comments and proposals under a series of headings. I will deal with each heading in turn.

Proposals made for the purpose of applying the alternative procurement procedures only in strictly regulated cases

It is critical that any alternative procurement procedure (i.e. other than open bidding with or without pre-qualification) be permitted on conditions which are set out clearly and consistently in the Law. These conditions should be strictly interpreted. They apply not only to the use of alternative procedures at different threshold levels but also for alternative procedures which become necessary as a result of specified circumstances such as in cases of extreme urgency or where bidders possess exclusive rights, for example. It would also be a good idea to ensure that contracting authorities should indicate in the record of the procedure the reasons for using such an alternative procedure.

Proposals made for the purpose of providing openness and transparency of information on placing orders

Providing clarity for the publication of advertisements on-line is important, particularly in respect of the format which needs to be consistent. I am not entirely sure of the purpose of providing appeals against the body responsible for the online publication for its failure to act but I agree that there must be some remedy where advertisements are not placed on-line in a timely fashion. Where there is online advertisement, the body responsible should be required to publish within a given time period and this should be reflected in the minimum time limits given to bidders to submit their tenders.

Proposals made for the purpose of attracting the largest possible number of suppliers and widening the circle of bidding participants from different regions

Electronic bid submission is an efficiency tool and can broaden the pool of bidders as suggested. Unless there is equal access to technology throughout the country, it

should not be made mandatory but used as an alternative. Electronic submission can also reduce document tampering provided there are sufficient guarantees in place with regard to the opening of the bid documents before the deadline for the opening of bids (this can be vouchsafed through the use of password protection or electronic signatures, for example).

On the related point concerning notary certification, there are also other documents which cannot always be submitted electronically such as certificates and qualifications. Of course, they can be converted into image files but it is the authenticity that becomes important in the verification process and this is less secure in the event of image files. One solution may be to require the electronic submission of such certificates and notarised documents and to impose a further requirement that the originals must either (1) be sent by post to arrive by a certain date or (2) be provided only by the successful bidder. This second possibility also has the effect of reducing the burden on bidders (something which sometimes dissuades them from bidding).

Proposals made for the purpose of providing equal opportunities to the bidding participants, regardless of the discretion of a customer, an authorised body, a tender or auction committee

I am not entirely sure that I understand the intention of the proposal with regard to intellectual property rights but I assume that it means that where the contracting entity comes into possession of intellectual property rights during the course of a procurement (e.g. the copyright in a design), it must licence all bidders to use that right. This is an issue which has arisen in many countries where, for example, a contract for services to provide a design has led to a claim by the successful designer that it then holds the copyright in the design so that the execution of that design (e.g. construction) could only be carried out by the designer, thereby preventing competition from other contractors. That results in unequal treatment.

Where there is a register of unreliable suppliers, then it is normal that absence from the register should be a condition of participation. However, it is equally important that the procedures linked to the register are not abused.

I agree that the production of inauthentic documents should be grounds for rejection. This should be even more the case, where they are deliberately falsified. This becomes a case of fraud which could be linked to corruption.

I do not fully understand the point regarding "verification of compliance of the winner" but I imagine that this related to post-qualification. This is useful in the case of the award of very large or complex contracts where the time involved in assessing

the bids is so long that there is a danger that the situation of the bidders may have changed in the interim. This is also the position if bidders have been selected from among pre-qualified or pre-registered bidders. The purpose is to ensure that the qualification and selection criteria continue to be met.

Clarity on whether the number of days is set in calendar or working days is important and raised by both experts.

The equality of the contracting parties is also important but a very difficult condition to apply in practice. Whilst governments are usually over-eager to challenge bidders who delay, they are less eager to bear the responsibility for late payments. This clearly has a negative effect on the procurement and can give rise to an opportunity for corrupt practices. I fully support the imposition in the Law of a requirement for both parties to take responsibility for their contractual obligations.

Proposals made for the purpose of improving control over observing the legislative requirements on state and municipal procurement

The reference to "inspections" is unclear. If it refers to an audit type function with an officer monitoring individual procedures, then it is unrealistic because an army of inspectors would be necessary to carry out such an exercise effectively and in a timely fashion. On the other hand, if by "inspection" is meant the actions of an authorised body following a complaint from a bidder in respect of a potential violation, then it makes perfect sense. The critical issue is one of timing. It is crucial that a bidder can make a complaint and that an authorised

body is in a position to react very quickly so that the proposed actions can be taken within the time-frame of the procurement procedure.

Proposals made for the purpose of simplifying the order placement procedures, ensuring transparency and openness of the procurement procedure, including legalisation of using IT, promoting competition when placing orders

In some cases in these papers, the term "auction" appears to be used as a synonym for tender/bidding (this may be a translation issue). Here, however, it does seem to refer to a reverse auction as such, i.e. a process of reducing prices incrementally either in an auction room or on-line. Personally, I do not see that auctions offer significant improvements as an anti-corruption tool although many do make that claim. I would emphasise that auctions are useful only for some procurements, notably off-the-shelf products and spare parts. It is less useful for construction projects or for the procurement of consultant services where quality is paramount. I think it would be beneficial, therefore, for this to be made clear in any legislative amendments. As the expert rightly points out, the essential process is that bidders should be properly qualified and assessed in advance of the auction and any technical issues resolved before it begins. The actual auction is realistically limited to price and not (at least not without difficulty) to other qualitative issues. The proposed clauses are appropriate.

Proposals by Ms Talapina

This expert's proposals are made in sequential points without numbering. I will deal with each in turn. Both papers will, therefore, need to be read together.

- It is imperative that the procedures are set out clearly and that exceptions are clearly defined. If this is not the case, then amendments should be made.
- What is important is that the lines of responsibility and accountability are clear so that the bidder knows where the decision-making power lies and who should be held accountable for any violations during the various stages of the procedure. The second issue raised

concerns the scope of application of the Law. I am afraid I do not know what the "double meaning" may be but it is unusual to see public authorities being able to avoid tendering procedures when using non-budget funds. This is more frequent in the case of State owned enterprises (SOEs). This is a very complicated area and the issue is really to ensure that the Law defined clearly who is and who is not covered and, if the situation changes depending on the source of funds, where this happens. In the EU, for example, SOEs are covered only where they provide a

defined service to the public. It is their activity which is covered and it is irrelevant where the funds come from. Public authorities are covered whatever the source of their funds.

- This reflects the points made by the other expert and discussed in paragraph 3 above. Exemptions from the preferred procedure must be clear and conditional.
- This is considered above ("Clarity on whether the number of days is set in calendar or working days ...").
- This is crucial.

- Records must be kept though it is often difficult to ensure this. It may also be an idea to require reporting of these records either to an authorised body or to the head of the procuring entity. That usually acts as an incentive to record accurately and to encourage greater care in the conduct of the procedure.
- It is certainly useful to provide that where there is a register of contractors or suppliers, then those invited to submit quotations should be selected from among those appearing on the register. I fully agree that the requests should be sent simultaneously.
- I do not understand the reference to "sole supplier" in this context unless it is to imply that the winner might become the sole supplier as a result of winning the contract. The proposal seems to raise many issues: (a) if the purchaser wants to add to the purchase order made to the successful bidder, then this would ordinarily be permitted up to a certain maximum percentage of the original order (say 20%) – this would need to be fixed in the Law; (b) if the successful bidder cannot satisfy the order, the contract is cancelled or, if that becomes clear at the time of award, the contract could be placed with the second best bidder on the terms it has offered; (c) splitting purchase orders between bidders should only be done where the bidding documents have made clear that the contract can be awarded in lots. Otherwise, there is a danger that the parties could get together (in a corrupt manner) to arrange the division of contracts between themselves.
- This is considered above ("Where there is a register of unreliable suppliers ...").
- The use of the terms bidding and auction in the same comment are confusing since the situation is different in each case. In the case of tenders/bidding, bids should be submitted at the deadline for receipt of bids and bid opening should take place immediately. There should be no delay between submission and opening since that time delay provides an opportunity for manipulation. In the case of pre-qualification, that should take place well before the date for submission of bids since only pre-qualified bidders will be permitted to submit bids and, following pre-qualification, they will need to start preparing their bids. In an auction, the qualification process also needs to take place well before the auction begins similar to the case of pre-qualification. See also above, "In some cases in these papers, the term 'auction' appears to be used as a synonym for tender/bidding"
- I am surprised that this is not already the case. Clearly the data needs to be verified ... where it is essential. Contracting entities should only ask for essential data and not for all the possible data listed in the Law.
- I'm afraid I do not understand this issue but if the authorised body is in any way involved in oversight or monitoring of a contracting entity then it should not become involved in any procurement itself since the lines of accountability will become blurred.
- I have no comment on this. It appears an administrative/political issue.
- I agree. See also above, page 121, "On the related point concerning notary certification ..."
- This is usually the function of a tender security. If the bidder refuses to conclude a contract, then he forfeits the tender security. In any event, the customer would then be entitled to award the contract to the next best bidder so there will be no loss in having conducted the procedure. If all bidders refuse to sign the contract, then there is more likely to be something wrong with the procedure in respect of the requirements or the proposed contract. Those are the issues which need to be addressed.
- There is usually no problem in allowing amendments before the deadline for submission of applications or bids. Only amendments after that date should be prohibited if they are unilateral. Changes made as a result of changes in the bidding documents should be permitted.
- I have not read the original provision and so cannot comment since I do not know the purpose of the provision.
- There are situations where changes are necessary. To eliminate the possibility would often condemn the procuring entity to buying the wrong thing. Protection is afforded by ensuring that any changes are notified to all bidders simultaneously in writing. If that is not done, the change is unlawful.
- This is designed to clarify mistakes or errors of calculations. To eliminate this would jeopardise the proper evaluation of bids.
- I have not read the original provision and so cannot comment.
- I'm afraid I cannot see what changes have been made other than re-arranging the order of the sentence.
- I do not see what substantive difference this makes but I would have no objection.
- I am assuming that the definition of "state defence order" does not allow exemption for any procurement by the defence authorities but only procurement of defence related equipment.
- I do not understand the proposed amendment. The power to provide permission is always an incentive for corruption. Compliance with legislative requirement is usually preferable.
- This seems a sensible precaution.
- I can see no difference between the texts.
- This is a very valid issue. The power to adopt implementing regulations should not be misused to deal with specific procurements nor to pursue the personal goals of the draftsman. All critical provisions should be set out in the Law and any explanations or guidance set out in the regulations should be entirely consistent with the Law. In addition, regulations should be kept to a minimum and must be transparent, i.e. must be made public so that everyone is aware of them.
- Any such changes should be made under strict conditions and recorded.
- I think that is a valuable precaution.

Proposals on improving the legislation in the sphere of education

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It seems feasible to renew substantially the regulatory base in the sphere of education by adopting a new Federal law “On Education”.

To design and to include a separate chapter “Providing educational services”

into the Russian Federation Civil Code where to regulate an agreement on rendering educational services – not only the paid ones, but also those covered by the respective budgets.

To design a legal base in order to move to financing of educational institutions on “per head” basis.

To make changes in the current legislation regulating the sphere of education.

Explanatory note

Expanding the area of application of Article 426 of the Civil Code of the Russian Federation to non-profit organisations including educational institutions is necessary to ensure better protection of rights of the consumers of educational services, as it will allow to make a contract for providing educational services a public document.

The Russian Federation legislation makes no provisions for competitive admission to the public and municipal educational institutions on the pre-school, comprehensive and secondary professional education levels. Nevertheless, in real life there are cases of refusal of admission to educational institutions based on the results of testing (or other forms of competitive selection), or unlawful charges for admission to educational institutions if those tests were passed non-satisfactorily. For this reason it is advisable to legally forbid using the results of admission tests (or other forms of competitive selection) for entering public and municipal educational institutions on the pre-school, comprehensive and secondary professional education levels.

In order to prevent any abuse of authority, an educational institution shall inform

the students and (or) their parents on the spending of additional funding by means of publication in media or providing them with an annual financial report.

Additional charges of parents or the students themselves in the form of presents to daycare workers, teachers and tutors are widely spread in Russian educational institutions. P. 2, Article 575 of the Civil Code of the Russian Federation allows the giving of presents to the employees of educational and similar institutions if their value does not exceed five minimal wages. This regulation is of a corruptive character. For this reason an imperative ban should be imposed on any kind of gifts to the above mentioned categories of employees, regardless of their value, so that in people’s minds it is associates with a corruption offence.

The proposed changes and additions to the legislation regulating education:

- To replace the words “commercial organisations” in Paragraph 1, Article 426 of the Civil Code of the Russian Federation with the “commercial and non-profit organisations”.

- To amend Part Two of P. 1, Article 16 of the Law “On Education” of the Russian Federation as follows:

“No testing or other competitive forms of selection violating the rights of individuals to education are allowed in the process of admission to state and municipal educational institutions at pre-school, primary, comprehensive, secondary (complete) and primary professional training levels.”

- To add P. 11 to the Article 41 of the Russian Federation Law “On Education”:

“An educational institution shall present an annual financial report on spending extra funding, listed in P. 8 of this article, by means of publication in media or distribution to the students and (or) their parents (authorised representatives)”.

- To add P. 23 to Article 50 of the Russian Federation Law “On Education”:

“Students of secondary professional or higher professional educational institutions may ask for documents, indicated in P. 2, Article 16 and P. 11, Article 41 of this law”.

- To add Part Two to P. 1 of Article 52 of the Russian Federation Law “On Education”:

- “Parents (authorised representatives) of students may ask for documents, indicated in P. 2, Article 16 and P. 11, Article 41 of this law.”
- To remove P. 2 and 3 from Article 575 of the Civil Code of the Russian Federation.
 - To add Part Two to Article 575 of the Civil Code of the Russian Federation:
 - “No gifts are allowed, regardless of their value:
 - to public servants and the officials of the municipal educational bodies in connection with their position or when performing their duties;
 - to the employees of healthcare, educational, training, social security and other similar institutions by individuals that are subject to medical treatment, that are kept, trained or educated in the above-mentioned institutions, as well as by parents (authorised representatives), spouses and relatives of those individuals”.

Proposals on improving the legislation in the sphere of education

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The legislation on education is excessively framed and declarative, therefore it needs serious revision. Taking into account the results of the anti-corruption expertise would be the most productive in the framework of exactly that kind of work. It is noteworthy that the anti-corruption correction of individual regulations would hardly make any significant difference to the corruption situation in the area under study.

Within the anti-corruption expertise carried out it is advisable to control the uncertainty in the following issues – procedure for licensing and state accreditation of educational institutions, procedure for providing paid educational services by them, possibility for state financing for fulfilling the educational standards.

It is necessary to make amendments to the regulations defining the competence of the public (municipal) bodies, namely, to eliminate the possibility for the unregulated implementation of authority referred to as the body's discretionary right.

In the Federal law “On education”

Article 30 part 6. The federal executive body exercising control and supervising functions in the sphere of education and science may, within its competence, inspect, as the way of supervision, educational institutions on the territory of the Russian Federation, regardless of their legal status, type and form, as well as bodies of Education Administration and the authorised executive bodies of the subjects of the Russian Federation exercising control and supervision in the sphere of education.

The proposed change is “inspects”.

Article 33 part 23. An educational institution may be deprived of its state accreditation as a result of performance audit.

The proposed change is “will be deprived”.

Article 37 part 6: In case of breaking by an educational institution the law of the Russian Federation on education and/or its own Charter, the public bodies of Education Administration may instruct them to eliminate the violation.

The proposed change – “instruct”.

Article 38 part 1. The state performance audit committee may send to an educational institution with the state accreditation, a reclamation regarding the quality of education and/or non-compliance of the level of education with the requirements of a relevant state education standard.

The proposed change – “sends reclamation”.

In the Federal Law “On Higher and Postgraduate Professional Training”:

Article 7 part 4. A decision of the state performance audit committee on awarding a graduate with the qualification (degree) and providing him/her with a standard state document on higher professional training may be cancelled by a federal executive body, that had appointed the chairman of the state performance audit committee, only in case when an established procedure of issuing standard documents on higher professional training was violated by a student.

The proposed change – “will be cancelled”.

To eliminate a regulatory collision with Article 3.12 of the Code on Administrative Offences, according to which the suspension of an activity is an administrative offence measure, prescribed by a judge only.

Article 47 part 5 of the Federal Law “On Education”: The founder or the local authorities may suspend till the court decision on this matter the entrepreneurial activity of an educational institution, if it harms the educational activity stipulated by the Charter.

The following version of this article is proposed:

The founder may suspend the entrepreneurial activity of an educational institution, if it harms the educational activity stipulated by the Charter till the court decision on this matter.

In order to fill the gaps in the legislative regulation of such issues as providing paid educational services (Article 45 of the Federal Law “On Education”, Article 29 of the Federal Law “On Higher and Postgraduate Professional training”), it is necessary to define in the text of the law a list of paid educational services, the main rights and obligations of parties in accordance with the terms of the agreement. Also the federal licensing requirements and conditions, the procedure for conducting expertise should be fixed by the law (if technically impossible – provisions should be made for adopting a subordinate regulation on this issue) (Article 33 of the Federal Law “On Education”, Article 10 of the Federal Law “On Higher and Postgraduate Professional Training”).

To specify the competence of the public bodies and legal uncertainties:

In the Federal Law "On Education"

Article 14 part 5: Public bodies of Education Administration ensure the development of model educational programmes on the basis of the state educational standards.

The proposed change is "develop".

Article 15 part 1: Public bodies of Education Administration ensure the development of primary curricula and model programmes of courses and subjects.

The proposed change is "develop".

Articles 28 and 29, defining the competence of the Russian Federation and its subjects, despite the presence of Article 30, insufficiently distinguish the competence of the executive and legislative bodies. As to the key issues, the legislative level of regulation should be reflected in the law.

Article 33 part 10: The requirements of the expertise cannot exceed the average statistical figures for the territory where an educational institution is registered.

It is advisable to remove this regulation in light of the previously mentioned proposal to legally define the expertise procedure.

In the Federal Law "On Higher and Postgraduate Professional training"

Article 5 part 4. National and regional components of the state educational standards in the sphere of higher and postgraduate professional training are defined by a higher education institution on the initiative of an executive body of the subject of the Russian Federation and are implemented by a higher educational institution on the basis of the contract with the relevant executive body of the subject of the Russian Federation.

If the development of the components of the national and regional standards is

entrusted to a higher educational institution itself, then their implementation can be co-financed by the state (or even by private entities, e.g., business structures interested in certain types of personnel). The procedure for co-financing is stipulated, but is not evident in the regulation. For this reason the following version of this article is proposed:

The national and regional components of the state educational standards in the sphere of higher and postgraduate professional training are defined by a higher educational institution. The obligation to develop, approve and introduce them is part of the licensing agreement. In case their implementation is fully or partially financed from the budget of a subject of the Russian Federation, the relevant higher educational institution acquires a status of the budget recipient with the respective rights and responsibilities (or – The relations of a higher educational institution on the implementation of the national and regional components of the state educational standards where the financing is made from the budget of a subject of the Russian Federation are regulated by the Russian Federation budget legislation.)

Article 10 part 6. Performance audit of the higher education institution is carried out by the state performance audit agency at the request of a higher educational institution or at the initiative of a federal body of Education Administration, bodies of executive power or executive-administrative bodies of the municipal districts where an institution is located.

A Performance audit agency of higher educational institutions, along with their state accreditation and licensing, is quite vaguely defined (it can be held at the initiative of both an institution itself and the authorities) with unclear frequency and function. It is envisaged that the two permissive procedures could be combined –

performance audit and accreditation; the more so, as according to the law, the state accreditation of a higher educational institution is fulfilled on the basis of the performance audit. Thus, performance audit is the initial stage of accreditation. This simplification will clarify the actual administrative procedure for performance audit.

To adopt the regulatory legal acts mentioned in the Federal Law "On Education":

Article 5 part 5 – the provisions of the federal law on the categories of individuals that are entitled to the social benefits; on the procedure and amounts of their provision.

Article 7 part 4 – the provisions of the federal law on the key issues of the state educational standards in the area of primary, comprehensive and secondary (complete) education; the procedure for their design and approval.

Part 16 article 28 – the procedure for providing the individuals for the state educational credit and its repayment.

To abolish the regulation of Article 34 of the Federal Law "On Education", according to which the procedure for reorganising the federal public educational institutions is set by the Government of the Russian Federation: by the executive authority of a subject of the Russian Federation in the case of the educational institutions of the subjects of the Russian Federation; and by the local authority for the municipal educational institutions. The reason is that the procedure for reorganising is regulated by the civil law. The same applies to part 6 of Article 28 (the procedure for establishing, re-organising and abolishing federal public educational institutions), so that "individual" requests are avoided when setting up an educational institution.

Opinion on proposed measures to tackle corruption in the education system in the Russian Federation

Quentin Reed

Lead expert to the RUCOLA 2 project

Introduction

This opinion briefly comments on the proposals of Larissa Sannikova and Elvira Talapina to amend legislation regulating the provision of education in the Russian Federation. While most of the proposals

appear sound, the expert believes that a few of the recommendations may be problematic. More importantly, following the expert's contribution on corruption in education to the 19 December RUCOLA 2

Working Meeting, this opinion underlines the need for a broader approach to education reform, including proper research to identify key problems.

Specific comments on the expert recommendations

The following specific comments are offered on the comments of Ms Sannikova, and refer to the Explanatory Note unless otherwise stated.

- The thrust of point 1 is not clear, and in particular it is not clear what is meant by “contract for providing educational services”.
- One of the main recommendations of Mrs Sannikova's contribution is to “legally forbid using the results of admission tests (or other forms of competitive selection) for entering public and municipal educational institutions on the pre-school, comprehensive and secondary professional education levels.” The expert has doubts whether a blanket prohibition on competitive methods of selection is applicable, as almost all education systems allow for such methods to be used to select pupils for certain types of schools (for example

allow for such methods to be used to select pupils for certain types of schools (for example *gymnasia*). The expert believes it is of more importance to clearly regulate which schools may use admission tests as an admission criterion, and impose clear duties on such schools to make such tests and other admission criteria clear to the public.

- While restricting the provision of gifts may be an important anti-corruption measure, it is not clear whether a ban on all gifts irrespective of value is wise. Forbidding expressions of gratitude such as flowers etc may undercut a legitimate cultural practice while doing little to prevent real corruption. The expert suggests that it would be wiser simply to ban gifts over a certain value, with the threshold value set such that it will not exclude gifts of insignificant value.

The following specific comment is offered on the comments of Ms Talapina:

The third sentence of the introductory paragraph suggests that amendments to individual regulations will have little effect on corruption in education. While the expert broadly shares this opinion, it is somewhat confusing as the rest of the opinion does not elaborate on what *additional* measures or approaches are necessary in order to actually have a real impact on corruption in education. Reflecting this, for example part 1 of the recommendations address problems in the wording of various laws that allocate rights rather than duties to make certain decisions. However, amending these laws will not tackle the issue of the adequacy of the criteria and processes by which such decisions are made – for example, the inspection of educational institutions or the conduct of performance audits.

The need for a broader approach to reform

In the opinion of the expert, not all of the factors underlying corruption in education can be identified by examining the laws governing the education system using the methodology for identifying corruption risks in legal acts. Indeed, the expert believes that the application of the methodology for identifying corruption risks in legal acts cannot identify the key problems unless it is carried out together with a wider assessment of the functioning of key aspects of the education system. A more comprehensive approach based on proper research into the functioning of the education system in practice is a necessary condition for well targeted reform.

Following the earlier contribution on corruption in education by the expert, the following steps are recommended in particular:

- The commissioning of an analysis of the financing of the education system, including:
 - A thorough analysis of the funding needed by the education system in order to ensure that the educational services envisaged by Russian legislation can be provided in practice
 - the use of Public Expenditure Tracking Surveys to identify financial leakages
 - an assessment of the application in practice of formula funding systems in locations of the Russian Federation that have initiated such systems
 - an assessment of control mechanisms at all levels within the system for financing education, including financial procedures, reporting systems and auditing
- Commissioning an analysis of the vulnerability to corruption of accreditation procedures for private schools and educational institutions and the development of proposals to reform such procedures.
- An assessment of the applicability of standard anti-corruption legal provisions to teachers, and recommendations for reforms to ensure that teachers can be prosecuted for receiving or soliciting bribes.
- Research on the incidence of corruption/informal payments within the educational process and particularly
 - the vulnerability to corruption of procedures for admission to educational institutions at all levels, including an assessment of the impact of the Unified National Examination on the transparency and uniformity of admissions processes at higher educational institutions
 - the vulnerability of school examinations to influence by bribes
 - the incidence and effects of the provision of private tuition by teachers in publicly funded educational institutions
- The development of proposals to address problems identified in the previous point.

Proposals on improving legislation in the healthcare system

Larissa Sannikova

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It seems feasible to renew substantially the regulatory base in the sphere of healthcare by adopting a new Federal law on healthcare in the RF.

To design and include a separate chapter “Providing medical services” into

the RF Civil Code where to regulate the use of an agreement on rendering medical services – not only the paid ones, but also those covered by the respective budgets.

To design a Federal law on the obligatory risk insurance of the professional lia-

bility of the subjects that carry out medical activity (medical institutions and doctors with private practice).

To make amendments to the current legislation regulating the sphere of healthcare.

Explanatory note

Expanding the area of application of Article 426 of the RF Civil Code to non-profit organisations including medical institutions is necessary to ensure better protection of the rights of the consumers of medical services, as it will allow to make a contract for providing medical services a public document.

The establishment of prohibition on the unilateral refusal by a service provider from fulfilling the terms of a public agreement on providing paid services is necessary to strengthen the legal position of the RF Constitutional Court for the purpose of ensuring that the citizens’ constitutional rights are not violated when providing medical service. The obligation to conclude a public agreement, where there is a possibility to provide with the relevant services, equally means the inadmissibility of a provider’s unilateral refusal from fulfilling the terms of an agreement, if there is a possibility to fulfil them (to provide relevant services to a person). Otherwise, the

obligation to conclude a contract stipulated by the law would make no sense and no legal importance.

In order to expand the citizen’s opportunities to exercise his/her right to receive primary medical-social care, it is recommended to set the right of an individual to receive his/her right to primary medical-social care covered by the obligatory medical insurance upon presentation of insurance policy in any medical institution of his/her area, and not only in the medical institution of his residence.

In order to ensure the citizens’ right to information on the provision of free medical assistance, it is advisable to set this right by the list of patient’s rights contained in Article 30 of the Fundamentals of the legislation on healthcare.

The proposed changes and additions to the legislation regulating healthcare:

- To replace the words “commercial organisations” in Paragraph 1, Article 426

of the RF Civil Code to “commercial and non-profit organisations”.

- To add Part 2, Article 782 of the RF Civil Code with the words:
“excluding cases, when an agreement for providing paid services is a public document”.
- To add a part to Article 38 of the Fundamentals of RF legislation on healthcare stating:
“A citizen has the right to claim primary medical and social care provided within the basic programme of obligatory medical insurance in any outpatient medical institution or polyclinic of the area of his/her permanent residence, upon presentation of an insurance policy”.
- To add a part to Part 1 of Article 30 of the Fundamentals of RF legislation on healthcare stating:
“information on the types of medical assistance provided within the state programme, guaranteeing free medical assistance to the citizens of the Russian Federation.”

Proposals on improving legislation in the healthcare system

Elvira Talapina

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As a result of the anti-corruption expertise of the legislation in the sphere of healthcare, it seems feasible to make some proposals on its improvement.

First of all, it is noteworthy that the situation with corruption in healthcare requires different action – from correcting individual legal regulations to filling in the gaps and eliminating the conceptual contradictions between The Fundamentals of the legislation on healthcare of individuals, the federal law “On medical insurance of the citizens of the Russian Federation” as well as the federal law “On medicines”. The main contradiction is a citizen’s right to free healthcare and its financing as well as unclear procedure of public procurement of medicines for their provision to the citizens with at concessionary rates.

Speaking about the anti-corruption revision of the existing Fundamentals of legislation, the following corruptive factors should be eliminated:

- To distinguish the competence of legislative and executive bodies in the articles 5, 6, 8 by specifying the authority of the legislative and – separately – executive bodies. For example, adopting and amending the federal laws in healthcare is the area of competence of a legislative body, whereas managing federal public property used in the healthcare system is the area of competence of an executive body.
- To set at the legislative level the main requirements to licensing, in particular

– licensing requirements and conditions for carrying out medical activity stipulated by the Regulations on licensing a medical activity of 22 January 2007 (availability of a document certifying medical education; observing medical technology, etc.), as well as licensing requirements and conditions for carrying out pharmaceutical activity (observing the rules for producing medicines, etc.).

- To design at the legislative level the procedure for conducting an independent expertise and using its results (Article 25, 53 of the Fundamentals).
- To define the relations of Articles 13, 38 of the Fundamentals (financing from the budget of the mandatory medical insurance and other sources) and the federal law “On medical insurance”. One of the ways is to determine the types of diseases when the medical care (outpatient care and in-hospital) is provided for free within the basic programme of the mandatory medical insurance.

The listed areas require further contents assessment and bringing in relevant specialists – medical, financial experts and economists. The lawyer’s task is to shape a selected anti-corruption concept.

At the same time it is necessary to make some amendments to the existing regulations in order to eliminate the corruptive factors. (*See table on following pages.*)

Besides, it is necessary to:

- clarify the provision of Article 41: *The citizens suffering from socially significant diseases, the list of which is defined by the Government of the Russian Federation, receive medical and social help and are guaranteed in-hospital observation in the relevant institutions for prevention and treatment for free or at concessionary conditions.* The procedure of defining the scope of privileges and the categories of citizens (or other criteria) who are not charged for medical assistance should also be specified by the Government and not left at the discretion of a medical institution.
- increase the level of information transparency on free medical services; to introduce the procedure for providing information on health condition in accordance with a special form against citizen’s signature.
- adopt the legal acts specified in p. 17 Article 5, p. 5 Article 6, Article 43 of the Fundamentals – The procedure for applying methods of diagnostics, treatment, immunobiological medication and disinfectants; The procedure for conducting medical expertise; The procedure and scope of social support measures offered to some groups of citizens when providing them with medical-social assistance and medicines.

A corruptive risk	Current version	Proposed version
Article 56: Legal collision with Article 3.12 of the Code for Administrative Offences of the RF	Prohibition to carry out private medical practice is made at the decision of a body that had issued a permit for carrying out private medical practice or at a court's decision.	Prohibition to carry out private medical practice is made at the decision of a court.
Article 34: Broad interpretation of "persons committed a publicly dangerous acts".	Providing medical assistance (medical examination, hospitalisation, observing and isolating) without consent of a citizen or his/her authorised representatives is allowed in regard to the persons with illnesses, which are of danger to the others, suffering from serious psychiatric disorders, or persons that committed socially dangerous acts, in the order and according to the procedure stipulated by the legislation of the Russian Federation.	Providing medical assistance (medical examination, hospitalisation, observing and isolating) without consent of a citizen or his/her authorised representatives is allowed in regard to the persons with illnesses, which are of danger to the others, suffering from serious psychiatric disorders, or persons that committed socially dangerous acts, in the order and according to the procedure stipulated by the Criminal Code of the RF and the Criminal Procedural Code of the RF .
Article 39: Narrowing down the circle of people entitled to receiving the first medical aid to the citizens of the RF (people without citizenship, refugees, foreigners are excluded)	First medical aid is provided to the citizens with conditions requiring urgent medical interference (accidents, injuries, poisoning, other conditions and illnesses), is provided immediately by medical institutions regardless of their territorial and departmental subordination and ownership form, by medical specialists as well as by other persons obligated to provide the first aid by law or by a special regulation.	First medical aid is provided to anyone in need of it with conditions requiring urgent medical interference (accidents, injuries, poisoning, other conditions and illnesses), is provided immediately by medical institutions regardless of their territorial and departmental subordination and ownership form, by medical specialists as well as by other persons obligated to provide the first aid by law or by a special regulation.
Article 61: Possibility for disclosing information that is part of medical secrecy	Disclosing information that is part of medical secrecy without consent of a citizen or his/her authorised representative is allowed in the following instances: 1) for the purpose of an examination and treatment of a citizen who is unable to express his/her will due to his/her condition; 2) under threat of spreading infectious diseases, mass poisoning and damage; 3) upon request of investigating bodies, the Prosecutor's office and court in connection with conducting an investigation or a court hearing; 4) in case of providing medical aid to a person under age (the age is stipulated by part 2, article 24 of the Fundamentals) to inform his/her parents or authorised representatives; 5) if there are grounds to believe that the damage to a citizen's health is done as a result of unlawful actions; 6) for the purpose of a military-medical expertise in the order stipulated by the Regulations on military-medical expertise approved by the RF Government.	It is proposed to leave out p.5 and p. 6

A corruptive risk	Current version	Proposed version
Article 34: Possibility for discretionary use of compulsory measures	The compulsory measures of medical nature can be applied to the persons that had committed socially dangerous acts, in the order stipulated by the legislation of the Russian Federation.	The compulsory measures of medical nature are applied to the persons that had committed socially dangerous acts, in the order stipulated by the Criminal Code and the Criminal Procedural legislation of the Russian Federation.
Article 44. Provision of the population with medicines and healthcare products, immunobiological medication and disinfectants: Absence of legal regulations for provision of medicines and rules for their procurement.	Control over quality of medicines, immunobiological medication, disinfectants and healthcare products is carried out by a federal executive body, responsible for exercising the public control and supervision in the sphere of application of medicines; and by a federal executive body responsible for control and supervision in the sphere of a person's sanitary and epidemic well-being.	The categories of citizens entitled to receive medicines and healthcare products at concessionary rates are stipulated by the legislation on the public social care. The production and procurement of medicines and healthcare products for provision to the citizens at concessionary conditions is carried out in accordance with the Federal law "On placing orders for procurement of goods, carrying out works, rendering services for public and municipal needs".

Opinion on proposed measures to tackle corruption in the healthcare system in the Russian Federation

Quentin Reed

Lead expert to the RUCOLA 2 Project

Introduction

This opinion briefly comments on the proposals of Larissa Sannikova and Elvira Talapina to amend legislation regulating the healthcare system in the Russian Federation. While the proposals appear sound, following the expert's contribution on corruption in the healthcare system to the De-

cember 19 RUCOLA 2 Working Meeting this opinion underlines the need for a broader approach to healthcare reform, including proper research to identify key problems and notes that the recommendations do not sufficiently address key areas of the healthcare system that are vulnera-

ble to corruption, in particular the registration and pricing of medicines. As in the case of the expert's opinion on proposals to amend legislation governing the education system, this contribution recommends a broader approach to tackling corruption in healthcare, based on targeted research.

Specific comments on the expert recommendations

The following specific comment is offered on the comments of Ms Sannikova and refers to point 1 of the Explanatory Note. It is not clear what is meant by "contract for providing medical services". If this means a contract between citizens and healthcare institutions, the expert is not aware that public/state healthcare is provided on such a basis in other countries, except in the case of private healthcare provision. A contract implies a transaction – and therefore the exchange of something for something (e.g. payment for healthcare provision), whereas under free public healthcare the issue is about what entitlements citizens (consumers of healthcare) have. The expert suggests that therefore the important objective for reform is to ensure that such entitlements are stated very clearly, irrespective of whether they are governed by a "contract" or not.

The following specific comments are offered on the comments of Ms Talapina:

Paragraph 2

This paragraph points to contradictions between three main pieces of health legislation; however, the rest of the expert opinion does not seem to identify such contradictions. In addition, the last sentence states that "The main contradiction is a citizen's right to free healthcare and its financing as well as unclear procedure of public procurement of medicines for their provision to the citizens at concessionary rates". This sentence does not however describe any contradiction, and is therefore unclear.

3rd bullet point

It is not clear to the expert what is meant by "independent expertise"

Box listing articles containing corruptive risks

The box lists a number of articles without specifying to which law or laws they belong. In addition, a number of the articles – while they may be problematic for the reasons stated – do not appear to be clear corruption risks; examples are Article 34 (page 2), 61.

The comment on page 133 concerning Article 44 touches on the issue of procurement, supply and provision of medicines and healthcare products, recommending that i) categories of citizens entitled to cheap or free medicines/healthcare products are stated in legislation; ii) production and provision of medicines/healthcare products are carried out in accordance with the Federal procurement law. The expert strongly believes that these proposed measures are not adequate to tackle the problems in this area. In particular, the system of establishing categories of citizens entitled to certain medicines and

healthcare products for free or cheaply requires a thorough assessment of the rationality of the system itself, as it appears to be very different to the systems of determining essential medicines – rather than determining categories of entitled citizens –

in advanced healthcare systems. Second, merely applying the procurement law to the production and provision of such medicines and products is unlikely to have any effect without a broader assessment of the entire system, including the whole issue of

the operation of the health regulator, Federal Mandatory Health Insurance Fund, budgetary procedures for making payments for medicines/healthcare products.

The need for a broader approach to reform

As in the case of corruption in education, the expert wishes to stress that not all of the factors underlying corruption in healthcare can be identified by examining laws through the optic of the methodology for identifying corruption risks in legal acts. It is debatable whether the removal of "corruption risk factors" as defined by the methodology is likely to have much effect on its own on key types of corruption, including: informal payments to doctors by patients; corruption of the state regulator, medical establishments and doctors by pharmaceutical companies; or leakages of budget funds. Given the apparent scale of corruption in the healthcare sector in the Russian Federation, in order to identify the key problems of corruption in the healthcare sector it is vital to conduct research and assessment of the functioning of key aspects of the system, and develop targeted reforms on this basis.

Following the earlier contribution on corruption in healthcare by the expert, the following steps – although not exhaustive – are recommended in particular:

- Carry out a comprehensive assessment of the imbalance between the rights to healthcare provision guaranteed by Russian law on the one hand, and the actual financial resources allocated to such provision on the other.
- In light of estimates (cited in the expert's earlier contribution) that up to 30 per cent of the federal health budget

does not reach its intended destination, to carry out Public Expenditure Tracking Surveys to assess the extent of such leakages and help identify where they take place. In particular, conduct as a priority selected audits – designed on the basis of audit risk analysis and conducted by independent auditors – of the effect in practice of the National Health Project.

- Likewise, conduct an assessment in selected regions of the implementation of the financing and purchasing mechanisms envisaged by existing healthcare legislation.
- Conduct a forensic audit of the functioning of the Federal Mandatory Health Insurance Fund.
- Conduct an independent assessment of the process of registration of drugs and medical equipment by the state regulator.
- Conduct an independent assessment of the prices for drugs and medical equipment approved by the state regulator, especially drugs and medical equipment partially or wholly financed from the health budget.
- Conduct research on informal payments in healthcare, designed to assess the extent to which such payments are the result of inadequate resources.
- Conduct research on the contacts and commercial relationships between – pharmaceutical companies and doctors

– pharmaceutical companies and medical establishments

- On the basis of the research conducted, formulate and implement – or encourage:
 - a clear statement of the principles on which the Russian healthcare system is based, in particular the extent of citizen rights to free or subsidised provision;
 - reforms of budget procedures and financing mechanisms;
 - reform of the status, composition, and other aspects of the FMHIF as revealed is necessary;
 - reform of the state regulator to ensure its professional composition, sufficient political independence and the transparency and objectivity of all procedures it conducts;
 - duties to publish or otherwise make transparent as much information concerning procurement contracts between medical establishments and drug/equipment providers, particularly on final prices paid;
 - duties of medical establishments to make public and actively distribute information on the exact rights and duties of patients;
 - make public or appropriately accessible information on waiting lists for operations and other information that will create incentives not to engage in informal payments for priority treatment.

Principles and format of establishing a specialised anti-corruption body in Russia

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Summary

An intersectoral working group was established by the President's Decree of 2 February 2007 for the preparation of the legislative proposals on the implementation of the provisions of the United Nations Convention against Corruption of 31 October 2003 and the Council of Europe Criminal Law Convention on corruption of 17 January 1999. The working group aims at preparing proposals including the proposals on designing a national anti-corruption strategy, as well as principles and objectives for the operation of a specialised anti-corruption body. Though it is impos-

sible to predict the final conclusions and resolutions of the intersectoral group, one can assume that, firstly, its decisions will be based on Russia's commitments within the international conventions ratified by it and, secondly, the group will have to choose the format of a specialised body out of the three known types of anti-corruption bodies: an independent specialised anti-corruption body; a body within an existing law-enforcement agency; or a consultative and co-ordinating body under one of the high level public authority bodies. One should keep in mind the basic factor: the

decision on such a body will be taken in the same way other important decisions regarding the structure of public administration bodies in the country are taken, that is at the level of the President of the Russian Federation. There are grounds to believe that this decision will be taken in the nearest future. The present report gives a brief review of the international requirements to a specialised body and the possible options for creating a specialised anti-corruption body in Russia.

International requirements to a specialised body

Article 6 of the United Nations Convention against Corruption states that

“Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: implementing the policies and, where appropriate, overseeing and co-ordinating the implementation of those policies; increasing and disseminating knowledge about the prevention of corruption. Each State Party shall grant the body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out

its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.”

Furthermore, Article 36 of the United Nations Convention against Corruption states that

“Each party should, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. Such body or bodies or persons should be granted the necessary independence, in accordance with the fundamental principles of the legal system of the state party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.”

Thus, the United Nations Convention definitely states that the anti-corruption

body in each country that ratified the Convention, including Russia, must perform a twofold function: prevention of corruption and prosecution for corruption offences. When choosing a format for a specialised anti-corruption body in Russia, this fact must be considered first.

The requirements to an anti-corruption body are also clearly stated and specified in Article 20 of Council of Europe Criminal Law Convention on Corruption, which declares that

“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. The Party shall ensure that the staff of such entities

has adequate training and financial resources for their tasks.”

Resolution (97) 24 of the Council of Europe’s Committee of Ministers on the twenty guiding principles for the fight against corruption defines the format and functions of a specialised anti-corruption body even in greater detail. It states that member states should

“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 member states shall also

“promote the specialisation of persons or bodies in charge of fighting corruption and

to provide them with appropriate means and training to perform their tasks”.

Thus, there are some international legal framework requirements to a specialised anti-corruption body and what and how it should carry out its tasks. In this connection the most important principle mentioned in all the documents is the principle of “independence”. What is also utterly important is the necessity to combine prosecution for corruption offences with a preventive function.

The challenge for Russia today is to choose, applying these framework requirements to the actual institutional and political situation in the country, the most adequate and effective option for a specialised anti-corruption body, where on the one hand, its activities harmoniously fit into the existing legal and institutional system and on the other hand – would be at the most independent from political disposition and would not turn out to be a fake.

Options for the format of a specialised anti-corruption body in Russia

Most countries do not have a body independent from other public authorities, which would concentrate solely on the fight against corruption. However, countries in which such anti-corruption agencies are in place, the efficiency of their work is impressive.

It is commonly believed that the Prosecutor’s Office is a public body, or a system, which must root out the problem of corruption in Russia. Indeed, there are several indisputable facts that point to that. Firstly, according to Article 151 of the RF Criminal and Procedure Code on investigative jurisdiction, the preliminary investigation of crimes against public authority, interests of public and municipal service (Chapter 30 of the RF Criminal and Procedure Code, par. 285-293) including corruption offences, must be carried out by investigators of the Prosecutor’s Office. Secondly, Prosecutor’s Office has a special status in the system of public administration in the Russian Federation and constitutes a “unified centralised system where lower ranking prosecutors are subordinate to the higher ranking ones” (Article 129 of the RF Constitution). Thirdly, a special procedure for appointing the General Prosecutor of the Russian Federation – by the Federal Council as advised by the President of the RF (according to p. “e” of Article 83 and p.

“3” of Article 102 of the RF Constitution) ensures independency of the Prosecutor’s Office in investigation process.

At the same time there are some doubts that the Russian Prosecutor’s Office can perform the tasks set by the United Nations Convention for anti-corruption bodies. The above-mentioned extract from the Convention points out that such bodies must be responsible for: a) implementing anti-corruption policies and, where appropriate, overseeing and co-ordinating the implementation of those policies; and b) increasing and disseminating knowledge about the prevention of corruption. Until now the experts have not seen any traces of developing a coherent anti-corruption policy, which would go further than traditional punitive surges. The same refers to the task of educating citizens on the prevention of corruption, which tends to be considered by the Prosecutor’s office as insignificant and something other agencies should be responsible for.

However, Federal Law #2202-1 of 17 January 1992 “On the Prosecutor’s Office of the Russian Federation” (with subsequent amendments)¹ has some shoots of anti-corruption tasks outlined in

1. *Rossiyskaya Gazeta*. Issue 39, 18 February 1992
Consultant Plus legal information system was used as a reference to prepare this material.

the United Nations Convention and the Council of Europe Criminal Law Convention on Corruption. For example, p. 1 of Article 8 of the Law states that “the General Prosecutor and his subordinate prosecutors co-ordinate the activities on fighting crime in the bodies of the interior, federal security bodies ... and other law-enforcement agencies.” According to p. 2 of Article 4 of the Law, the Prosecutor’s Offices “inform ... citizens on the state of the rule of law”.

In other words, if the task of fighting corruption is entrusted to the Russian Prosecutor’s Office, it must raise awareness of the scope of the problem of corruption to the level outlined in the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. It means, *inter alia*, that the Prosecutor’s Office shall take serious measures to prevent corruption, rather than only prosecute for corruption offences, as well as it shall develop a coherent long-term programme of combating corruption in Russia.

Setting up a specialised anti-corruption body to is believed to be effective in a situation, when the law-enforcement agencies are subject to corruption themselves, and therefore citizens do not trust them in this respect. In most economically developed

countries there are no special anti-corruption agencies, but the problem of corruption there is not systematic. In other countries, where corruption is so widespread that it literally becomes a threat to normal, effective operation of public authorities and affects practically all aspects of society life, the issue of establishing a special anti-corruption structure remains

of current importance. However, before the UN Convention was adopted, most of these countries relied without any success on law-enforcement bodies, or created weird administrative structures to solve the problem of corruption, entrusting responsibility for anti-corruption measures to, for example, Ombudsman, as in Uganda or Papua New Guinea.¹

Discussing the necessity to establish an independent anti-corruption body, different experts often give similar arguments, which are summarised in the table below:

1. *Basics of fighting corruption* (of the state ethics of conduct system), Edited by S.V. Maksimov and others – M.: Spark, 2000. P. 186.

Table 1: Establishment of a specialised anti-corruption body

Advantages	Disadvantages
<ul style="list-style-type: none"> • High quality investigation and other results are ensured due to professional skills. • High degree of autonomy and public character of a body makes it unlikely for corruption to spread among its employees. • Concentration on one issue results in a more responsible approach towards work. • Responsibility for solving the problem of corruption is not divided among a wide variety of agencies; consequently it is always clear what body is responsible for failure. • A new body will enjoy a larger level of trust of citizens. • Starting to work from scratch means the absence of the burden of old departmental bureaucratic problems; the new agency is more flexible and mobile.* 	<ul style="list-style-type: none"> • Higher costs to support an independent body. • Investigation of corruption offences often requires interdepartmental co-operation, which will be hindered from a “special” status of a new agency. • Possible decrease of influence of traditional law-enforcement agencies, especially if success of a new body becomes obvious. • Political issues of exercising control over activities of a new body can in some cases put obstacles to its work.†

* *The global program against corruption. UN anti-corruption tool-kit.* 3rd edition, Vienna, September 2004. P. 90.

† See for example: P.A. Skoblikov “Does Russia need an independent federal service of fighting organised crime and corruption?”, *Problems of fighting corruption. Collected articles.* M., 1999. P. 55.

Specialised anti-corruption bodies were established in a number of countries, including Hong Kong, Singapore, India, Philippines, etc. The Hong Kong anti-corruption service is generally considered to be the most successful one. An independent anti-corruption commission was established in Hong Kong as early as 1973. The Commission is an independent body subordinate to the Governor of Hong Kong, who appoints members of the Commission for six years without re-election possibility. The Commission is structured according to its key tasks: increasing the risks of involvement into corruption offences, restructuring bureaucracy in order to reduce opportunities for corruption, changing attitude of citizens to corruption. Successful anti-corruption bodies were established in Croatia, Latvia, Lithuania and Slovenia based on the same principles.

It would be incorrect to say that Russia has always been aside from the idea of establishing a specialised anti-corruption body. There have been several attempts, but in all of these cases Russian anti-corruption commissions were consultative or working bodies within the existing public authorities.

Thus, following the RF Government Order #1761-p² of 17 September, 1992 a Governmental commission headed by the

Chairman of the RF Government E.T. Gaidar was established “to review issues and to develop proposals for fighting corruption in the public administration system and to organise financial and legal control over business activities in the major sectors of economy”

According to Resolution of the RF Supreme Council #4891-1 of 28 April 1993, a specialised commission for investigating corruption offences committed by public authority officials was established within the framework of the RF General Prosecutor’s Office “to ensure objective and overall examination and investigation of the facts of corruption, misuse of authority and economic crime.”³ V.G. Stepankov, General Prosecutor was advised to introduce a position of the First Deputy General Prosecutor – head of the special commission – for organisational and operational control.⁴

The provision “On the intersectoral committee by the Security Council of the Russian Federation for combating crime and corruption”⁵ was approved by the Pres-

ident’s Decree #103 of 20 January 1993. The decision on establishing this committee was part of the President’s Decree #1189 of 8 October 1992 “On measures for protecting citizens’ rights, law enforcement and strengthening anti-criminal efforts”.

In carrying out its tasks the intersectoral committee, *inter alia*:

- co-ordinates the provision of information and analytical materials to the President of the RF and the Security Council of the RF;
- summarises the anti-corruption efforts in the ministries, agencies and executive bodies of the Russian Federation, as well as puts forward proposals on the prevention of corruption;
- by order of the RF President, co-ordinates auditing the activities of law enforcement bodies in the area of preventing crime and corruption and, according to the set-up legal procedure, reports on any illegal actions committed by the officials at any level;
- studies international experience in the area of combating crime and corruption as well as develops proposals on apply-

2. Collected legislative acts of the RF President and Government. September 28, 1992 # 13. P. 1071

3. News of the RF Council of People’s Deputies and Supreme Council. May 13, 1993 # 19. P. 691.

4. It is known that the similar suggestion was made in 2006 by the State Duma Speaker and “United Russia” party leader B. Gryzlov.

5. Collected legislative acts of the RF President and Government. 28 June 1993. #26. p. 2419.

ing it to the activities of the law enforcement bodies in the Russian Federation.

Apparently a special role was to be played by a new anti-corruption body established under the President's auspices. It is not coincidental that in light of signing the UN Convention against Corruption Mr Meshkov, head of the Russian delegation at the conference in Merida (Mexico), informed the participants about setting up an anti-corruption Council by the RF President's auspices. The provisions for establishing the Council were approved by the President's Decree #1384 of 24 November 2003.¹ According to the Decree, the Council is a consultative body by the President of the RF, which was to assist him in executing his constitutional authority. The anti-corruption Commission and the Commission on the conflict of interest were established by the Council.

Among the members of the Council are the Chairman of the Government, the Chairman of the Federation Council, the Chairman of the State Duma, Chairmen of the Constitutional Court and Supreme Arbitration Court. The Council does not deal with the reports on crimes and offences and does not follow up on the incidents of violating working discipline. However, it carries out the following key functions:

- puts forward proposals to the President of the RF on the composition of the anti-corruption Commission and the Commission on the conflict of interest;
- hears annually the report of the General Prosecutor of the RF on the state of affairs in combating corruption;
- considers proposals prepared by the anti-corruption Commission on the

prevention and combating corruption in the federal, regional and local authorities;

- reports annually to the President of the RF on the results of its activities.

Thus, having reviewed the tasks and working procedures of the Council on combating corruption, one can conclude that this body cannot be regarded as an independent anti-corruption agency in the sense as it refers to the international experience of establishing specialised anti-corruption bodies. What is important here is the fact that this body was specially presented by the Russian representative at the conference in Merida in connection with signing the UN Convention against Corruption.

The recent legal initiatives in searching for the best organisational structure in the context of anti-corruption activities show willingness to reconsider previously used approaches. For example, an intersectoral working group was set up by the President's Decree #129 of 3 February 2007.² It is responsible for developing proposals for the improvement of the Russian legislation in line with signing the anti-corruption conventions.

According to the Decree, for the realisation of the tasks put forward the intersectoral working group has the right to:

- request and get in accordance with the set up procedure the necessary materials from the federal government authorities, government authorities of the subjects of the RF and local authorities as well as organisations;
- invite to its meetings the government officials of the federal government au-

thorities, government authorities of the subjects of the RF and local authorities as well as representatives of those organisations;

- set up the permanent and/or ad hoc working (expert) groups on the subjects under its jurisdiction and to approve its composition;
- attract in accordance with the set up procedures scientists and experts to carry out work including on a contract basis.

By 1 August 2007 the inter-institutional working group in accordance with the set-up procedure shall present the legislative proposals necessary for the implementation of the provisions of the international anti-corruption legal acts, including the proposals on the creation of the specialised body responsible for the co-ordination of national effort in fighting corruption. In order words, the issue of creating a specialised anti-corruption body will be solved in the near future in line with the provisions of the anti-corruption conventions.

If the option of setting up a separate specialised anti-corruption body is to be chosen, such a body could incorporate the best practice of similar bodies around the world which already proved effective. The structure of such body should reflect the key principles of its operation (one-man management, collectiveness, transparency, etc.), as well as three main areas of the national anti-corruption strategy (prosecution, prevention, education). Moreover it should take into account the federal structure of the Russian Federation as well as to make provisions for co-ordination with various public authorities.

1. Collection of the RF legislation. 1 December 2003.# 48. p. 4657.

2. Collection of the RF legislation, 5 February 2007. # 6. p. 731.

Draft structure of an independent specialised anti-corruption body

The structure of a specialised anti-corruption body should include 4 directorates:

- Directorate for Prosecution
- Directorate for Prevention
- Directorate for Education
- Directorate for Administration.

Directorate for Prosecution consists of:

- investigation departments (there can be several of them considering the size of the country; the exact number can be determined by different factors – e.g. 7

federal districts in the Russian Federation),

- department for co-ordination (its task is to co-ordinate efforts with law-enforcement bodies),
- department for international co-operation (its task is to co-ordinate efforts with other countries on issuing and recovering assets, etc.) and
- "hot line" department (it is in a way a unit working with citizens' appeals, but with a wider range of functions – it analyses the accumulated data and

passes it to investigation or other relevant departments; among its functions are also monitoring media publications, setting up "hot lines" in the regions, etc.)

Directorate for Prevention consists of:

- legal department (prepares legislative initiatives related to all aspects of combating corruption as well as provides legal expertise as necessary),
- public service department (exercises control over observing legislation in the

- area of public service; collects and analyses the data provided by the public officials on their income, property, etc.),
- department on conflict of interest (collects information on the conflict of interest facts; offers relevant consultations to the public servants, etc.),
- public procurement department (exercises control over observing transparency principles in public and municipal procurement; offers relevant consultations to the public and municipal authorities, etc.),
- department of corruption risk assessment (monitors the areas of public administration, which are most vulnerable to corruption; screens legal acts for corruption risks, etc.),
- monitoring and research department (conducts surveys in the area of corruption at the national, regional and departmental levels; monitors public opinion on the permanent basis, etc.)

Directorate for Education consists of:

- department of public programmes (develops and offers educational programmes targeted at different society groups; prepares educational programmes for schools, conducts special campaigns, prepares media programmes, etc.),
- department of sectoral programmes (prepares special programmes on public service ethics, court ethics, ethics of law enforcement service, business ethics; offers special educational programmes to federal, regional and local authorities, etc.),
- co-ordination department (aims to co-ordinate efforts with civil society insti-

tutions, business society, mass media, etc.)

Directorate for Administration consists of:

- HR department (selects and trains personnel for the specialised body),
- information department (informs the public about the activities of the specialised body both through mass media and its own web-site; carries out press-service functions),
- financial department,
- department for planning (plans the activities of the specialised body based on the information from other directorates and departments as well as prepares regular narrative reports),
- security and audit department (it is responsible for proper security within the specialised body and internal audit of its activities),
- IT department (it is responsible for information and communication systems within the specialised body).

The proposed structure is, of course, only exemplary and can vary depending on the specific tasks the specialised body will be expected to perform and the functions that will be assigned to it. The elements of this exemplary structure are based on the functions and tasks which seem to be the most relevant for Russia today. On the other hand, this structure proved its effectiveness in the countries where specialised anti-corruption bodies already exist and work actively.

Another option for an anti-corruption body in Russia could be setting up a consultative body by the President of the RF or by the RF Government. It could include representatives of the President's Administration, RF Government, the State Duma of

the RF, the Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, General Prosecutor's Office, RF Ministry of Justice, RF Ministry of Economic Development and Trade, RF Ministry of Finance, Central Bank of the RF, the Federal Service for Financial Monitoring of the RF, Accounts Chamber of the RF, other ministries and agencies, as well as representatives of the specialised civil society organisations and expert institutions. Such body would apparently function on the periodic basis and distribute authority given to the specialised anti-corruption body between its member agencies. This option also has its advantages and disadvantages. If a specialised anti-corruption body operates in this format, the main problem would be deciding how and between which agencies the three key functions would be divided: prevention, education and prosecution for corruption. There is a danger of minimal impact from such anti-corruption measures if they are in competence of three different agencies and there is no proper co-ordination between them.

In any case, while analysing approaches to selecting a format of a specialised anti-corruption body in Russia, One should keep in mind the basic factor: the decision on such a body will be taken in the same way other important decisions regarding the structure of public administration bodies in the country are taken, that is at the level of the President of the Russian Federation. There are grounds to believe that this decision will be taken in the nearest future.

Annex

V.V. Putin, President of the Russian Federation signed the Decree "On establishing the inter-institutional Working Group for the preparation of the legislative proposals on the implementation of the provisions of the UN Convention against Corruption of 31 October 2003 and the Council of Europe Criminal Law Convention on corruption of 17 January 1999". Below is the full text of the Decree:

In order to harmonise the Russian legislation in line with international obligations of the Russian Federation in the sphere of fight against corruption I declare:

- To establish an inter-institutional working group for the preparation of the legislative proposals on the implementation of the provisions of the UN Convention against Corruption of 31 October 2003 and the Council of Europe Criminal Law Convention on corruption of 17 January 1999 (hereafter *inter-institutional working group*).
- To nominate V.P. Ivanov, an Adviser to the President, as Head of the inter-institutional working group.
- The Head of the inter-institutional working group shall present for ap-

proval the composition of the inter-institutional working group by 15 February 2007.

- By 1 August 2007 the inter-institutional working group, in accordance with the set-up procedure shall present the legislative proposals necessary for the implementation of the provisions of the international legal acts, mentioned in p. 1 of this decree, including the proposals on the creation of the specialised body responsible for the co-ordination of national effort in fighting corruption.

- For the realisation of the tasks put forward the inter-institutional working group has the right to:
 - request and get in accordance with the procedure the necessary materials from the federal government authorities, government authorities of the subjects of the RF and local authorities as well as organisations;
 - invite to its meetings the government officials of the federal government authorities, government authorities of the subjects of the RF and local authorities as well as representatives of those organisations;
 - set up the permanent and/or ad hoc working (expert) groups on the subjects under its jurisdiction and to approve its composition;
 - attract in accordance with the set up procedures scientists and experts to carry out work including on a contract basis.
- Make responsible the President's Administration for the material-technical, transport and other support of the activities of the inter-institutional working group.
- Refer the expenses connected with the work of the inter-institutional working group to the federal budget aimed at supporting the President's Administration of the RF;
- Cancel the President's Decree N 1384 on the Council under President's auspices on the fight against corruption of 24 November 2003 (The collection of the legislation of the RF, 2003, N48, p. 4657).
- The present Decree will come into force on the day of its signature.

Expert opinion on the papers prepared by Elena Panfilova concerning anti-corruption strategy and anti-corruption body in the Russian Federation

Drago Kos

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Introduction

Both documents – “Principles and format of establishing a specialised anti-corruption body in Russia” (page 136 of this volume) and “The basis for the national anti-corruption strategy in the Russian Federation” (page 85) – were prepared in the framework of RUCOLA-2 project and followed by list of seminars, foreign and Russian experts’ opinions and some very interesting and exhaustive discussions taking part in the Russian Duma. The input of Ms Panfilova, as leading person in the Russian’s Transparency International National Chapter was significant in all stages

of the project, especially having in mind that she was the only representative of civil society who took part in the project. Therefore, it was also essential, that her taking part in almost all RUCOLA-2 activities, as a person, who knows a lot about the state of play of anti-corruption efforts in the Russian Federation, and as someone who enjoys uncontested high level of credibility by country’s governmental and non-governmental institutions was appointed to produce a concluding document on two most important issues dealt with in the framework of the project – the national

anti-corruption policy and the national anti-corruption body.

Both documents will be analysed first as they are written – chapter by chapter. At the end of the detailed analysis a general opinion on the strengths and weaknesses of the relevant document will be given. Where no comments are made by the expert, it is a sign that he or she does not have any special remarks, neither in the negative nor in the positive way. In order to avoid longer repetitions, Ms Elena Panfilova in this expert opinion will be referred as “the author”.

Principles and format of establishing a specialised anti-corruption body in Russia

Summary

In this part the author gives a short factual description on developments in the Russian Federation following the establishment of a multidisciplinary working group in February 2007. The author is referring to three “known types of anti-corruption bodies”: an independent specialised anti-corruption body, a body within an existing law-enforcement agency, and consultative and co-ordinating body under one of the high level public authority bodies. From

the list given it can not be understood what can be derived easily from the following parts on the international requirements: that it is important for countries to have a preventive and a repressive body, or a combination of both. The position of such a body is generally not so important under the presumption that other basic requirements (independence, autonomy, no disallowed influence, objectivity ...) are fulfilled, but it is obvious that this (the position of a body in a state administration)

will be one of the most important questions to be solved. Following the establishment of a multidisciplinary working group in February 2007 and a logical conclusion of the author that decision on the future anti-corruption body will be taken by the President of the Russian Federation, it is to be believed that the President before making his final decision will take into account international legal requirements for the establishment/existence of such a body, Russian conditions/circumstances

and the level of readiness of Russian administration to honestly and sincerely fight corruption.

International requirements to a specialised body

Requirements of international legal documents (United Nations Convention against Corruption, Council of Europe Criminal Law Convention on Corruption, Resolution (97) 24 of the Council of Europe's Committee of Ministers on the twenty guiding principles for the fight against corruption) are given in this part in a fairly direct and understandable manner pointing out that the crucial question of the future anti-corruption body in the Russian Federation will be the question of its functional independence, having in mind broad existing legal and institutional system in Russia and existing relations in the political set-up of the country with clearly dominating powers of its President.

Options for the format of a specialised anti-corruption body in Russia

This part contains some paragraphs dealing with the past Russian efforts in the area of establishing an anti-corruption body. As much as they are useful, in order to understand the situation in the Russian Federation it would be better to place them in the first part ("Summary"), which is dealing with the "history" of those efforts.

Furthermore, in this part the author gives a very precise and structured analysis of the advantages and disadvantages of a "specialised" anti-corruption body. Perhaps, it is a problem of translation; however, the real problem that is discussed here is the problem of "institutional independence" and not a problem of "specialisation". The analysis is a very good one and

it can serve as a good starting point when making decision on a future body.

Basically, this part deals with two possible options for the future anti-corruption body: the first one is a body within the Russian Prosecutor's Office and the second one is a body within the President's administration (having in mind the fact that there were already several attempts made in this direction). The author does not mention third possibility, which was often mentioned during discussions in the Russian Duma: the FSB, the federal law enforcement agency, which – under some conditions – could also serve as a basis for the new anti-corruption institution.

For obvious reasons the author does not explicitly take the stand on the position of the future anti-corruption institution, moreover, from her text it can easily be understood that she is in favour of creation of a "separate specialised anti-corruption body", pointing at the creation of an independent anti-corruption institution similar to those in Hong Kong, Lithuania, Latvia This indeed seems to be the best possible solution for the Russian Federation.

Draft structure of an independent specialised anti-corruption body

Despite the title of this chapter the author is not dealing with one but with two possible forms of the anti-corruption agency: the first one is an independent body and the second one the consultative body within the President's administration.

The author proposes to entrust the future body with law enforcement powers, too. Without going into details this seems to be a natural and the only choice for the future anti-corruption body in Russian Federation in order to be taken seriously by the Russian citizens and by other public administration bodies in the country.

There is a proposal given by the author to divide the future body into four directorates and a detailed description of their tasks is given. Without going into details of suggested structure – the author herself is aware of the exemplary nature of the given structure – it can be said that in the Directorate for Prevention the Public service department and the Department for corruption risk assessment could be merged and if there are no special reasons for it there is no need to have a "Public procurement department", since its tasks in other countries are usually performed by other bodies, controlling the use of public money.

There is no structure given for the second option – the consultative body. There is only a list of its possible members and the author herself has noticed its main deficiency: the lack of co-ordination while this body would not be in session. Clearly, this is not a solution, which would make a difference in the anti-corruption efforts of the Russian Federation.

Conclusion

The author has prepared a document which gives answers to the main questions on the format and desired position of the future anti-corruption institution in the Russian Federation. Although her opinion and ideas are of a very high quality, the author herself has warned several times that the final decision on the position and structure of the Russian anti-corruption body will be taken at the highest possible level – the President of the Russian Federation. This is a fact inevitably involving inclusion of political considerations and despite the work conducted in the framework of RUCOLA-2 and the work of working group established by the President's Decree of 2 February 2007 this fact can result in a major surprise when the decision will be made.

The basis for the national anti-corruption strategy in the Russian Federation

Preliminary statement

In this part the author describes the fundamentals of the future anti-corruption strategy of the Russian Federation, dividing them into two parts: "general statements" and "main areas in combating corruption

in Russia". The author is not giving any explanation on the relation between the mentioned two parts, which might give the impression that they are dealing with two different and separated subjects. However, this is not a case and both parts are closely related but it would be even better if they

would be merged into one single chapter proving in such a way that all their elements are parts of a single national anti-corruption policy. This could be done easily since all elements are elaborated substantially in a very reasonable and useful manner.

General statements

Stating the problem

This part is a very good one and with minor drafting improvements it can serve as an excellent introduction to Russian anti-corruption strategy.

Definition of corruption

Due to several definitions copied from international legal instruments or working bodies, it is difficult to find the definition of corruption which will be used for the purposes of the strategy. It is defined in a best possible way ("corruption is any use of power or functions for the personal benefit"), although it is somehow hidden in the mass of other definitions.

The aims of the strategy

The aims of the strategy are given in a form of "general" and "special" objectives. While the list of general objectives is quite an exhaustive one and it is only asking for some adjustments concerning the priorities of general objectives¹, the list of special objectives consists only of two objectives, which is simply not enough. Accomplishing special objectives the general ones will be reached as well. Therefore, it would be necessary to elaborate a slightly more on the special objectives.

The principles of strategy implementation

The principles of strategy implementation are given in a form of "general" and "special" principles. Despite the fact that the principles chosen for the implementation of the national anti-corruption policies solely depend on their drafters, there is a very important principle missing in the given list: political will! It will prove to be the most important principle for the implementation of the strategy (as it always does), and it simply has to be mentioned. Thorough analysis of the given lists would enable inclusion of other useful principles, too (gradual approach, flexibility ...).

The mechanisms of anti-corruption Strategy implementation

On the basis of the text given here, it is not possible to assess in practical terms how the strategy will be implemented. More precise redrafting of this part seems to be unavoidable.

1. I.e. it is not clear why "strengthening the trust of citizens to public and municipal authorities" is given at the beginning of the list.

Main areas of combating corruption in Russia

A specialised anti-corruption body

Although tasks of the future anti-corruption body are given in a very general manner, they are not covering full area of responsibility of the body: there is nothing explicit on prevention and education, both tasks being important ones for the purposes of the implementation of the national anti-corruption strategy.

Prosecution for corruption offences

There is nothing written here, probably due to the fact that this part relates to activities of "traditional" law enforcement bodies.

Prevention of corruption

This part deals only with prevention of corruption in the public sector. Business and civil society are not mentioned at all. It is unambiguous that corruption has to be fought in the public sector first, yet without anti-corruption measures in the private sector no significant results can be achieved or sustained.

anti-corruption education

In this part it has to be added that not too intrusive anti-corruption education has to become a component of standard educational programmes in all kinds and levels of schools.

High priority measures for implementing the anti-corruption strategy in Russia

This part represents a list of first practical steps to be fulfilled in order to ensure implementation of the national anti-corruption strategy. It would be too much to expect that measures will be implemented following the priority given by the author, but the set of measures given here – with minor exceptions – is indeed the most urgent one to be implemented. Nevertheless, some remarks have to be made:

Criminalisation

There are two different ways how to amend existing articles of the RF Criminal Code: by changing each of them or by adding an additional article referring to all relevant articles in the Criminal Code. The second option seems to be a better one since there is no danger for leaving out important individual articles. It is also not necessary to

adopt a "special legal regulation" as suggested by the author since regular amendments to the Criminal Code are also possible – this possibility is even envisaged in the following sub-chapter on strengthening sanctions.

Term of "public officials"

Definition and concept of "public official" is one of the crucial points in incriminating different forms of corrupt behaviour and represents vital criteria for assessment of the implementation of different international anti-corruption conventions, adopted by different international organisations (UN, Council of Europe, OECD ...). Therefore, it is of utter importance that this concept includes requirements of all relevant conventions and special attention has to be paid to it.

Illicit enrichment

The UN Convention does not ask for mandatory incrimination of illicit enrichment. Therefore, a detailed and careful pro/contra analysis should be conducted before making a decision on the incrimination.

The OECD Convention

The OECD Convention cannot be ratified by a country which is not a member of the OECD or its Working Group on Bribery.

"anti-corruption diagnostics"

The usual term used internationally in this area is "risk assessment" and not "anti-corruption diagnostics".

anti-corruption programmes

It would be very natural if two programmes mentioned here would merge into one single programme targeting the goals mentioned in both previous ones.

Risks at the stage of strategy implementation

The relation between preventive and repressive anti-corruption measures is a very complex one. Therefore, "prevailing of legislative and law-enforcement measures over preventive actions" does not necessarily mean that there will be a big obstacle for full implementation of the strategy. Without going into details, this part of the sub-chapter would have to be deleted in order not to cause any unnecessary problems.

Annex – Model Plan

The term "persons in charge" would have to be replaced by "institutions in charge". If this is to be considered as a detailed action plan, then planned measures ("activities")

will have to be further elaborated in a form of very concrete and detailed actions for their implementation.

Conclusion

Again, the author has produced a very qualitative document, which can assist substantially in the initiating stages of the drafting and implementing procedures for the national anti-corruption strategy. Minor flaws identified do not spoil this

conclusion. If the Russian Federation wants to start with implementation of the anti-corruption policy in an efficient and effective manner, then this document will have to be used as one of important tools for achieving that goal.

Legislative measures to prevent corruption in healthcare

It is generally acknowledged that corruption in the healthcare systems of transition countries is a major problem, and systemic in countries of the former Soviet Union. According to the results of surveys cited in the Transparency International Global Corruption Report, informal payments by patients to doctors constitute 84% of total healthcare expenditure in Azerbaijan, 35-40% in Georgia and 56% in the Russian Federation. According to other survey evidence, in CIS countries more than 60% of citizens reported making informal payments, while in Armenia the figure is close to 90%. The Centre for the Study of Public Policy's New Europe Barometer surveys conducted in 2004 found that 93% of Russians rate their healthcare system as very bad or not so good. The results of the survey across countries show a correlation between healthcare quality ratings and general perceptions of corruption in the country.

Article 41 of the Constitution of the Russian Federation states that every person has the right to health protection and medical care. It is established that medical care in state and municipal health institutions is to be provided to citizens free of charge and be covered by the relevant budget, insurance contributions and other income.

This constitutional right is not, however, being properly put into effect. The weakness of the state healthcare system, the problems with its funding, the unfinished nature of the medical insurance reform and inadequate legal regulation of private medical services combine to create fertile ground for corruption in this area. Data provided by VTsIOM [Russian Public Opinion Research Centre] show that Russians most often give bribes to medical personnel – 51%. This problem is a general one. In its Global Corruption Report 2006, the non-governmental organisation Transparency International observed that the

extent of corruption in healthcare was significant in both poor and wealthy countries.

Bribes paid to medical personnel are classed as routine corruption, but that does not take away from the social hazard they represent. Reports from the IA Teleinform suggest that some 30 million Russians have been unable to obtain medical care because they could not afford to pay bribes to medical personnel.

One of the priority tasks when fighting corruption in the healthcare sphere, therefore, is to see to it that Russian citizens are able to exercise their right to health protection and free medical care.

Violations in the procurement of medical equipment under the National Health Project have been uncovered by the RF Chamber of Accounts. In the Chamber's report "On the results of the audit of targeted and effective use of funds from the Russian Federation budget allocated for centralised procurement of equipment and medicines for healthcare needs", it was concluded that centralised procurement of a number of medicines and items of medical equipment had been carried out in violation of the law as it stood at that time, specifically Federal Law No. 97-FZ of 6 May 1999 "On tenders for the placement of orders for the delivery of goods, execution of work and provision of services for public needs". Organisations, for example, were announced as having won tenders even though they had failed to meet the requirements laid down in current law and in the tender documents issued by the organiser for those participating in the procedure; the time limits for tender procedures had been violated, and purchases of medical products made without a tender procedure being held at all.

It appears, therefore, that abuses in the centralised procurement of equipment and medicines are due not so much to inadequate legal regulation as to flagrant viola-

tions of this regulation. Also, there is still a lack of information about the application of the new Federal Law No. 94-FZ of 21 July 2005 "On the placement of orders for the delivery of goods, execution of work and provision of services for state and municipal needs", which came into effect on 1 January 2006.

In these circumstances, the task is to reform the healthcare system while at the same time eliminating corruption risks. One of the ways this has been tackled in the RUCOLA-2 project is through drafting legislative proposals to deal with corruption in healthcare. This work was carried out in several stages. To begin with, Russian experts (Elvira Talapina and Larissa Sannikova) analysed Russian legislation on healthcare for its corruption potential. Their findings were then evaluated by a European expert (Quentin Reed). Each expert also put forward proposals on how to improve healthcare legislation with a view to preventing corruption. This was then taken as a basis for some summary proposals from all the experts involved in the project.

Analysis of the corruption potential (anti-corruption expertise) of Russian healthcare legislation was performed on the basis of a document on methodology entitled "Instructions to experts on primary analysis of a legislative enactment for corruption risks" (TsSR, 2004). Consideration was given to analysis of such features of the legislation in question as its comprehensiveness, the existence of a large number of sub-legislative instruments, and also corrupt practices that had developed in practice. The main focus of the analysis were the Principles of Russian Federation Legislation on Public Healthcare of 22.07.1993 (hereinafter referred to as the Legislation Principles), a number of provisions of the Civil Code (regarding contracts for the provision of services) and the Programme

of State Guarantees for the Provision of Free Medical Care to RF citizens.

As a result of the anti-corruption expertise, the Legislation Principles were found to contain the following **corruption risk factors**.

First, the wide scope of discretionary powers, as reflected in the fact that there is no division of competence between legislative and executive agencies. This means there is a high risk of arbitrary interpretation, and of relations of a general nature being regulated at sub-legislative level, which may also lead to a duplication of competence. The breadth of discretionary powers can also be seen in Article 34 of the Legislation Principles, under which compulsory medical care, including even isolating citizens without their consent, is permissible on the grounds and in accordance with the procedure prescribed by law in respect of persons suffering from diseases that constitute a hazard to those around them, those suffering from severe mental disorders or persons who have committed socially hazardous acts. It is a well-known fact, however, that administrative offences also constitute socially hazardous acts, thus opening the way for an unacceptably free application of this article.

Second, the existence of legal loopholes. Generally legislation on healthcare contains numerous gaps, which are filled by regulation at sub-legislative level. For example, the law provides no rules for licensing medical and pharmaceutical activities, or for carrying out independent medical evaluations.

Third, the Legislation Principles provide merely a declarative framework, with the result that there is a large number of referential and blanket provisions. Pursuant to these Principles, the RF Government and authorised agencies have obtained extensive rule-making powers, and this is not always justified.

Fourth, the Legislation Principles set excessively high requirements for individuals seeking medical care. Article 39, for example, formulates the right to render medical first aid in conditions requiring urgent medical intervention (in cases of accident, injury, poisoning and other conditions and diseases). Such an open-ended list may be interpreted in favour of the applicant, but it also confers the right to refuse to provide medical care if the health professional considers that a given disease (in his/her opinion) does not require urgent medical intervention.

Fifth, a lack of administrative procedures. Specifically, there is no defined procedure whereby children, adolescents, students, disabled people and pensioners engaging in physical training can exercise their right to free medical check-ups (Article 20). Nor is any procedure laid down in Article 52, where mention is made of citizens' right to request that the agency calling for a forensic medical or forensic psychiatric appraisal include on the panel of experts an additional specialist with a relevant background.

Sixth, there is the juridical/linguistic corruption risk factor, namely terms which, when used, give rise to a certain ambiguity of interpretation and may in practice lead to corruption. In Articles 24 and 31, for example, mention is made of citizens' right to obtain information about the state of their own health in a form that is accessible to them. As a rule, "accessible form" means that the information should be delivered to the patient in his/her native tongue. This is clearly inadequate.

Seventh, there are no provisions establishing specific penalties for violations. The liability of health professionals is stated, but there is no indication of the forms, scope, grounds or conditions under which liability arises (Article 58, para. 6, Article 66, para. 1, Article 68, para. 1, of the Principles).

Eighth, competence is defined using the word "may". Specifically, under Article 34, enforcement measures of a medical nature may be applied on the grounds and in accordance with the procedure prescribed by RF legislation to individuals who have committed socially hazardous acts. This wording allows for variation in the actions of the relevant officials who, even if grounds exist, are formally entitled to refrain from applying enforcement measures of a medical nature.

Ninth, a number of inconsistencies have been found. Article 56 states that a ban on engaging in private medical practice shall be imposed by decision of the agency that issued the licence to engage in private medical practice, or by a court. Under the RF Code of Administrative Offences, however, prohibition of engagement in certain activities is an administrative punishment which may be imposed only by a court.

Tenth, in the RF Legislation Principles, there are no provisions that envisage the holding of tender (bidding) procedures in healthcare, for example when placing state orders for the provision of certain types of medical care.

Eleventh, many regulatory legal instruments which should have been adopted at the direct instigation of the Legislation Principles for healthcare have not been adopted. For example, under Article 40, the Government is to ratify a list of specialist federal medical institutions which provide specialist medical care. In practice, this list has not been adopted by the government, and has been replaced by a Ministry of Health enactment.

Twelfth, a failure to ensure transparency of information has been identified. Under Article 20, para. 4, of the Legislation Principles, citizens are to be afforded a certain guaranteed scope of free medical care in accordance with the Programme of State Guarantees for the Provision of Free Medical Care to RF citizens. The Programme, however, gives no details of the types and scope of such care. As a result, RF citizens do not have information about the types and scope of primary medical and sanitary assistance which they may receive free-of-charge at a medical institution near where they live.

Besides the corruption factors listed above, the experts pointed out that where healthcare institutions provide paid medical services, opportunities for corruption are created by Chapter 39 of the RF Civil Code "Compensable services" which applies in such cases. Under Article 782, para. 2, of the RF Civil Code, a contractor may unilaterally refuse to perform a contract. In practice, this provision of the law leads to a violation of citizens' constitutional rights. In its decision No. 115-O of 6 June 2002, for example, the RF Constitutional Court found that a contract to provide paid medical services constitutes a public contract under Article 426, para. 1, of the RF Civil Code. The Constitutional Court likewise ruled that the obligatory aspect of concluding a public contract also means there can be no unilateral refusal by the contractor (service provider) to perform it. The legal position of the Court is not reflected in current legislation, however.

The summary conclusions of the anti-corruption expertise of healthcare legislation were presented at a seminar/meeting of Russian and European experts on 22 February 2007. The Russian experts emphasised that the findings of the expertise could be incorporated in a more broad-based work on reforms to the healthcare system.

At the next meeting, on 20 March 2007, the Russian experts' conclusions were eval-

uated by the European experts. This evaluation was delivered by Quentin Reed. He recommended that, over and above the amendments suggested by the experts, which were very important from the point of view of combating the emergence of corruption, a detailed analysis be made in specific areas, using research methodologies. His main conclusion was that a broader approach to healthcare reform was required. Mr Reed reported that there were eight separate areas in healthcare where a corresponding evaluation should be made of the discrepancies between the provisions of the legislation on citizens' rights to medical services and the actual funds made available. He also recommended monitoring the public funds that were disbursed for healthcare purposes. According to some estimates, as much as 30% of the federal budget set aside for healthcare did not reach the end user. It might be necessary to carry out a judicial enquiry into the functioning of the Mandatory Health Insurance Fund and the activities of the state regulatory body, the registration of medicines, medical training, and the pricing of medicines, especially for products that were partially or wholly funded by the state. It was also very important to examine the practice of making unofficial payments for the services of healthcare agencies, doctors, etc. This was a very widespread phenomenon in Russia. The question of whether it was due to inadequate resources, creating scope for corruption, or whether there were other reasons still remained to be answered.

Future research would provide an opportunity to develop some clear principles for the functioning of the healthcare system, especially with regard to citizens' rights, budget procedures, allocation of funds, reforms, the status of the Federal Mandatory Health Insurance Fund and procedural transparency. A duty to publish or otherwise make transparent information concerning contracts between medical institutions and drug/equipment providers should be established, together with a duty on the part of medical institutions to make patients fully aware of their rights and duties, Mr Reed concluded.

There were questions for Mr Reed from the seminar participants. A member of the European delegation, Stephanie Harter, asked him to give an assessment of the effectiveness of public expenditure monitoring. Mr Reed confirmed that the value of public expenditure surveys was considerable. The state should decide what kind of

audit was required, internal or external. If the state audit functioned as it should, there was no need for other types of control. In central and eastern Europe, however, the state audit did not function properly anywhere.

In support of his argument for a broad approach, Mr Reed provided an overview of corruption issues and anti-corruption strategies in the healthcare system, saying that the following were required for successful action in this area:

- establish clear and publicly reiterated goals and commitments;
- establish clear mechanisms and rules for achieving those goals and commitments;
- include a system of financing that enables these goals to be achieved in practice within the financial constraints.

Far more vulnerable to corruption are systems in which there is a large gulf between the healthcare services to which the public is officially entitled and the actual capacity of the system to deliver healthcare services in line with officially approved standards. One vivid example of this is the healthcare system in the former Soviet Union. The USSR was the first state in the world to give all citizens a constitutionally-based guarantee of free healthcare. But the system never made enough resources available to provide such a high standard of healthcare in practice. Moreover, healthcare provision was biased in ways that wasted resources on certain types of care (particularly in-hospital treatment) at the expense of other types (especially primary care). One of the main consequences of these systemic factors was the *de facto* institutionalisation of informal payments by patients to doctors or medical facilities as a means of obtaining care to which patients were formally entitled.

Mr Reed identified three areas of corruption and the most important measures for tackling them.

Informal payments

Payments to doctors in cash or in kind for services that are meant to be covered by the public health system are very widespread in the countries of the former USSR. It is assumed here that all informal gratuities or payments constitute corruption or encourage a context in which healthcare is conditional on the provision of such payments.

One solution to the problem of informal payments that is often advocated is the introduction of official charges as a means of "formalising" informal payments. While introducing charges may be a way of increasing revenue to redress the balance between formal and real entitlements to care, the introduction of official charges should not be taken as a panacea for dealing with informal payments. While such payments may make patients less willing to pay doctors "under the table", they may not make doctors less willing to demand such payments, in the absence of improvements in their own situation. Moreover, such reforms must be very careful to monitor their effects on lower income segments of the population.

This brings us to another reason for informal payments, which is inadequate remuneration of doctors and other medical personnel. In addition to the basic need to ensure that the healthcare system does not promise to provide more than its funding will sustain, doctors and other key medical personnel should be remunerated such that their official income does not lag radically behind their "target wage" – in lay terms, the income to which they feel entitled.

The paradox of countries where informal payments are widespread, however, is that both "adequate remuneration" of doctors *and* the introduction of official charges may both be politically unfeasible. Where such solutions are partially implemented, other specific measures to prevent corruption are also essential. The most important of these can be divided into two types: measures to maximise transparency and the establishment of functioning complaint mechanisms.

Measures to increase transparency (1) are a fundamentally important anti-corruption mechanism in all areas of healthcare provision. In the context of informal payments, there are two main types of transparency measure. First, a clear statement of patients' rights and active provision of information on these rights can act as an important bulwark against informal payments for treatment to which patients have a right. Second, more specific measures to provide information on the provision of care in practice can be very useful. A good example of this is a pilot scheme implemented in Croatia in 2004-2005 to tackle corruption by publishing waiting lists for treatment such as operations. Hospitals were obliged to disclose to patients lists showing them their position in the

waiting list and make such lists available at medical facility reception desks. Patients who did not wish their identity to be disclosed were listed by number instead. According to preliminary evaluations of the scheme, it had a significant impact.

While measures to increase the transparency of healthcare provision are vital, they may be ineffective if patients are not able to seek redress (2) for misconduct or bribe-seeking by medical personnel. In the open waiting lists policy implemented in Croatia, TI Croatia established a hotline to monitor the project, and received more than 90 calls relating to waiting lists in one hospital in the first few months.

Corruption of the health regulator

The link between pharmaceutical companies and the state regulator is one of the clearest points of vulnerability to corruption in a healthcare system. The state regulator (e.g. the Food and Drug Administration in the United States or the Czech State Institute for Drug Control) registers the drugs produced by pharmaceutical companies and decides which of those drugs will be provided to patients at public expense ("essential drugs").

Measures to prevent corruption involving the regulator and pharmaceutical companies include criteria and procedures for drug registration and selection.

The World Health Organisation has defined a set of minimum criteria for a transparent drug registration process:

- a list of all registered pharmaceutical products and an information system for the registration process of pharmaceutical products which include a defined minimum level of information, such as the product description (including the generic name and a summary of product characteristics), the name of the manufacturing company, the date of the registration, and the name and contact information of the company registering the medicines;
- written procedures on how to submit and assess applications for registration of medicinal products, describing the process to follow and the fees required;
- a standard application form, which is publicly accessible and readily available at a government office or on a web site;
- a formally established and operational committee responsible for registration of pharmaceutical products, composed

of professionals with technical skills, which meets on a regular basis;

- the existence of a mechanism whereby once decisions are made, the responsible committees provide official written documents for all decisions regarding applications, explaining the reasons for rejection if necessary.

The inclusion of a drug on the list of drugs that are provided for free – that is, paid for or at least partially subsidised from the public health budget – may be seen as the ultimate prize for a pharmaceutical company, essentially guaranteeing the prescription of the drug for the relevant medical conditions, and reimbursement at taxpayers' expense. For these reasons, a key anti-corruption mechanism is the promotion of essential drug lists based on objective criteria. The WHO criteria for selection of drugs for inclusion on EDLs should be seen as a minimal standard. These are: relevance to the pattern of prevalent diseases; proven efficacy and safety; evidence of performance in a variety of settings; adequate quality, including bio-availability and stability; favourable cost-benefit ratio in terms of total treatment cost; and preferences for drugs that are well known to have good pharmaco-kinetic properties.

A minimal condition for the approaches outlined above are rules and procedures to ensure the professionalism and independence of selection committees, which should be composed of impartial persons with the appropriate technical skills. Regulators should apply strict rules governing contacts and meetings between employees of the regulator and representatives of pharmaceutical companies – for example a ban on such meetings on the premises of the regulator or company unless accompanied by a designated official from the regulator, duties of both regulatory employees and pharmaceutical companies to declare other meetings, and so on.

Corruption of doctors and medical facilities by pharmaceutical companies

Influence by the pharmaceutical industry on the healthcare practices of doctors and medical facilities is an area in which there is increasing evidence of corruption. This subsection covers corruption involving the provision of benefits to doctors in return for prescribing or over-prescribing particular drugs, and of procurement staff in return for manipulation of drug prices or

procurement of excessive quantities of drugs.

Corruption of doctors

Doctors need some contact with pharmaceutical companies in order to obtain necessary information about the drugs or devices those companies supply. However, such contacts can very easily grow into unhealthy relationships which distort treatment patterns and prescription practices in particular. Measures to restrict undue influence by pharmaceutical companies include the following:

- self-regulation and codes of ethics approved and enforced by pharmaceutical companies themselves and their trade associations – on the principle that restriction of all companies is more advantageous for all than no restriction;
- formal restrictions on marketing and promotion activities by pharmaceutical companies within medical facilities;
- bans or restrictions on promotion of particular medicines and drugs by doctors within medical facilities;
- conflict of interest provisions for doctors which rule as inadmissible business relationships or positions by which they benefit from the activities of pharmaceutical companies (for example share ownership or consultancy contracts);
- in particular, banning of trips by doctors paid for by pharmaceutical companies, for example to conferences in exotic locations;
- monitoring of prescription practices of individual doctors by medical facility oversight committees or citizen boards.

Corruption in procurement

In addition to the standard application of rules and oversight systems for procurement, measures to increase transparency may have a big impact. In Argentina, the government implemented a policy of monitoring the prices hospitals paid for medical supplies and then distributing this information among all hospitals. Prices of the monitored supplies fell immediately by an average of 12% and stayed below the initial purchase price for the whole time the policy was implemented.

On the basis of the reports and conclusions of the Russian and European experts, some summary proposals were then put together and approved for amending the legislation on healthcare. These proposals were prepared in the light of the findings of the anti-corruption expertise and the legis-

lative proposals made by the Russian experts (Elvira Talapina and Larissa San- nikova), with due regard for the assessment and opinion provided by the European expert (Quentin Reed) as part of the Council of Europe’s RUCOLA 2 project.

Legislative measures to prevent corruption in public procurement

As part of the project to develop legislative and other measures to prevent corruption in public procurement, the Russian and European experts met to hear and discuss reports by **Peter Trepte**, Council of Europe expert, **Nina Solovianenko**, senior scientific expert, Institute of State and Law, Candidate of Law, and **Elvira Talapina**, senior scientific expert, Institute of State and Law, Candidate of Law.

In the report by the Council of Europe expert, **Peter Trepte**¹ “The prevention of corruption in public procurement: good practice in Europe”, the author considers the various methods employed in Europe to prevent corruption in procurement through regulation and addresses the issue of excessive or inappropriate regulation, which often has the effect of creating inefficiencies in the procurement process.

Procurement regulation in Europe involves the use of specific administrative procedures and criteria for evaluating bids, and also controls the choices made in respect of the bidders to be entertained. Procurement decisions are largely made and carried out by the bureaucracy, specifically by procurement agents within the bureaucratic hierarchy. In this relationship, the government acts as principal and the bureaucrat as agent.

In order to exercise control over the agent, the principal will set out the permitted parameters and framework within which the agent is permitted to operate and needs to be able, if the need should arise, to verify that the agent has indeed acted within those parameters. The purpose of such regulation is to reduce the scope for unlawful action, ensure discre-

tion is exercised objectively and improve detection of unlawful behaviour.

In the fight against corruption, the main components of regulation in Europe are as follows:

- the imposition of procedural requirements. All modern systems of procurement regulation operate by imposing the use of preferred procurement procedures – typically tender and bidding procedures – in the case of large contracts. Alternative procurement procedures are allowed only in well defined circumstances;
- the imposition of transparency requirements (including the requirement to advertise any procurement procedures, to disclose information, to make the technical specifications as well as selection and award criteria known in advance).

In the context of the fight against corruption, transparency is a vitally important tool because it makes visible what can be only too easily concealed. Transparency requirements make it more difficult to be corrupt and reduce the opportunity for extracting or receiving bribes.

Transparency can be used throughout the whole procurement process from the initiation of a given procurement procedure right through to the contract administration phase. The mechanisms adopted are initially based on the publicity provisions of the procurement regulation which normally requires technical specifications as well as selection and award criteria to be made known in advance. The requirement to advertise procurement procedures or at least solicit bids from a minimum number of tenderers will ensure that procurement agents are not able simply to contact those tenderers with whom they would prefer to deal. Transparency is also enhanced by additional requirements that requests for in-

formation be made only in writing and that all responses and clarifications be sent in writing to all the tenderers simultaneously. Most systems of procurement regulation will also prohibit negotiations or discussions between purchaser and tenderer during the course of the procedure in anything other than permitted sole source or “negotiated” procedures and only where they do not concern price or other fundamental terms and conditions of the tender or contract documents. The requirement either to notify the tenderers of the successful tenderer or to publish a contract award notice can also serve to alert tenderers to the possibility of corruption where the outcome is not consistent with expectations.

In the case of technical specifications, the procurement regulations will often set out in relatively strict terms what may be acceptable. There is a general preference for the use of performance, output or function specifications as opposed to design or descriptive specifications. This enables a description of the items to be procured to be defined in terms of their intended use rather than by reference to specific products, makes or sources or to particular manufacturing processes which could have the effect of favouring or eliminating specific tenderers.

In respect of qualification criteria, procurement regulations tend to follow the same principles and the criteria usually relate to three aspects of qualification: the suitability of the bidder as a trustworthy company, the bidder’s economic and financial standing denoting its ability to complete the proposed contract and the bidder’s technical capacity and resources.

More and more frequently, provisions relating to probity are being introduced to the extent that the issue of a tenderer’s pro-

1. Peter Trepte is a barrister based in London specialising in public procurement law and has participated in the reform of public procurement systems in a number of different transition and developing countries in many parts of the world.

fessional conduct will cover previous acts of corruption.

In so far as award criteria are concerned, transparency is applied in a similar way to ensure that the criteria to be applied by the agent are known. Thus, the procuring entity will be required to state in the notice and/or tender documents all the criteria it intends to apply to the award of the contract. The award criteria applied in most procurement systems can be divided into two: (1) the lowest price and (2) price which is evaluated together with a number of other criteria which will be set out in the tender documents.

- Responsibility and accountability, which provide a guarantee of probity but can be undermined in the context of procurement.

In his report, the author emphasises the need to allow the agent a measure of freedom. Taking away the decision-making responsibility of the agent by, for example, subjecting critical decisions like the choice of procurement procedure to prior authorisation, takes the responsibility for that decision away from the agent and places it with a third party who may not be accountable for that decision. The same may be said for the existence of hierarchically superior tender committees or central procurement units which operate in a similar way to absolve the agent of responsibility and accountability. As well as increasing the potential for higher level corruption, this mechanism can be a barrier to good procurement decision-making in a given segment of the market.

The specific tools used to guarantee accountability in procurement are the provisions relating to recording and reporting and the mechanisms for review and control.

Apart from requiring that all files and documents related to the procurement procedure be kept for a stated period following the execution of the contract, the regulation will also usually impose specific requirements as to the taking of minutes. In most cases, these will apply to bid opening procedures, evaluation reports and award decisions. Procurement regulations also often require grounds for choosing certain procurement procedures to be recorded. Access to such information will assist in identifying those cases in which the reasons are not properly substantiated and where agents have sought to manipulate their discretion to favour certain tenderers.

Procurement regulation will also seek to reduce instances of potential conflicts of interest in the context of procurement and will generally impose provisions with regard to impartiality and confidentiality. From the anti-corruption perspective, the purpose of procurement regulation is to minimise the way in which the agent may be persuaded to misuse the information he possesses for his personal gain. Traditionally, this was done by way of direct supervision. The costs and time involved in direct supervision make this an effective and ineffective system of control, however.

It is for this reason that modern systems of procurement regulation rely on the twin pillars of responsibility and accountability, and on external and independent enforcement mechanisms to impose accountability based on complaints brought by the tenderers themselves.

Most countries have in place mechanisms and procedures for review of the acts (and omissions) of administrative bodies and other public entities in the exercise of their procurement functions. Broadly speaking, the review mechanism will include a complaint to the procuring entity itself, followed by an appeal before an administrative body (either hierarchical or independent) and judicial review. In most reforming countries, it is the second tier (administrative) review which is the most interesting.

The review mechanism needs to be effective and rapid and most systems give tenderers broadly three avenues of attack: an injunction (interim measures and/or suspension) to prevent an infringement, the possibility of setting aside (annulling) a particular procedure or award, including the right to remove unlawful specifications, and, finally, damages. Some countries also impose financial penalties for breaches of the procurement law. As a general mechanism, such penalties often attach to any breach of the procurement regulation regardless of whether that breach is also corrupt.

Debarment or "blacklisting" (the practice of excluding certain bidders from procurement procedures either temporarily or permanently) is also a mechanism sometimes used to punish those engaging in corrupt practices. Success of the blacklisting system is generally equated with the number of those caught. This, however, does not necessarily indicate success in the eradication of corruption as a practice, especially in the case of systemic corruption.

Audit is one of the main forms of direct supervision over the procurement process and includes both internal and external audit. The main disadvantage is that this is generally conducted *ex post*. The findings of auditors are usually too late to make any difference to specific procurement procedures, although they may, where reports are sufficiently synthesised and comprehensive, provide an indication of particular weaknesses in the system. A further potential problem with auditing procurement is that the auditors lack the experience of procurement agents and so are not sufficiently qualified to make the necessary assessments.

There is no doubt that procurement regulation can play an important part in the fight against corruption and the tools used in Europe demonstrate that it can be effective. Procurement is an activity which provides a number of opportunities which may be exploited by the corrupt. The agency relationship with its authority to decide provides the opportunity; the informational asymmetries created by the agency relationship provide the means. By imposing administrative control over the process, the government principal can reduce the opportunities for corruption. Procurement regulation succeeds in this respect by applying procedural requirements and transparency requirements. The effect of these requirements is to reduce the opportunity for corruption by making the information relied upon in the procurement process (the tender documents, draft contract, technical requirements, selection and award criteria) available for all to see and, most importantly, by making it verifiable. The responsibility given to the procurement agent can then be tested since it will be possible to hold the agent fully accountable for his actions.

Much depends, however, on the strength and impartiality of the enforcement mechanisms in place. Procurement regulation provides a means of detection, but enforcement mechanisms need to be in place to ensure that the corrupt officer loses his gamble, i.e. that the costs associated with corruption (the risk of being caught and the penalty to be paid) exceed the likely benefits. Review procedures brought by bidders will highlight the instances of corruption but it is the civil service rules which must provide for the disciplinary measures and the appropriate authorities which must prosecute criminal activity.

It is not enough to address only the rules to be applied. Blind adherence to a set of rules can result in incompetent (rather than corrupt) procurement but can also provide a shield for corrupt practices. The approach has to take on board the need to create a cadre of procurement agents who are well versed in the conduct of efficient and ethical procurement in all its aspects. This is imperative because procurement agents need to have knowledge, skill and experience in order to exercise their professional judgement in awarding contracts. They must be able to exercise their necessary discretion wisely. Inadequate training may well lead to the incorrect use of discretion and could well contribute to the corrupt use of that discretion. The procurement function needs to be better professionalised in the public sector as well as tightly controlled.

The answer is not to impose ever stricter regulations on the agent in the name of anti-corruption. In extreme cases, over-regulation erodes the ability of the agent to exercise his discretion to such an extent that he is incapable of making a proper procurement decision. Such forms of regulation have a serious negative effect on public expenditure because they will often condemn the government to inefficient and expensive purchasing and result in the purchase of outdated or low quality products not fit for the purpose intended.

Provided it successfully addresses the issue of minimising opportunities for corruption, procurement regulation will serve as an important tool in the fight against corruption. Where that is not the case, it will provide a cosmetic and possibly politically astute statement of intention which will achieve little in real terms to reduce or eradicate corruption but which will increase the costs of procurement to the public purse and thereby defeat one of the main objectives of procurement regulation, cost savings to the government. To avoid losing the benefits to be expected from effective procurement regulation, a balance needs to be struck between combating corruption and promoting professionalism in procurement. Equally important are the commitment of the government and the efforts made to develop capacity to provide proactive and ethical procurement officers capable of achieving the financial and economic benefits to be gained from transparent, efficient and competitive procurement.

In the course of the discussion, Mr Trepte said he was not suggesting that

countries turn their backs on regulation completely, but that he did not think there was any evidence to support a direct link between stricter regulation in this area and a reduction in corruption. To his knowledge, no such data existed.

Attention was also given to another important issue, namely that breaches of public procurement law are not always evidence of corruption. Corruption does exist, of course, but problems in public procurement and price variations can also be due to lack of comprehension or incompetence. Such problems need to be addressed, but in a different way, i.e. not through anti-corruption measures but simply by developing capacity and clarifying the law. There may well be corruption as well but it is important in that case to focus on the causes, and not to see every problem that arises in the area of procurement as a corruption issue.

The report by the Russian expert¹ looked at corruption risks in RF legislation on state and municipal procurement.

RF Law No. 94-FZ of 21 July 2005 "On the placement of orders for delivery of goods, execution of works and provision of services for state and municipal needs" covers those areas of economic and administrative relations in Russia that are particularly prone to corruption as they involve managing budgetary funds. In this respect, the above-mentioned law has an additional, anti-corruption function. In terms of anti-corruption requirements, the law "On the placement of orders" belongs to a "new generation" of Russian legislation. In keeping with international standards, it contains a set of rules designed to prevent corruption:

- it calls for the introduction of criteria such as openness and transparency in procurement procedures, and requires that the necessary information be published within fixed deadlines in the official media and on official websites;
- it legalises new procedures for placing orders with a view to ensuring more efficient use of budgetary resources, such as bidding, requests for quotations with pre-selection and procurement on commodity exchanges;
- the pool of potential bidders has been considerably widened;
- a list of requirements to be met by all bidders has been drawn up, together

1. Nina Solovianenko, senior scientific expert, Institute of State and Law, Russian Academy of Science, Candidate of Law, member of the State Duma anti-corruption Commission.

with a list of criteria to be applied in the evaluation of competitive bids;

- the law provides for the possibility of pre-trial appeal against the actions of state and municipal customers, etc.

As it stands today, however, Russian legislation on public procurement remains contradictory and piecemeal and has some serious deficiencies, creating opportunities for corruption when it comes to enforcement. It is possible to identify a number of provisions which constitute corruption risk factors and create a conducive environment for corruption in state and municipal procurement.

Among the main risk factors is the Federal Law's failure to establish a number of essential administrative procedures. This is an unacceptable omission in a law, the fundamental purpose of which is to set out such procedures in detail. A whole series of acts, moreover, appear in brackets, giving the customer too much room for manoeuvre. Examples of areas not covered by the law include: the procedure governing dealings between the authorised body and the customer; the procedure for compulsory verification of information concerning bidders; the procedure for amending an order placement contract, the procedure for making unilateral changes to the volume of work to be done, the procedure for placing orders via open bidding in electronic form, the procedure for keeping tender (bidding) documents, and the administrative procedure for requesting documents when filing a complaint.

The law likewise fails to address the following procedural issues: what is the procedure for posting information on the official website; in what format should the information be presented; is it possible to refuse to post this information and if so, on what grounds; is it possible to remove information from the open access area and what should be the grounds for such removal; and, finally, what is the liability of the authorised website provider? Unless these issues are resolved, the mechanism for implementing the provisions ensuring openness, transparency and accessibility of information in order placement cannot be fully effective. It should further be noted that the law "On the placement of orders" affords no opportunity for appealing against the actions (or omissions) of the organisation authorised by the executive authorities to maintain the official website.

There is no separation of powers between the customer, the authorised body, the specialised organisation and the

committee. In some cases, these entities enter into administrative relations which require stricter regulation, in others they enter into civil-law relations that allow some variation. None of this is reflected in the law, however, leaving the way open for ambiguous interpretations in practice.

Not enough has been done to develop objective admission, selection and award criteria. Bidders do not always have the opportunity to participate on equal terms and are to some degree dependent on the discretion of the customer, authorised body, tender or bid committee. Evidence of this discretion can be seen in two areas: possession by bidders of exclusive rights to intellectual property, and liability of the supplier (contractor, sub-contractor) and customer for non-performance or improper performance of the contract. The various types of orders that can be placed without bidding with a single supplier are framed in vague, ill-defined terms, with the result that almost any order can be classified in this way at will, so as to bypass the bidding process. The primary goal of the law, namely to make bidding the main method of placing orders, is thus subverted.

The system of penalties and monitoring to ensure compliance with the legislation on public procurement is flawed. The law does not deal adequately with the question of monitoring to ensure that the legislation on public procurement is observed. There are doubts about the effectiveness of the scheduled and unscheduled checks, as presented in the law, and also about the stipulation that no customer, authorised body or tender/bid committee operating on a permanent basis may be subjected to more than one scheduled check every six months. While such restrictions are permissible in the case of private operators, which stand, as it were, in "opposition" to the state, they are completely unjustified in the case of internal, public-sector controls.

Another potential source of corruption in the legislation on public procurement is the existence of gaps and the filling of these gaps with regulatory legal instruments issued by executive authorities. The law contains a large number of referring provisions, which give the RF Government standard-setting powers to deal with particular issues in greater detail. Such provisions carry a risk of corruption because the rules are then made at a lower level, and departmental acts are drafted in greater secrecy than laws and are more likely to enshrine corrupt practices that have devel-

oped in practice. Any decision to include referring provisions in a law always needs to be justified, therefore, and to address the question: why cannot the relations in question be governed by legislation? The law provides for the adoption of a large number (over 20) of sub-legislative acts of the RF Government, without which the law cannot operate.

Also problematic are the provisions in the Federal Law "On the placement of orders" which define the competence of executive authorities in terms of what they "may" do, making it possible to interpret the right thus conferred purely as an option, and not a duty, to perform the actions envisaged in the law, and to subject the exercise of that right to corrupt conditions.

This risk typically arises in the provisions which impose requirements on bidders, and in the provisions defining the competence of federal executive authorities, executive authorities of RF subjects and local self-government bodies authorised to carry out supervision in respect of order placement.

Attention should also be drawn to a number of instances in state and municipal procurement where corruption-prone provisions are or may be used (the practice of "splitting" orders in order to bypass the tender process, the existence of legislation that artificially restricts the pool of bidders from different parts of Russia, and restricts competition when placing orders).

In the light of the analysis of corruption risk factors in RF legislation on state and municipal procurement, the Russian experts¹ have produced a number of proposals setting out legislative measures to prevent corruption in this area:

- ensure openness and transparency of information concerning order placement;
- establish the necessary procedures for improving the rules on conducting bidding;
- apply objective, predetermined admission, selection and award criteria;
- introduce penalties and monitoring to ensure that the legislation on public procurement is observed;
- introduce an effective complaints system;

1. Nina Solovianenko, senior scientific expert, Institute of State and Law, Russian Academy of Science, Candidate of Law, member of the State Duma anti-corruption Commission, and Elvira Talapina, senior scientific expert, Institute of State and Law, Russian Academy of Science, Candidate of Law.

- achieve an optimal balance between legislative and sub-legislative public procurement regulation, reduce departmental rule-making;
- require an anti-corruption evaluation to be carried out in respect of regulatory legal instruments in the field of public procurement;
- eliminate corrupt practices through legislation.

The Russian experts have made a large number of proposals along these lines which, if acted upon, would be enough to eradicate some typical corruption risk factors such as lack of administrative procedures, excessively wide discretionary powers, definition of competence using the word "may", absence of liability for violations of the legislation on state and municipal procurement, excessive requirements for bidders, excessive freedom in terms of sub-legislative rule-making, non-compliance with transparency rules and the existence of gaps in the law.

The proposals were examined and commented on by the Council of Europe expert, Peter Trepte, and then revised in the light of Mr Trepte's comments and suggestions.

In order to eliminate corruption factors and risks in the legislation on state and municipal procurement, the experts have recommended making amendments and additions to RF Law No. 94-FZ of 21 July 2005 "On the placement of orders for delivery of goods, execution of works and provision of services for state and municipal needs".

The Russian experts' proposals containing measures to prevent corruption in state and municipal procurement can be divided into the following broad categories: 1) general proposals for eliminating corruption factors and risks, 2) elimination of corruption risks by developing the necessary procedures, 3) elimination of corruption risks by abolishing or amending the relevant sections of the law.

Among the general proposals for eliminating corruption factors are the following:

- introduce administrative liability for failure to ensure the safe-keeping of tender (bidding) documents, impose a requirement to provide information about the existence and content of these documents;
- establish a legal framework for interaction between the authorised body and the customer;
- in order to guard against ambiguous interpretation of articles, make additions

- to the law or adopt government acts on the procedure for registering and granting privileges to penal institutions and disability organisations, and also to small businesses when placing orders through bidding;
- in order to ensure openness and transparency of information on order placement, introduce an additional provision governing the procedure for posting information on the official website. Among other things, the provision should cover: the format of information posted on the website, whether it is possible to refuse to post information and if so, on what grounds; whether it is possible to remove information from the open access area and if so, on what grounds; and finally, what is the liability of the authorised website provider;
 - for the purpose of applying alternative procurement procedures only in strictly regulated cases, introduce amendments to the RF Budget Code, specify the contract value beyond which, in order for such contracts to be awarded, orders must be placed in accordance with the procedures laid down in the Federal Law "On the placement of orders for delivery of goods, execution of works and provision of services for public and municipal needs";
 - in order to afford bidders the opportunity to participate on equal terms, irrespective of the discretion enjoyed by the customer, authorised body, tender or bid committee, introduce a provision whereby when placing an order through bidding, the customer or authorised body must impose the following requirements:
 - bidders to possess exclusive rights to the objects of intellectual property if, in the course of the performance of the state or municipal contract, the customer acquires the rights to those objects;
 - bidders must not appear in the register of unreliable suppliers;
 - stipulate that the supplier (contractor, subcontractor) and the customer bear equal responsibility for non-performance or improper performance of the contract;
 - provide for the possibility of appeal against the actions (omissions) of the body authorised by the executive authorities to maintain the official website and for the possibility of monitoring to ensure that the said body complies with RF legislation on order placement.

Among the measures to eliminate corruption risks by developing the necessary procedures, mention should be made of the following:

 - introduce a procedure for pre-selecting those persons to whom it is mandatory that a request for quotations be sent. There should also be a duty to simultaneously send out and publish the request for quotations;
 - introduce a procedure for mandatory verification of the information concerning bidders;
 - establish a procedure for amending order placement contracts: such amendments could be governed by the rules on placing orders with a single supplier;
 - develop a procedure for giving reasons for any unilateral change in the volume of work to be done;
 - in order to simplify order placement procedures and ensure transparency and openness in the way procurement is carried out, including by legalising the use of information technologies and encouraging competition when placing orders, devote a separate chapter of the law to electronic bidding: "Placement of orders via open bidding in electronic form";
 - introduce an administrative procedure for requesting documents when filing a complaint.

The proposals for eliminating corruption risks by abolishing or amending the relevant sections of the law include the following: remove the provision on withdrawal of complaints; transfer to the RF Government the powers vested under Article 13, para. 3, of the Law in the federal executive authority carrying out regulation in respect of order placement; clarify the format in which documents must be presented (originals or copies, the procedure for certification), or include a duty to stipulate such requirements in the notice, etc.;

do not apply the notarisation requirement to electronic documents if they have been signed with an electronic digital signature in accordance with the procedures laid down in the RF Law "On electronic digital signature".

During the discussion on the proposed legislative measures to prevent corruption in state and municipal procurement, a number of points came up:

The place and role of blanket provisions in procurement regulation. The participants expressed doubts about the effectiveness of a large number of sub-legislative acts in the field of procurement, describing such regulation as "leading nowhere".

The expert agrees that a notable feature of this law is the fact that it refers to over 20 sub-legislative instruments, without which the law will be unable to operate to the full extent. There are also some areas where, without the appropriate sub-legislative instrument, the law cannot be fully effective. These regulatory legal instruments are now being adopted. Accordingly, the law contains a large number of references to these sub-legislative acts. The experts have sought, where possible, to reduce these provisions, by incorporating the relevant norms directly in statute. There are, however, some issues that cannot be regulated by law, such as the introduction of technical, linguistic and legal requirements in respect of official websites. It is a well-known fact that if only because of their fast-changing nature, no technical requirements can be incorporated directly in law. One sensible option would be to have mandatory anti-corruption evaluations when adopting regulatory legal acts of this kind.

Could the proposed arrangement be adopted by private entities/effective owners, given that procurement occurs in the private sector as well?

In the expert's opinion, the proposed anti-corruption rules should be perfectly applicable, with all our amendments, to the legislation on procurement carried out by natural monopolies.

National anti-corruption strategy in the Russian Federation

A seminar of Russian and international experts was held on 17 October 2006 with the aim of studying the experience of European countries in devising and running national anti-corruption strategies, with **Mikhail Grishankov**, chairman of the Russian Federation State Duma Commission on combating corruption, in the chair.

Drago Kos, chairman of the Slovenian Commission for the Prevention of Corruption and chairman of the GRECO group, presented a report on “Experience of European countries in the sphere of development and functioning of national anti-corruption strategies” (see report in this collection of documents, page 7).

This was followed by a report on “Russia’s experience in developing and implementing national anti-corruption strategies” presented by **Elena Panfilova**, director of the Centre for anti-corruption research and the Transparency International Russia initiative. Her report focused on both purely Russian and international experience in devising national anti-corruption strategies.

She pointed out that the countries where anti-corruption strategies already existed had taken differing approaches to drawing them up: in some cases work to devise such strategies had been initiated by international institutions providing assistance to the countries in question (for example Ghana, Uganda, Zimbabwe) and in other cases by the countries themselves (with the involvement of international organisations and institutions) in their efforts to comply with international anti-corruption standards (for example Estonia, Latvia, Romania, Bulgaria). There were also substantial differences in the content of programmes: all approaches towards setting up national anti-corruption strategies to date could be divided into two basic categories: declaratory strategies and practical strategies.

Declaratory strategies were above all geared to formulating general objectives for combating corruption (such as “lowering the level of corruption and creating a climate of intolerance towards corruption in society”), with an indication of the general thrusts of activity but no laying down of concrete tasks or assigning of specific institutions or officials responsible for carrying out the strategy or clear definition of a system of supervision and accountability for strategy implementation. *Practical* strategies on the other hand differed from the familiar technocratic approach by reducing the declaratory part to a minimum and devoting most of the document to a detailed description of the planned measures, with reference to what purposes those measures served, who was to implement them and by when.

Existing practical anti-corruption strategies from countries around the world were analysed to pick out a number of general, fundamental factors characteristic of those documents, with a few exceptions. Firstly, an anti-corruption strategy had to focus not on the manifestations but on the causes and sources of corruption, not on diagnosis but on specific acts, and not on selective reforms but on a systematic approach towards all institutions. Secondly, an anti-corruption strategy had to be persuasively argued and take account of the country’s specific requirements, it had to be a unified, all-embracing strategy, transparent, objective and targeted. It had to be subject to supervision and assessment, take account of the country’s possibilities and resources and be devised within the country for the country, i.e. it had to be backed as far as possible by national expertise and political will. Thirdly, a national anti-corruption strategy generally incorporated five main thrusts:

- prevention: administrative and regulatory mechanisms for preventing corruption;

- application of the law: legal (legislative) structure for detecting, investigating and prosecuting cases of corruption;
- institutional structuring: strengthening of all elements of the national institutional system;
- anti-corruption education, public participation;
- monitoring and assessment of the level of corruption and the effectiveness of the national anti-corruption strategy.

It was also pointed out that substantial experience had been gained in different countries in implementing each of these main thrusts – both positive and negative – and that not one of the national anti-corruption strategies in any of the countries having adopted one had reached anything like a concluding phase.

Where Russia’s direct experience of systematically combating corruption was concerned, the rapporteur mentioned that there had been attempts to tackle the problem of corruption (some more active, some completely lackadaisical) throughout the whole of Russia’s contemporary history. Unfortunately, all these attempts had never resulted in any kind of systematic approach, apparently for a variety of reasons, some of them as follows:

Fragmentation and unsustained political will

At various stages the country’s top political leadership had initiated anti-corruption campaigns which, more often than not, had been used for purposes totally unconnected with a real fight against corruption. Above all, those leading anti-corruption reforms had continually been replaced, in terms of both staff and state institutions. In such conditions, there was no possibility whatsoever of co-ordinated action.

Weak institutions and an all-powerful bureaucracy

Russia's institutional system had been created virtually from scratch but made heavy use of the bureaucratic officialdom previously in place. The system had fairly rapidly become a complex one, with institutional functions of state authorities becoming subordinate to the specific interests of the bureaucracy. For obvious reasons, the bureaucracy had no interest whatsoever in creating a streamlined anti-corruption system, which might seriously restrict the extent of its influence and opportunities for unlawful enrichment.

Weak civil society

An organised civil society was also a novelty in post-soviet Russia, like the market economy and independent media. It had been quite some time before public organisations had begun to grow at grass-roots level. Up to that time a large number of public sector organisations had been set up and had been securing functions that would normally have been the preserve of civil society institutions in any democratic State. Until very recently, the possibilities available to non-governmental organisations in terms of expert, intellectual and innovative input had been starkly inadequate for initiating and encouraging the setting up of a national anti-corruption strategy in Russia.

The report went on to analyse in detail the specific steps and efforts undertaken by executive and legislative authorities in the Russian Federation on combating corruption. Where the legislative authorities were concerned, the report mentioned the Decree of the Russian Federation President "On priority measures for the prevention of corruption and reduction of budget expenditure in the organisation of state procurement" (no. 305 of 8 April 1997), which was of a highly specialised nature relating to state procurement but nevertheless contained a number of provisions for curbing corruption in the country; it also mentioned a whole raft of anti-corruption bills, none of which had become actual law in the Russian Federation, pointing to the conclusion that attempts, numerous as they were, to create special legislative acts that could underpin a national anti-corruption strategy had all come to nothing.

Another section of the report analysed the activity of the State Duma Commission on combating corruption, which concen-

trated its efforts not on drawing up any kind of unified anti-corruption document but on systematic activity to ratify international anti-corruption texts to which Russia had begun to sign up by the end of the 1990s. As a result the State Duma had adopted laws (subsequently signed by the President, which had brought them into force) "On ratification of the United Nations Convention against Corruption" (February 2006) and "On ratification of the Council of Europe Criminal Law Convention on Corruption" (July 2006). There were plans to prepare ratification of another Council of Europe convention also signed by Russia, the Civil Law Convention on Corruption.

In the analysis of the activities of Russia's executive authorities in combating corruption, the report drew a necessary distinction between the anti-corruption activity of the President and that of the Government of the Russian Federation. President Putin had repeatedly turned to the theme of combating corruption. He had done so in virtually all of his annual messages to the Federal Assembly of the Russian Federation. The most important of these had been in May 2006, with the statement that old-style corruption was the most serious obstacle to Russia's development. In addition, at the G8 summit in St Petersburg in July 2006, President Putin, together with the other participants, had signed a declaration on fighting high-level corruption, calling on the signatory countries to pursue an active fight against corruption among senior officials.

Of the Russian President's other anti-corruption initiatives, the report singled out the setting up in November 2003 (Decree no. 1384 of 24 November 2003) of the Presidential Council for combating corruption. Under the terms of the decree, the Council was to pursue its work through two commissions: a Commission for combating corruption and a Commission for resolving conflicts of interest. However, with its first and last sitting in February 2004, the Council had *de facto* ceased to exist.

Regarding the anti-corruption activity of the Russian Government, it was as broad as it was scattered. The report pointed out in this connection that virtually all anti-corruption initiatives were generated within the Russian Federation Ministry of Economic Development and Trade. They were linked primarily to the implementation of administrative and civil service reform in Russia.

The report reached the general conclusion that the efforts of the Russian Federation's executive authorities to combat corruption were not underpinned by a comprehensive approach and were of an isolated, technical nature and, secondly, that nothing within that activity suggested that the authorities had any kind of basic, generalised strategy for the comprehensive combating of corruption in the country.

The report also looked at anti-corruption initiatives of civil society and specialist institutions: the Strategic Development Centre, the National anti-corruption Committee and many others. All the necessary components of a national anti-corruption strategy for Russia had already been developed and proposed in expert documents. The task now was simply to summarise them, analyse the relevance of each one and formulate some general approaches to building up an effective blueprint for combating corruption in the country.

The following basic principles for framing national anti-corruption policy in Russia were set out in the report:

- An anti-corruption strategy in Russia should be based on a definition of corruption which is wider than just bribery-taking, also implying "abuse of one's official status with a view to procuring personal benefit". The strategy should be aimed at opposing officials' self-serving use of existing laws, rules and procedures as well as depriving certain people and groups of the possibility of creating legal scope for exploiting public authority in their own interests.
- An anti-corruption strategy in Russia should be built into the general effort to strengthen democratic institutions in the country, by ensuring real political competition, primacy of law, media freedom, free competition in business and freedom of development for civil society.
- An anti-corruption strategy should fully reflect all Russia's international commitments in the area of fighting corruption (conventions and other documents).
- In order to implement a comprehensive national anti-corruption strategy a specialised independent body should be set up to co-ordinate activity on each aspect of the strategy: prevention, investigation and enforcement, public education and public involvement, supervision and monitoring, and international co-operation.

- The strategy should be based on a far-reaching analysis of the level and structure of corruption in the country. Corruption in both day-to-day life and business should be measured at federal, regional and municipal levels. Citizens, entrepreneurs and public officials should be surveyed so that – firstly – the extent of corruption is recorded and subsequently monitored and – secondly – priorities can be determined for a specific action plan.
- Development of an anti-corruption strategy must be geared to the fundamental objective of minimising the damage caused to the country by corruption in the following areas: political influence; economic influence; influence in the social sphere.
- In parallel with investigating the current level of corruption and the institutional damage it could cause in key areas, detailed analysis should be carried out of the major causes of corruption and the factors promoting its sustainability. Attempts to combat corruption should also be reviewed, as well as the existing legislative and institutional base.
- The framing of a truly effective and successful anti-corruption strategy calls for an assessment of institutional, human and financial resources available in Russia for combating corruption.
- The main objectives for a national anti-corruption strategy in Russia must be: to develop a unified, consistent, detailed and long-term programme for fighting corruption; to define priorities in fighting corruption; to specify activities, resources, timeframes, responsible individuals and structures in order to meet the priorities; to set up a system for monitoring and supervising implementation of anti-corruption measures (with active involvement of civil society); to establish mechanisms to co-ordinate anti-corruption efforts of all authorities and institutions; to assess existing anti-corruption institutions and laws as well as the effectiveness of previous anti-corruption activity; to set up an ongoing system for independent measurement and assessment of the level of corruption in the country.
- The priorities of an anti-corruption programme should be defined on the basis of broad and open discussion, involving all public and social institutions. The facts about the real situation of corruption in the country must also

be taken into consideration, with a focus on the zones where corruption risks are highest.

- anti-corruption activities should be carried out for all the main components of the strategy simultaneously: prevention, investigation and enforcement, public education and public involvement, supervision and monitoring, and international co-operation.
- anti-corruption activities should be planned so that they directly impact on all the major forms of corruption in Russia: political corruption, including improper use of administrative resources; administrative corruption in day-to-day dealings; administrative corruption in the business sphere; corruption in the area of managing state assets, including state procurement and privatisation; corruption in the judicial system; corruption in law-enforcement bodies and the army; corruption in the social security system.

The concluding section of the report analysed the following risks that were potential obstacles to implementing a comprehensive national anti-corruption strategy: lack of political will on the part of the country's top leadership to carry out serious anti-corruption reforms; a declaratory approach to formulating a national anti-corruption strategy; bureaucratic obstruction to adopting and implementing a national anti-corruption strategy; deviation from the principles of progressive democratic development of the country; failure to ensure real independence of a specialised co-ordinating anti-corruption body; a slant towards legislative and enforcement measures, diminishing the role of preventive action; leaving some areas of state activity outside the scope of a unified anti-corruption programme; inadequate human resource potential to carry out anti-corruption measures; failure to ensure legal protection for the individuals participating in implementation of anti-corruption activities; passiveness and excluding the media from strategy implementation; excluding civil society from strategy implementation.

The seminar participants then engaged in detailed discussion on approaches to setting up a national anti-corruption strategy and a specialised anti-corruption body in the Russian Federation.

In reply to their questions **Mikhail Grishankov** said that the setting up of a specialised anti-corruption body would hinge directly on the political decision

taken by the Russian President and that the State Duma Commission on combating corruption would obviously provide the President with all the necessary information, documentation and data on this question.

In response to numerous requests from the participants, **Drago Kos** described in detail the terms of reference and practical work of the Slovenian Commission for the Prevention of Corruption he chaired. In particular, he pointed out that a special law passed in 2004 guaranteed the Commission's independence and made it subordinate to the Slovenian Parliament. The Commission's main task was to implement national anti-corruption strategy. It checked records of Slovenian state officials' incomes, oversaw implementation of the law on conflicts of interest and monitored legislative restrictions on contacts between state officials and commercial companies. In addition, the Commission monitored compliance with the restriction imposed on gifts to officials in Slovenia (not more than €65 per annum). The Commission presented an annual report to Parliament on the work carried out. In turn, all Slovenia's state authorities were under obligation to submit annual reports on their implementation of the anti-corruption strategy. If it was found that state authorities had failed to comply with the requirements of the national anti-corruption strategy, the Commission could issue them with a formal warning and notify the Slovenian Government of the fact. Another important aspect of the work of Slovenia's Commission for the Prevention of Corruption was to reinforce ethical standards for public administration and analyse risks of corruption in the civil service. The Commission consisted of five members appointed by the Slovenian Parliament at the proposal of the Government, the Supreme Court and the Parliament itself. Its term of office was six years.

Drago Kos pointed out that the work of Slovenia's Commission for the Prevention of Corruption was not without its difficulties and problems, many of which arose immediately after it had been set up. These problems were primarily linked to attempts by the Slovenian Government to restrict the Commission's powers.

He reviewed in detail legislative approaches to setting up specialised anti-corruption bodies in different countries around the world and reiterated that there were various means of guaranteeing that they functioned effectively. In France the

role was fulfilled by the Ministry of Justice, while there were distinct bodies in countries like Lithuania and Latvia. He also stressed that the issues of creating a specialised anti-corruption body, what type it should be and how it was to fit into the country's political system were directly linked to the issue of drawing up and adopting a national anti-corruption strategy and the two aspects could not be considered separately.

The seminar participants went on to discuss different approaches to researching and measuring corruption in a country and also the parameters for determining the state of corruption with a view to framing a national anti-corruption strategy. It was proposed that Russia's national anti-corruption strategy should cover all types of corruption: political corruption, corruption in day-to-day dealings; administrative corruption in the business sphere; corruption in the area of state procurement and privatisation; corruption in the civil service; corruption in social services, etc. It was also suggested that one of the forthcoming seminars be devoted to a more in-depth examination of the problem of assessing the level of corruption in Russia and discussion of the findings of previous studies.

The participants also engaged in detailed discussion of the declaration of income by civil servants, which was one of the most important problems and called, among other things, for the adoption of a national anti-corruption strategy. It was pointed out that although Russia had ratified the United Nations Convention against Corruption with a reservation in respect of Article 20 ("Illicit enrichment") every possible effort had to be made to establish a clear mandatory procedure in the country for the declaration of income by officials and members of their families, together with a corresponding system of strict checks on their declarations. Active media involvement was also necessary to highlight the income declaration issue and encourage public condemnation of state officials who refused to publish their incomes.

The representatives of the Chamber of commerce and industry, the Russian Federal anti-monopolies department and the "Opora Rossiy" association informed the seminar participants of the work carried out by their organisations to combat corruption and put forward a number of proposals for the practical implementation of a national anti-corruption strategy where interaction between au-

thorities and business and the drawing up of specialised departmental anti-corruption texts were concerned.

The overall conclusion from the seminar's findings was that, as of October 2006, Russia did not have a unified comprehensive national anti-corruption strategy, this being defined as a clear action programme set out in a document officially adopted and approved by society, aimed at reducing the level of corruption in the Russian Federation through the effective elimination of its causes and integrated use of adequate enforcement measures as well as through active anti-corruption education. Attempts to create such a strategy for Russia to date had been fragmented and unco-ordinated. The main reasons for the lack of a clearly formulated anti-corruption strategy in Russia (reasons that could hamper the adoption and implementation of such a strategy in the future too) were: lack of sustained political will to carry out systematic anti-corruption reforms in the country, the systemic and institutional nature of corruption, bureaucratic obstruction and weak democratic institutions (political competition, media, civil society). Furthermore, no comprehensive assessment of the level of corruption and the contributing factors had been carried out in Russia. There was a pressing need for Russia's legislative and executive authorities and civil society institutions to devise a national anti-corruption strategy on the basis of the international commitments entered into by Russia and the general principles already devised for an approach towards framing an anti-corruption strategy in the country.

The topic of a national anti-corruption strategy, and more specifically the drawing up of recommendations for creating one, was pursued at a seminar of experts on 22 February 2007.

Introducing the seminar, the chairman of the Russian Federation State Duma Commission on combating corruption, **Mikhail Grishankov**, said that devising and adopting a national anti-corruption strategy in Russia was one of the most topical issues, not only because it was necessary to bring Russian legislation into line with the requirements of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption, but also because the planning of specific anti-corruption activities hinged on the adoption of such a strategy, and these ranked highly on the country's agenda at present.

Elena Panfilova, director of the Centre for anti-corruption research and the Transparency International Russia initiative, then presented her report on the bases for national anti-corruption strategy in the Russian Federation. Her proposed approach to framing a national anti-corruption strategy for Russia reflected the basic principles of the approach set out in the United Nations Convention against Corruption and also in the documents related to anti-corruption efforts drawn up in the last ten years in Russia. Accordingly, for her report on the bases for drawing up a strategy she had drawn on several provisions and principles set out in draft federal laws "On combating corruption" (2002) and "On the bases of anti-corruption policy" (2001). Further material had come from numerous expert studies on ways of combating corruption in Russia, and particularly from seminars run under joint projects of the Russian Federation State Duma Commission on combating corruption and the Council of Europe.

The report on the bases for national anti-corruption strategy was in two sections: a general section, considering the necessity of combating corruption, defined corruption, formulated the objectives, aims and principles of the strategy and gave references for the legal and regulatory basis and strategy implementation machinery, and a section focusing on the main areas of combating corruption in Russia, reflecting specific actions and measures.

In the first section it was noted that attaining the goals of sustainable and progressive development of Russia was impossible without a substantial reduction in the level of corruption on both the federal and regional scales. At present corruption was a serious threat to the proper functioning of public authority, rule of law, democracy, human rights and social justice, slowing down the social and economic development of Russia.

The official statistics, and also data provided by NGOs specialising in the relevant field, the findings of scientific, sociological and criminological surveys and data provided by law-enforcement agencies, judicial statistics bodies and media statements testified to the fact that the corruption phenomenon affected the political and institutional, economic, judicial and law-enforcement, educational and instructional fields, as well as the social welfare system, medical and investment spheres and international trade, and seriously damaged the state system of Russia itself. An anti-cor-

ruption strategy should take into consideration the full range of instances of corruption and be geared not to correcting individual shortcomings in the functioning of regional authorities but to eliminating corruption and its causes as far as possible from public administration practices.

anti-corruption strategy was primarily focused on reasons for and sources of corruption rather than on its manifestations, on concrete actions rather than on diagnosis, on a systematic approach to all institutions rather than on selective measures. It was to be implemented systematically and progressively throughout the territory of the Russian Federation, involving all public and municipal authorities. It should be geared as far as possible to the specific corruption situation in Russia and draw on a set of continually renewed data in this area. The strategy should be a unified document accessible to all and assuming public involvement in its fine-tuning and implementation and in the supervision and assessment of its implementation, with due regard to Russia's available capacities and resources.

For the framing of a national anti-corruption strategy the rapporteur proposed that corruption be defined in the broadest sense, as any exploitation of power or functions for personal benefit. The Council of Europe Criminal Law Convention on Corruption defined corruption according to the form of its perpetration – active and passive bribery. Active bribery was "the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any [of its] public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions". Passive bribery was "the request or receipt by any [of its] public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions". The United Nations Convention defined the following instances of corruption: bribery of national public officials, bribery of foreign public officials and officials of public international organisations, embezzlement, misappropriation or other diversion of property by a public official, trading in influence, abuse of functions, illicit enrichment, bribery in the private sector, embezzlement of property in the private sector, laundering of proceeds of crime and obstruction of justice. Russian legislators

now had the task of enshrining that broad concept in domestic legislation.

The objective of the strategy should be to reduce the level of corruption in Russia by eliminating its causes, promoting intolerance of corruption by co-ordinating efforts and resources of different public authorities and society, and developing a unified long-term anti-corruption policy in Russia in order to remove a threat to the rule of law and democracy and barriers to the economic and social development of the State. The aims of the strategy should be to: strengthen citizens' trust in public and municipal authorities; ensure that the main instrument for regulating the life of society and the State is the rule of law; ensure transparency of functioning of public and municipal authorities and free access of citizens to information on the activities of public and municipal authorities; strengthen real political competition and reduce the threat of weakening democratic institutions; observe the principle of division of powers and their interaction strictly in accordance with the Russian Constitution and the legislation of the Russian Federation; increase tax revenue and strengthen the budget sphere; strengthen market economy institutions by implementing efficient competition mechanisms; improve the quality and accessibility of state and municipal services for citizens; reduce operational business costs and so achieve increased competitiveness and lower costs of goods and services; develop and strengthen civil society institutions.

The principles proposed for strategy implementation entailed general principles such as: the rule of law, inevitability of criminal liability for crimes committed; presumption of innocence; equality of all citizens before the law and ensuring free access to justice; respect for the fundamental rights and freedoms of citizens; transparency and accountability of state and municipal authorities for their activities, and also special principles: consolidation of legal and administrative anti-corruption mechanisms; partnership of state and municipal authorities with civil society institutions and the private sector; priority of preventive anti-corruption measures; inadmissibility of restricting access to information on instances of corruption, corruption risks and anti-corruption measures.

The legal basis for strategy implementation was formed by the Constitution of the Russian Federation and federal laws and

codes of the Russian Federation, notably: the RF Criminal Code; the RF Code on Administrative Offences and other legal and regulatory acts. A special legal and regulatory framework was being developed in order to implement the priority measures within the main areas of anti-corruption efforts in Russia. All measures were carried out on the basis of unified methodologies, whose application was mandatory at federal, regional and local levels. Federal and regional authorities, municipal authorities, civil society organisations and institutions and the private sector could all take a role in developing methodology. Methodologies for implementing the national anti-corruption strategy were subject to public discussion and subsequent approval in accordance with the established procedure. An individual action plan was developed for each strategy implementation measure, with an indication of specific activities, methodology, organisation or person in charge, timeframe for implementation and resources, necessary for specific actions. Strategy implementation measures could be tested through pilot activities followed by a review of their results and, depending on the results, finalisation of the methodology for its large-scale implementation. The list of measures to implement anti-corruption strategy in Russia was not exhaustive and could be amended and supplemented in accordance with the established procedure.

The following main areas of combating corruption in Russia were singled out:

Creation of a specialised anti-corruption body

The main tasks of this body were to: ensure and co-ordinate implementation of anti-corruption efforts, co-ordinate efforts to bring prosecution for corruption offences, develop anti-corruption policy measures, carry out monitoring and assessment of the level of corruption and effectiveness of implementing anti-corruption measures, as well as overseeing the implementation of anti-corruption activities.

Setting up of a comprehensive system of prosecution for corruption offences

This set of measures included bringing Russian legislation into line with the standards of the United Nations Convention against Corruption and the Council of

Europe Criminal Law Convention on Corruption with respect to extending and more closely defining the list of corruption offences and establishing corresponding punitive sanctions, as well as introducing a common definition of corruption in Russian legislation.

Prevention of corruption

Prevention of corruption in Russia would be implemented by identifying and eliminating conditions and reasons causing and encouraging corruption. This entailed eliminating conflicts of functions, when state and municipal authorities ran checks, exercised supervision and provided services simultaneously. It was also necessary to strictly define the procedures of public regulation, deprive officials of opportunities to make decisions at their own discretion, and depersonalise interaction between public servants and citizens and organisations (reducing the number of personal contacts while resolving problems). The fight against corruption in the activities of state and municipal authorities had to be carried out with consideration of the key areas of administrative reform, namely by: regulating the functions of state and municipal authorities; improving decision-making procedures; reforming the system of selecting, training and assigning staff; supervising conflicts of interests; improving the law-making procedure; introducing mandatory anti-corruption screening of current legislation as well as draft laws by a specialised anti-corruption body; cutting down administrative barriers; strict control and transparency of real estate deals, privatisation and the renting out of state and municipal property.

Anti-corruption education

There had to be a special effort to promote negative views of corruption in society. Corruption had to be regarded by society as a type of dangerous anti-social behaviour. In many cases corruption could be prevented if citizens took a more responsible attitude in exercising their legal rights. First and foremost the public had to be made aware of corruption risks and of their rights. The goal of anti-corruption education was to create such a pattern of public behaviour when people would choose a lengthier but legal solution to their problem rather than simply bribing officials. Special training programmes for

adults, students and pupils, focusing on corruption risks, ways of fighting corruption and conduct geared to preventing corruption, would be developed and implemented for that purpose.

Assessment and monitoring of corruption in Russia

Monitoring and assessment of corruption would be based on surveys run to ascertain and measure: public perception of the level of corruption in state and municipal authorities; state and municipal officials' perception of the level of corruption in state and municipal authorities; business entities' perception of the level of corruption in state and municipal authorities; federal and regional markets of corruption; corrupt practices at federal and regional levels; mechanisms of corrupt dealing; structure of corruption in Russia as a whole and in the regions; factors facilitating corruption; effectiveness of implementing measures of the national anti-corruption strategy. Corruption had to be assessed on an annual basis in order to track trends in the development of corruption processes.

Specific high-priority measures for implementing the anti-corruption strategy in Russia were also covered in the report, which gave a detailed description of 26 technological and instrument-based measures geared to the planned reduction of corruption in the country, underpinned by an implementation programme with an indication of those responsible for carrying out each of the measures and the timeframes for completing the tasks set.

Elena Panfilova concluded by considering two further issues: the potential risks to strategy implementation and the practical problem of deciding on the format for a specialised anti-corruption body. On the first point, she said that a strategy could not be fully implemented under the following circumstances: lack of political will to implement the strategy at the highest level of executive and legislative authority; absence or ineffectiveness of the specialised anti-corruption body; inclusion of over-ambitious activities in the anti-corruption programme, which could not be fulfilled; too much emphasis on legislative and law-enforcement measures over preventive actions; creation of no-go areas for anti-corruption measures; absence of mechanisms to protect those implementing anti-corruption measures; lack of civil society involvement or participation in implementing and monitoring the strategy.

On the second point she pointed out that experts had expressed the view at previous seminars that at this stage of developing anti-corruption activity in the country it was necessary to set up a specialised anti-corruption body covering the transitional phase. More specifically, this would be a prototype unified co-ordinating body involving as many interested authorities and civil society representatives as possible, which would prepare a co-ordinated proposal on the format and objectives of the agency that would be responsible for combating corruption in the country.

Presenting a report on principles for framing a national anti-corruption strategy, **Drago Kos**, chairman of the Slovenian Commission for the Prevention of Corruption, pointed out that fundamental precepts had been identified at previous seminars which had to underpin the formulation of the objectives, tasks and practical content of an anti-corruption strategy in Russia. The opinion of a broad circle of experts taking part in the discussions had been instrumental in this. Also of great importance was the information on the start of work by the Inter-departmental working group set up by Decree of the Russian President to prepare proposals for implementing the provisions of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption in Russian Federation legislation. This raised hopes that the proposals made in the previous phase of the project would take concrete form fairly soon, as most of them concerned the alignment of both Russian anti-corruption legislation and practices with international standards.

Drago Kos spoke at length about the setting up of a specialised anti-corruption body in Russia, reiterating the importance of the issues he had raised at previous seminars, and first and foremost the importance of the legal arrangement for creating such a body. Were it to be created not by a law but a presidential decree or government instruction, the agency could be susceptible to outside pressure and influence.

Moreover, it had to be very clearly determined exactly which entity would provide the foundation for the national strategy. Given that it was a national strategy to be applied throughout the Russian Federation, there were two possibilities: the State Duma or the President, because this would give the strategy sufficient authority and power for it to be carried out.

As its name suggested, a strategy was a strategic document but it also had to be a flexible one. If the body responsible for carrying it out decided that it needed to be adjusted, improved, supplemented or otherwise cut down, the necessary changes would have to be made. For that reason it had to be considered from the outset what system to adopt for the further development and fine-tuning of the strategy. It was also necessary to preserve the full abundance of ideas generated by existing work on the project. The way had to be cleared for sectoral strategies. It was most improbable that all corruption problems could be resolved with one anti-corruption strategy, and provision had to be made for incorporating sectoral and local strategies, focusing on corruption problems in different areas, with these sectoral and local schemes corresponding to the base parameters of the overall strategy. The strategy therefore had to contain provisions for its future development, guaranteeing potential for evolution and refinement as it was being implemented, and also opening the door to the incorporation of other regional and departmental proposals.

One of the most complex tasks was to incorporate a definition of corruption in national legislation. Even the international legal instruments were not united on this issue. The Council of Europe Civil Law Convention on Corruption was possibly better than the others in this respect, with its very detailed description of bribery.

But corruption was actually a far broader concept, also involving cronyism and nepotism, favouritism, conflicts of interest, clashes of interest and so on, which made corruption very difficult to define. There were a number of models that could be used and various possibilities for defining corruption. The first of these was based on the principle of loyalty or trust, and the best example of this was the corruption bill which had failed to pass into law in Great Britain. Formulating a definition of corruption along these lines for the needs of Russian legislation could be a first concrete step towards framing a national anti-corruption strategy.

As far as monitoring and supervision of such a strategy were concerned, there had to be provision for some ramifications and sanctions for failure to implement it. And, of course, there had to be action plans for implementing the strategy, with as much detail as possible.

Russia also had to pass law incorporating both preventive and punitive measures

for corruption offences. While it was true that much was already covered by different laws within the Criminal Code, which could not be altered, something could simply be added to make everything clear and specific. When the Inter-departmental working group finished its work in August 2007, the text of such a law would be drawn up. It was possible that some of the components of the national anti-corruption strategy would be directly inserted into it. Indeed, the law might directly down the bases of the strategy.

Implementation of a national anti-corruption strategy in Russia might be in several phases, beginning with the presidential decree on the specialised body, then a law laying down the bases for combating corruption and then practical, specialised strategies to be prepared by the specialised body. This would launch a process that would go on for a fairly lengthy period.

By complying with this handful of principles, Russia would meet all the requirements of international conventions and have all the basic instruments for successful implementation of the strategy.

In the ensuing discussion the seminar participants stated their views concerning the content and principles for the framing of a national anti-corruption strategy for Russia. In particular, **Mikhail Grishankov** reiterated that decisions on the strategy's content would largely hinge on the findings of the Inter-departmental working group. The creation of this group was itself a major step forward in systematic anti-corruption efforts in Russia. The necessity of devising an anti-corruption strategy was quite clear. At present there was a whole host of isolated ideas which had emanated from different structures and departments in the country. These efforts had to be given unity and work had to be more systematic.

Mikhail Grishankov saw the question of adopting an anti-corruption law as a separate issue. Any such law would have to very clearly be a framework law, laying down a number of common definitions. In recent times numerous heads of departments had asked to be given a definition of corruption, which they believed would open up a great many possibilities for taking action. And while their position was not fully borne out by evidence, if society was calling for a definition of corruption and practitioners and theoreticians were eager to draw one up that would serve as the yardstick for assessing numerous activities,

it had to be done. The Commission for combating corruption had prepared a draft law "On combating corruption" laying down a set of general provisions. Obviously, all the ideas contained in this draft law required meticulous examination, including within the community of experts.

The seminar participants also gave detailed consideration to the correlation between a national anti-corruption strategy and local, regional and departmental strategies. In line with the blueprint for administrative reform in the Russian Federation for the period 2005-2008, all of the Federation's administrative departments and regions were preparing departmental and regional strategies and were ideally to have completed them by 1 January 2007. Some had already done so. It was important to note that the Ministry of Economic Development and Trade was also planning to prepare model departmental and regional anti-corruption strategies in the near future in order to assist those which had not managed to complete the task on their own and to bring all the strategies into line. It was stressed that it was necessary to achieve a balance and an optimum combination between the national strategy and the strategies worked on at regional and local level. Within the strategy a specialised body had to be assigned the task of ascertaining which regional and local bodies already had a strategy, analysing them and passing them on for information at regional and national level.

Another specific discussion topic was the complex issue of fusing the requirements laid down for national anti-corruption bodies in international instruments with the specific characteristics of Russia's domestic legislation. Here it would obviously be necessary to consider which matters fell within the competence of individual Russian authorities in accordance with the Constitution of the Russian Federation and along what lines. Under the Constitution, the setting up of federal executive authorities lay within the competence of the President, who set up ministries, federal services and agencies. Depending on the essence of the issues involved, the Russian Government could also decide on such matters, but this mainly applied to authorities dealing with strictly social and economic questions. The prerogative remained with the President. If the anti-corruption body was an advisory body, without any state powers, it could be created by the State Duma. Following discussion, the seminar participants con-

cluded that it was necessary to carry out detailed analysis of the whole of Russia's legislation to ensure that new anti-corruption mechanisms and instruments fitted harmoniously into the existing collection of legal and regulatory acts.

The most hotly debated point was the format of the specialised anti-corruption body. The question was raised as to whether it had to be a separate, new authority or whether the tasks and functions of a specialised anti-corruption body could be dealt with by one of the existing law-enforcement agencies in Russia. Whichever the case, the key issue was how that body would fit into the existing system of state authorities. At present, presidential decrees stated that combating corruption was the task of the Ministry of Internal Affairs, the FSB to a certain extent and the Russian Financial monitoring agency. Where the Prosecutor General's office was concerned, there was a law, since the powers of the *Prokuratura*, on the basis of

the Constitution, were transcribed into federal law, giving it a special place within the system of authorities. The Federal Law "On the *Prokuratura*" made the Prosecutor General's office responsible for co-ordinating the anti-corruption activity of federal executive authorities. It was possible, with the passing of anti-corruption legislation, that it would also be assigned anti-corruption activities and, accordingly, the Prosecutor General's office would play more of a leading role in decision-making where combating corruption was concerned.

Under the United Nations Convention against Corruption it was not compulsory to create a new body, since the convention spoke in general terms of the necessary existence of an anti-corruption body. It might already exist. But Articles 6 and 36 mentioned two different functions of specialised anti-corruption bodies: prevention and enforcement. A specialised body could combine those powers. But if one or other of Russia's existing federal authorities

could handle those tasks, there was no point in creating a separate body. At the same time, if it was clear from detailed analysis that none of the existing bodies would be able to fully cope with the tasks of both preventing and directly combating corruption, the need to create a new, separate body would be undeniable.

In conclusion, the seminar participants agreed that the main purpose of a national anti-corruption strategy in Russia had to be not so much to define punishments for acts of corruption but rather to bring about substantive and far-reaching changes in attitudes to the problem of corruption on the part of state authorities and officials and also in public perceptions. For that reason, when considering the three components of the strategy: prevention, repression and education, the right balance had to be struck between them, with each being assigned clear content easily grasped by society.

Corruption in education in the Russian Federation

As part of the project to develop legislative measures to prevent corruption in education, Russian and European experts gathered to hear and discuss reports by Quentin Reed, the lead consultant from the Council of Europe, Larissa Sannikova, senior scientific expert, Institute of State and Law, Candidate of Law, and Elvira Tapalina, senior scientific expert, Institute of State and Law, Candidate of Law.

In the report by the Council of Europe expert, **Quentin Reed**, “Corruption in education systems: an overview of problems and solutions”, the author looked at the problem of corruption in education systems based on a review of existing literature and his own insights.

Identifying the main types of corruption encountered in education systems, Mr Reed divided them into five main areas: policy decisions, financing, procurement, personnel and the educational process itself.

As the report points out, corruption can distort a range of decisions affecting the educational system: first, corruption reduces the share of public expenditure allocated to education; second, major investment decisions may be corrupted and third, corruption can also occur in the accreditation of educational institutions.

All states with educational systems must address the challenge of how to allocate money (generally from a central ministry budget) to schools so that it is used in the optimum and most rational manner. There are several obvious risks of corruption: first, many reports stress the impact of lower teacher salaries in providing a context in which corruption may flourish; second, as funds are allocated from the centre to regions, educational authorities and schools, they may be siphoned off by officials or politicians; third, schools may provide inaccurate information to central authorities in order to secure a larger portion of funds than they are entitled to;

fourth, management of funds *already* received by a school may also be subject to corruption involving teachers and staff responsible for handling and/or spending money.

As in any other sector where significant amounts of money are spent on public contracts, procurement in the education sector is an area that is vulnerable to corruption. Although procurement is intimately related to the financing of education, it is conceptually a separate issue as it involves decisions on how to spend funds that have already been allocated.

Corruption may occur not only to influence the recruitment or career decisions of school heads and administrators, but also to influence the activities of inspection bodies, one of whose functions is to ensure that teachers perform their duties adequately.

One fundamentally important area of corruption in education, and the one that probably affects pupils/students most directly, is corruption within the educational process itself. Stated very generally, such corruption occurs at school level where admission, quality or quantity of education, test results and exam results are determined or influenced by criteria other than professional standards, merit and ability. One of the aims of introducing a Unified National Examination for school graduation is to reduce corruption.

In Mr Reed’s view, policies to prevent corruption in education can be divided into two main categories: general policies are policies and measures to reduce corruption that apply not only to the education sector; sector-specific policies are those that are specifically designed for use in the education sector.

There are three main types of general policies that are important also in the education sector: legislation to tackle bribery and abuse of official powers, public pro-

urement regulation and budget procedures.

Officials in government institutions responsible for managing and financing the education system must be subject to clear laws against bribery, with appropriate sanctions for violations. Moreover, teachers and administrative staff in educational institutions are in principle public officials, while teachers in private educational institutions perform functions that are of vital importance to the public interest.

Procurement in education is in principle the same as procurement in any other area, and ensuring it functions with as little corruption as possible means pursuing the same policies and measures as are needed for procurement in general. It is important to note that procurement in education may raise specific challenges, in particular the fact that price may often not be the most important criterion for allocating contracts. This is particularly the case for textbooks and other teaching materials, where it is vital for clear quality standards or criteria to be defined for procurement purposes.

Given the importance of education as a proportion of public budgets, general budget procedures will have a major impact on the potential for corruption in budget decision-making. In particular, it is important that major decisions on investment in the education system are open to public scrutiny, and that the process of budget approval is designed to minimise the potential for undue influence.

A very useful instrument for assessing the integrity of education budgets are Public Expenditure Tracking Surveys (PETS). PETS gather information on the funds allocated by central government to education and compare this to information from lower levels of the system – regional education authorities and schools themselves – to assess to what extent the funds allocated actually reach their destination.

Specific policies can be applied in the following areas: accreditation of educational institutions; financing and audit; personnel systems; admission procedures; testing and examinations; gifts and contributions; professional standards and codes of conduct; restrictions on private tutoring; complaint mechanisms and feedback; disciplinary procedures and sanctions; governance; inspection bodies.

Corruption in the process by which educational institutions are accredited is likely to have a direct effect on the quality of educational institutions themselves, as objective criteria are pushed aside by bribes. Corruption in accreditation is a problem that applies primarily to private educational institutions that want to enter the system, at both secondary and higher education level.

Two main areas of education financing are of crucial importance in influencing the vulnerability of the system to corruption. The first is simply the level of financing. Where education is allocated insufficient resources, one likely result is a decrease in equal access to quality education – and, often, an increase in corruption as bribery may become an important means for securing increasingly scarce places. In addition, the effect on teacher salaries is likely to be disproportionate, as other items of spending are less easy to reduce, and a fall in salaries is likely to increase the incentives for teachers to engage in corrupt practices. Russia still lags behind other central and eastern European countries in the proportion of GDP spent on education.

The second and fundamental issue is the method by which schools and educational institutions are financed. Two main types of funding exist, with countries occupying various positions on a continuum between them: input-based treasury funding and formula-based funding.

Traditionally, education systems in Europe have tended to allocate resources from a central education ministry on the basis of estimates of "inputs" submitted by schools – such as average class size, number of classes per subject, number of buildings, etc. Russia (as of 2004) still operated essentially with the model outlined above. Funding determined in this way creates a large area for schools to attempt to "inflate" various inputs – for example by overstating the size of classes, buildings, etc.

Increasingly, governments finance education through formula funding, defined as "a rule for allocating resources to schools

that is universally applied to all schools of a given type within an educational jurisdiction". This means that a school receives funds based on a formula, that is itself mostly derived from the number of pupils and their age; hence, formula funding is often synonymous with "per capita funding". Once the school receives the funds, it then controls some or all spending decisions. Relating funding to the number of pupils/students means that governments determine funding on an objective basis that is available and understandable to the public. If information on school performance is readily available, this also makes schools much more accountable to parents. In particular, it also reduces the scope for the provision of incorrect information in order to secure more funds. Last but not least, schools have an incentive to use funds more efficiently, as they make spending decisions themselves and are rewarded for saving money in one area – which is not the case under an input-based financing system.

Formula funding with decentralised control over spending is also likely to lead to less corruption, at least corruption involving central bureaucrats.

In order to minimise corruption of the personnel system, it is first and foremost vital to establish clear, objective and transparent criteria and procedures for teacher recruitment, placement, promotion and remuneration. Second, educational institutions should have in place established standard procedures for recording and evaluating the performance of teachers. Third, governance institutions should be sufficiently representative of all stakeholders – especially parents – that they can play a role in detecting teachers who do not perform; such bodies should have the authority to either address such problems directly (for example by initiating sanctions) or notify them to the appropriate inspection body.

In primary and secondary education, the full implementation of a formula funding system is likely to help, as it will provide more resources to schools which become more popular, thereby helping to satisfy demand for places at good schools and reducing the pressure for corruption to determine which pupils are admitted. Admission to higher education institutions should be based primarily on the criteria of standard nationwide examinations.

Testing and examinations are a key point of vulnerability to corruption within the education system. In order to minimise

the possibility of teachers awarding marks in return for unauthorised benefits, the following principles should be applied in the design of tests and examinations: key tests and examinations at primary or secondary school (in particular leaving examinations) should be standardised nationally; important examinations should ideally be based on more than one type of assessment; the use of oral examinations should be restricted; the criteria and procedure for marking examinations should be clearly laid out and binding.

In addition to the establishment and implementation of clear objective criteria for admission and examination, there should be clear guidelines for the acceptance of gifts by teachers from pupils or parents, and also for the acceptance of financial contributions by educational institutions. Such guidelines should include a requirement for educational institutions to publish any financial contributions they receive.

A vital component of any education system is the existence of clear and widely disseminated professional standards. The value of such standards and codes in creating a culture and norms that are resistant to corruption should not be underestimated.

Private tutoring is a phenomenon that is often linked with corruption, for example being paid for by parents or students as a condition for receiving good marks or other treatment to which pupils or students should be entitled anyway. It may be worth considering specific restrictions on private tutoring, for example, the registration of tutors or prohibitions on private tutoring by teachers of students they already teach in school.

As in other public organisations, it is important for schools to have established mechanisms for complaints to be submitted by parents or pupils/students.

Often, the first step in addressing suspicions of misconduct (including corrupt behaviour) are internal disciplinary proceedings within the education institution. It is important that such proceedings are codified and conducted by a sufficiently broadly representative body. Likewise, where wrongdoing is confirmed, the body conducting proceedings needs to have the authority to impose adequate sanctions.

For any of the policies and measures described in this report to be implemented properly, it is vitally important that schools and universities have adequate governance structures.

In order to supervise whether schools fulfil the standards by which they are bound, European countries have established professional school inspectorates, responsible for carrying out regular checks. In post-communist countries school inspectorates tend to be weak and focused on checking formalities rather than the substance of school activities. It is vital to provide inspectorates with sufficient resources.

In his conclusion, Quentin Reed stresses that corruption in education is not a one-dimensional phenomenon, but takes many different forms affecting different components of the education system. A fundamentally important lesson from the experience of advanced countries in building educational systems is that none of the policies and measures outlined in the report will be effective alone; each of them requires a certain context.

An anti-corruption evaluation of Russian legislation in the field of education has been prepared by two Russian experts – Larissa Sannikova and Elvira Talapina – independently from one another. The object of the exercise was to identify any provisions in the law which directly or indirectly created incentives for corruption or had the potential to do so. The main focus of the evaluation were the Federal Law "On education" of 10 July 1992 and the Federal Law "On higher and postgraduate professional education" of 22 August 1996. When evaluating these laws, attention was also given to the relevant provisions of the RF Civil Code and the Rules on the Provision of Paid Educational Services, as approved by RF Government Order No. 505 of 5 July 2001. When carrying out their study, the experts used the methodology for assessing legislative acts for corruption risks (Centre for Strategic Research, World Bank, 2006).

As a result of the assessment, the legislation on education was found to contain a number of corruption risk factors:

- absence of liability for violations;
- excessive freedom in sub-legislative rule-making;
- wide scope of discretionary powers;
- definition of competence using the word "may";
- existence of conflicting legal provisions; juridical and linguistic corruption risks;
- existence of gaps in the law; failure to adopt regulatory legal instruments; lack of public scrutiny of the activities of educational institutions; excessive requirements for persons wishing to

exercise their rights; lack of competitive (bidding) procedures; lack of administrative procedures.

Absence of liability for violations

The RF Law "On education" contains no specific measures that would enable educational institutions and officials to be held liable for violating the rights of students and pupils and other unlawful actions; there is no effective mechanism in place to ensure that wrongdoing does not go unpunished (*Article 4, para. 3; Article 51, para. 7; Article 32, para. 3*). The same is true of the Federal Law "On higher and postgraduate professional education" (*Article 3, para. 2*).

Excessive freedom in sub-legislative rule-making

The RF Law "On education" contains a relatively large number of provisions authorising the RF Government to adopt sub-legislative acts: *Article 5, para. 7, Article 7, para. 3, Article 10, para. 3, Article 12, para. 5, Article 13, para. 2, Article 16, paras. 4 and 5, Article 20, para. 1, Article 28, para. 1, Article 33, para. 1, Article 34, para. 1, Article 35, para. 3, Article 41, para. 3, Article 42, para. 2, Article 50, para. 10, Article 52.1, para. 3, Article 53, para. 2*.

Other provisions grant rule-making powers to state authorities (federal state authorities and state authorities of subjects of the Russian Federation, as well as local self-government bodies) – *Article 7, para. 1, Article 13, para. 2, Article 15, para. 8, Article 28, Article 29, Article 31, Article 33, paras. 1 and 9, Article 34, para. 1, Article 41, para. 4, Article 52.2, para. 2*.

Founders of institutions have responsibility for a fairly wide range of issues. In the case of federal educational institutions established by the RF Government, the RF Ministry of Education and Science acts as founder. As a result, some important areas of educational activity are governed by the decisions of this Ministry when in fact they ought to be governed by statute.

The Federal Law "On higher and postgraduate professional education" contains a relatively large number of blanket provisions conferring powers on the RF Government (*Article 5, paras. 3 and 6, Article 6, para. 8, Article 10, paras. 4, 6 and 7, Article 11, para. 6, Article 16, para. 3, Article 19, para. 4, Article 21, para. 3, Article 24, para.*

2, Article 33, para. 2). There are also provisions that grant powers to the federal executive agencies (*Article 6, para. 9, Article 7, para. 2, Article 8, para. 3, Article 11, para. 2, Article 15, para. 4, Article 16, para. 3, Article 17, para. 4, Article 20, para. 2, Article 23, para. 5, Article 24, para. 3*), with a distinction being made between federal executive agencies, federal educational authorities and their respective powers.

With so many references and blanket provisions, Russian legislation in the education sector may be said to provide merely a declaratory framework, that leaves it unclear how citizens are to exercise their rights in this area.

Wide scope of discretionary powers

The powers of public bodies are defined extremely loosely. Use is made of the term "ensure" which in practice admits of various interpretations, from a passive co-ordinating or approving role to active intervention in the activities of educational institutions (*Article 14, para. 1, Article 15, paras 1 and 5, of the RF Law "On education"*).

The powers of local self-government bodies are of a declaratory nature only and can be exercised discretionally: *local self-government authorities shall organise and co-ordinate (Article 18, para. 5, of the RF Law "On education")*.

Licensing powers can be exercised as discretionary ones, as *Article 33, para. 13, of the RF Law "On education"* suggests only one outcome of the licensing activity in cases where there are no grounds for denying an application: *the founder may appeal to a court of law against a negative conclusion based on an expert evaluation and any resultant refusal to issue a licence*.

The implementation of national and regional components of state educational standards in higher and postgraduate professional education by higher educational establishments on a contractual basis with the relevant executive agencies of RF subjects creates incentives for doing corrupt deals under these contracts (*Article 5, para. 4, of the RF Law "On higher and postgraduate professional education"*).

Granting discretionary powers, namely the right to conduct performance reviews, means that these can be applied to selected institutions, creating incentives for corruption (*Article 10, para. 6, of the RF Law "On higher and postgraduate professional education"*).

Definition of competence using the word “may”

The competence of executive agencies and officials is defined in terms of what they “may” or “have the right to” do in a number of places in the RF Law “On education” (Article 30, para. 6, Article 33, para. 23, Article 37, para. 6, Article 38, para. 1), and in the RF Law “On higher and postgraduate professional education” (Article 7, para. 4, Article 16, para. 9).

Article 47, para. 4, of the RF Law “On education” contains several corruption risk factors: *The founder or local self-government bodies may suspend the entrepreneurial activity of an educational institution if it is detrimental to the educational activity stipulated in its Charter, pending a court decision on the matter.*

The use of the term “may” here opens the way for arbitrary and possibly corrupt decisions in relation to educational institutions. Either the decision to suspend entrepreneurial activity should be assigned to the courts or an exhaustive list of grounds for suspending the entrepreneurial activities of educational institutions should be drawn up.

The provision also confers alternative powers on public authorities and individuals (if the founder is an individual); the procedure governing suspension is unclear (time-limits, decision-making procedure) and the activity may also not be suspended.

Existence of conflicting legal provisions.

Article 47, para. 5, of the RF Law “On education” conflicts with Article 3.12 of the Code of Administrative Offences. Article 47, para. 5, grants founders and local authorities the right to suspend the entrepreneurial activities of educational institutions if they are detrimental to the educational activities provided for in their charters, pending a court decision on the matter. Under Article 3.12 of the Code of Administrative Offences, however, suspension of activity is an administrative penalty, which may be imposed only by a court.

Juridical and linguistic corruption risks

In Article 33, para. 10, of the RF Law “On education”, reference is made to “average statistical indicators”, without any further indication as to what the term implies. As

this concept forms the basis of the expert evaluation when issuing licences to educational institutions, it can be interpreted by enforcement agencies in a variety of ways and may thus be used for corrupt purposes.

It is also unclear which body is responsible for calculating the average statistical indicator and introducing methodology for its calculation. In this context, the requirements of the expert evaluation can be both overstated and understated, giving the expert evaluation committee a very wide margin of discretion.

Existence of gaps in the law

The RF Law “On education” is, generally speaking, a framework law. One consequence of this is that the legislation examined here contains no legal mechanisms by which participants in educational activity can exercise their rights. The rights of those participants are merely declaratory, as the rights of some do not correspond to the duties of others.

For example, chapter V “Social guarantees for the exercise of citizens’ rights to education” does not stipulate or regulate the duties of educational institutions and teachers, so the civic rights to education referred to in this same chapter have no legal back-up.

Something else that is missing from the legislation on educational activity is a mechanism that would enable citizens to exercise their right to equal access to education.

One of the components of this mechanism can be created by recognising contracts for the provision of educational services as public agreements. They would then fall within the scope of Article 426 of the RF Civil Code which:

- requires the service provider to contract with all requesting parties on equal terms;
- provides for the possibility of going to court, to force the other party to conclude a contract if it unreasonably refuses to do so.

Under para. 13 of the Rules on the Provision of Paid Educational Services, an educational institution is required to conclude a contract for providing paid educational services if it is able to provide the requested service, without favouring one customer over another. The Rules, however, make no mention of the possibility of legal action to force an educational institu-

tion to enter into a contract with a customer if the institution refuses to do so.

The laws on education are silent on some essential parameters and conditions for providing paid educational services: the procedure for engaging in paid educational activity, the nature of paid educational services, the terms of the contract on the basis of which the activity is to be performed, etc. (Article 45 of the RF Law “On Education”, Article 29 of the Federal Law “On higher and postgraduate professional education”).

The mechanism for providing paid educational services is dealt with at sub-legislative level, in the Rules on the Provision of Paid Educational Services, as approved by RF Government Order No. 505 of 5 July 2001. These Rules, moreover, deal with the provision of paid educational services only in a very general sense, leaving the same gaps as before (para. 26 of the Rules, for example, fails to stipulate the procedure whereby supervision is to be exercised). The main corruption risk factor in these Rules is the practice of filling gaps in the law by means of regulatory legal instruments issued by executive agencies.

The existence of these gaps gives rise to a number of corrupt practices which involve students and parents being billed for illicit charges:

- charging a separate fee for taking or re-sitting tests and examinations;
- charging for tutoring, when the tutor is actually the teacher himself/herself;
- providing additional paid educational services within school hours, making it
- almost impossible for students (in particular schoolchildren) to refuse them.

The procedure for ensuring that educational institutions fulfil the terms of their licence (Article 33, para. 14, of the RF Law “On education”) leaves a gap in the law, which can be filled either by regulatory instruments issued by the supervisory authority, or by that authority’s discretionary practice.

The issuing of licences for engaging in educational activity is not addressed in law (Article 33, para. 7, of the RF Law “On education”). The gap is filled by a sub-legislative instrument: RF Government Order No. 796 of 18 October 2000 “Approving the Regulations on the Licensing of Educational Activity”. Under Article 28, para. 11, of the Law on Education, however, establishing a licensing procedure is a matter for the Russian Federation (not the executive agencies). Generally speaking, it is advisable that the basic principles of licensing in

the education sector be enshrined directly in law.

Failure to adopt a regulatory legal instrument

Article 7, para. 4, of the RF Law “On education” provides for the adoption of a federal law establishing the basic provisions for national educational standards in primary general, basic general and secondary (complete) general education and the procedure for their development and approval.

At present, however, the development of educational standards is governed by the RF Government, which delegates many areas to the federal executive agencies. Regulation thus occurs at a lower level and the appropriate regulatory legal instrument is not adopted. This in turn hampers the implementation of Article 43, para. 5, of the RF Constitution which requires the Russian Federation to establish federal state educational standards, and maintain different forms of education and self-education.

There are no legal instruments governing the procedure for the granting to, and repayment by, citizens of state educational loans, as referred to in Article 28, para. 16, of the RF Law “On education”. This omission makes for a highly “individual” approach to granting educational loans and, hence, corruption.

The provisions of Article 5, para. 5, of the Law on Education providing for the adoption of federal laws establishing for federal state educational institutions the categories of citizens to whom social assistance shall be granted, the procedure for granting such assistance and its scope, have not been fully implemented. Specific social support measures appear only in the Federal Law “On higher and postgraduate professional education” (Article 16, paras. 3 and 3.1). As regards students of other educational institutions, no provision for social support exists in federal law. It is felt that this could hamper the implementation of Article 43, para. 2, of the RF Constitution which guarantees universal, free access to pre-school, general secondary and vocational secondary education in state and municipal educational institutions and enterprises.

Article 28, para. 6, and Article 34 of the RF Law “On education” provides for the adoption of federal laws establishing the procedure for the creation, reorganisation

and liquidation of federal state educational institutions.

These provisions have not been implemented at federal level.

Lack of public scrutiny of the activities of educational institutions

Under Article 41, para. 8, educational institutions may receive additional funds, including through voluntary donations and targeted contributions from individuals and/or legal entities. In practice, however, voluntary donations from individuals often mean voluntary-compulsory charges imposed on parents of students.

It is important to recognise that the charges levied in educational institutions are due primarily to underfunding and cannot always be classed as corruption. There is no corruption if the money is spent exclusively on meeting the needs of the institution. Because there is no legal mechanism for monitoring the way funds are used, however, instances of abuse on the part of heads of educational institutions are not uncommon.

In order to prevent possible abuses, it seems sensible to require educational institutions to inform students and/or their parents about how the extra funds raised are spent, either by publishing the information or by presenting students and/or their parents with an annual financial report.

Excessive requirements for persons wishing to exercise their rights

Erecting excessive barriers to entry to educational establishments at all levels is a major corruption risk factor. Nowadays testing (or other forms of selection) is used for admission to educational institutions practically everywhere. However well-intended, such testing poses another barrier, and corruption becomes a way of overcoming it.

What is needed, therefore, is a legislative ban on all admission tests and the practice of using their results to determine admission to state and municipal educational institutions in pre-school, general and primary vocational education.

Lack of competitive (bidding) procedures

The Federal Law “On higher and postgraduate professional education” provides for state support in training specialists for priority areas of scientific research in higher and postgraduate professional education (Article 1, para. 5). It is not specified, however, how matters relating to state support are to be dealt with. It seems sensible that such support should be allocated solely on the basis of competitive bidding procedures and that this should be clearly stated in law.

Lack of administrative procedures

The Federal Law “On higher and postgraduate professional education” does not specify the procedures for agreeing/co-ordinating the setting-up of branches of federal state higher educational institutions (Article 8, para. 3) or for the academic council’s decision to create the post of president of a higher educational institution (Article 20, para. 3.1).

Nor does it deal with the procedure for approving the Regulations on performance review committees and their membership (Article 12, para. 4, of the Federal Law “On higher and postgraduate professional education”).

It is unclear how executive agencies, executive-administrative bodies of city districts and academic councils of higher educational institutions are to consider and act on recommendations made by NGOs and state-public associations within the system of higher and postgraduate professional education (Article 15, para. 5, of the Federal Law “On higher and postgraduate professional education”).

Larissa Sannikova has observed that in Russian educational institutions, the practice of extorting money from students or their parents in the form of gifts for teachers and tutors is relatively widespread. In Article 575, para. 2, of the RF Civil Code, it is permitted to give gifts to staff of educational and other similar institutions provided their value does not exceed five times the minimum wage. In Ms Sannikova’s view, this rule carries a risk of corruption as a similar rule with regard to state employees has already been widely recognised as corruptive and is to be removed from the RF Civil Code. Simply removing such provisions from the Civil Code is clearly not

enough, however. Ms Sannikova suggests introducing a strict ban on all gifts, irrespective of their value, to the above-mentioned categories of persons, so that the public will start to see such practices as a corruption offence.

In the course of the discussion, certain of the experts' proposals drew criticism. Doubts were expressed about the wisdom of banning the use of admission test results for entry to state and municipal educational institutions, on the ground that students needed to have particular natural qualities and abilities to study in specialist educational institutions (e.g. music or sports academies). Quentin Reed argued in favour of allowing *gymnasias* and other specialist educational institutions to keep the right to employ competitive methods of selection.

Another subject of heated debate was Ms Sannikova's proposal that the giving of gifts to teachers and other staff of educational institutions should be banned, irrespective of their value. Vladimir Yuzhakov expressed the fear that scrapping the existing right of workers in education, health-care and other budget-financed institutions to receive gifts would do nothing to reduce corruption, and merely swell the list of practices that were deemed to constitute an offence. Ms Sannikova said

that at present, the maximum permissible value of gifts was equivalent to the average wage of workers in the budget-financed sector. Instead of raising the pay of budget-sector workers, the state was thus effectively legalising the system whereby workers lived off gifts. In order, therefore, to eradicate such practices and develop public intolerance to them, it was proposed that a strict ban be introduced, with no mention, however, of possible criminal consequences. Quentin Reed felt that the maximum permissible value of gifts in Russia was too high, but also that to ban all gifts would be too extreme. In his view, there ought to be sensible limits on the value of gifts and the maximum threshold should be reduced through legislation so as to avoid the danger that even very small gifts might become grounds for prosecution.

The proposal that educational institutions should shift to a system of financing based on the number of students was criticised as many rural schools would in that case be threatened with closure. The experts agreed that these fears were justified, with Quentin Reed pointing out that "per capita funding" was only one of the ways in which transparency could be ensured in the financing of educational institutions.

Overall, Quentin Reed considered that the application of the methodology for identifying corruption risks could not identify the key problems unless it was carried out together with a wider assessment of the functioning of Russia's education system as a whole. First and foremost, there was a need to carry out an analysis of the financing of the education system, including an assessment of the funding needed, in order to ensure that the educational services envisaged by Russian legislation could be provided in practice. There was also a need to use public expenditure tracking surveys to identify any financial leakages. On the subject of funding analysis, it was very important to carry out research on the incidence of corruption in the education sector and on the various types of informal, unofficial payments for services in teaching and education in general.

In the light of the anti-corruption evaluation and after discussing its findings at meetings with the European expert, Quentin Reed, the Russian experts, Larissa Sannikova and Elvira Talapina, developed a set of proposals for improving the legislation so as to prevent corruption in education.

The creation of the anti-corruption body in the Russian Federation

A conference of Russian and international experts was held on 19 December 2006 with the aim of studying best practices of European countries in the creation and functioning of a specialised body responsible for co-ordinating national efforts in the sphere to prevent and combat corruption.

When opening the seminar, the chairman of the Russian Federation State Duma Commission on combating corruption, **Mikhail Grishankov**, informed the participants of his involvement in the Octopus project conference held in Strasbourg in November where discussion had focused, among other aspects, on steps taken to comply with the requirements of international anti-corruption conventions in different European countries. Mikhail Grishankov also pointed out that a meeting, chaired by the Russian President, Vladimir Putin, had been held on 21 November, with discussion also covering questions of anti-corruption efforts of law-enforcement agencies and problems of complying with the standards laid down in the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption, particularly in relation to the framing of Russia's anti-corruption strategy. Clearly, the issue of creating a specialised body or bodies responsible for co-ordinating state measures to combat and prevent corruption is highly topical.

Alexander Seger, head of the Council of Europe's Economic crime division, pointed out in turn that the most important prerequisite for successfully combating corruption was political commitment and support, and stated his belief that the necessary political backing and will for serious measures now existed in the Russian Federation. He also welcomed the steps taken in the Russian Federation, particularly the ratification of the United Nations Conven-

tion against Corruption and the Council of Europe Criminal Law Convention on Corruption, as well as the Russian Federation's forthcoming accession, in the next two months, to the Group of States against corruption (GRECO).

The Chairman of the Slovenian Commission for the Prevention of Corruption and Chairman of the GRECO group, **Drago Kos**, then presented the base report on "Experience of European countries in the sphere of creation and functioning of a specialised body responsible for the co-ordination of national efforts in the sphere of combating and prevention of corruption", analysing the fundamental requirements of international law regarding specialised anti-corruption bodies and the ways in which those requirements had been met in different countries (see report in this collection of documents).

In particular, he pointed out that, to combat corruption successfully, it was necessary, among other things, to implement the twenty guiding principles for the fight against corruption ratified in the relevant Council of Europe resolution. Those principles established the key requirements for anti-corruption bodies and included: independence and autonomy, freedom from improper influence, adequate resources and close specialisation.

Furthermore, these principles allowed more than one anti-corruption body to be set up in a country. This had to be determined by the real political situation and legislation of each individual country. Anti-corruption bodies might take solely punitive or preventive measures or combine these with other measures. But, whatever the case, they had to implement the measures laid down by the anti-corruption policy of the country in question.

In some countries, the legislators had concluded that it was sufficient to have ef-

ficient police bodies and a good state prosecution system to combat corruption. But recent experience showed that that was not enough. It was precisely for that reason that the United Nations Convention against Corruption had been adopted. As a result, many countries had begun to rethink their attitudes towards creating specialised anti-corruption bodies.

To create an effective and genuinely useful anti-corruption body it was firstly necessary to determine and identify the concrete problems faced by the country in question. It also had to be clarified what type of corruption was involved, what kind of corruption was being encountered by citizens and businessmen. Was it across the board, taking in different sectors of state administration, was it large-scale in terms of the amounts involved? It was also necessary to analyse the experience of existing institutions and determine whether these problems could be resolved by creating new bodies or by improving efforts through better co-ordination between existing bodies and closer inter-departmental co-operation.

When considering these issues States could reach the conclusion that it might require specialised anti-corruption bodies, in which case they had to make such bodies truly effective.

Firstly, they had to decide on which legal basis anti-corruption bodies were to be set up. In one country, to take the example of Serbia, anti-corruption bodies had been created for the sole purpose of meeting the requirements of international organisations and the international community. A so-called anti-corruption committee had been created simply by governmental decree. As soon as the committee had started its work, the government itself had immediately begun to exert pressure on it and it had only been public

vigilance that protected it. But the sequence of events itself showed that a specialised anti-corruption body had to be created on the basis not of sub-legal acts but on a foundation of law, a legal act adopted by parliament, in order to reduce the risk of that body being destroyed by political forces not happy with its work. Unfortunately, that was exactly what was happening in a number of countries at present, notably in Slovenia.

Secondly, the *nature of the future body* had to be determined. Would its function be repressive, clamping down on and punishing existing abuses, or would it be to prevent corruption? If there was no particular need for a body with a repressive function, then there was no point in creating one. If the public previously trusted the existing law enforcement agencies and the judicial system, then it was very risky to create another, new repressive anti-corruption body with investigative functions. The division of labour between existing law enforcement agencies and the new body would generate problems which might be very difficult to resolve.

Thirdly, it was necessary to be clear as to the *status of a future anti-corruption body within the system of state authorities*. This body was required to be independent, but of course that did not mean absolute independence. Independent though it might be, an anti-corruption body had to be accountable to someone. Usually such bodies were subordinate to a legislative body and its activity had to be meticulously regulated, especially if it was assigned repressive functions, particularly if these were linked to any degree with restrictions of human rights. A system had to be devised to supervise its activity to ensure that rights were not violated.

Fourthly, prior provision had to be made for effectively settling the problem of *guaranteeing adequate resources for such a body*. In some countries remarkable anti-corruption bodies had been created with the most wide-ranging functions. They had been granted independence within the social structure but they had not been given the necessary resources. And if such a body existed only on paper, it was not going to solve the problem. Specialised anti-corruption bodies had to have their own independent budget. They had to be able to take independent action to involve the top specialists in a given field in their work. Adopting legislative acts and creating anti-corruption bodies on paper alone proved little in terms of political will. It was

the allocation of the necessary funding that demonstrated political will, because without funding such bodies would be of no use.

There were a number of other conditions linked to the activities of anti-corruption bodies: *objectivity, professionalism, impartiality, honesty, integrity, effectiveness*. If those conditions were not met, these bodies' activities could very easily be discredited and restructuring or even abolition might result. This had already happened in countries like Albania, Macedonia, Serbia and Slovenia. For the time being specialised anti-corruption bodies in Latvia, Lithuania and Estonia were still free from this kind of pressure.

The GRECO Group of States against Corruption analysed the functioning of such bodies and assessed their activities. In the GRECO group's work it had emerged that the so-called transition countries were very keen to create and develop anti-corruption bodies. On the other hand, long-standing members of the European Union which also had high levels of corruption gave no consideration to the necessity of creating specialised anti-corruption bodies (Italy, Spain, Greece). It was obvious that double standards existed between the older members of the EU and its new members. It was equally clear that in most countries there was a shortage of well-trained staff specialised in combating corruption.

Analysis of the overall experience of creating and operating specialised anti-corruption bodies in Europe suggested that all countries had attempted to one degree or another to create some semblance of one: in some cases solely with repressive functions, in other cases solely with preventive functions and then others with mixed functions.

One well-known example was the repressive activities of anti-corruption bodies in Italy, in the "Clean hands" operation, where the role of anti-corruption body had been fulfilled by a group of prosecutors based in Milan. They had investigated the activities of nearly three thousand suspects, including members of parliament, and 500 or so of these had been convicted for corruption. When the political powers had turned against this activity, it had to be wound down. A similar scenario had been played out in Romania, where the activities of an independent anti-corruption body had been substantially restricted after it had ruffled the feathers of the highest echelons of the country's political leadership. As far as preventive bodies

were concerned, examples included the commissions in France, Slovenia and a number of other countries.

But the most effective bodies were those fulfilling both repressive and preventive functions, such as those set up in Croatia, Latvia and Lithuania.

On the whole, it could be concluded that the creation of specialised anti-corruption bodies was a good indicator of a country's willingness to combat corruption, but if those bodies did not receive the necessary resources for their work, their creation would mark just another failure in the fight against corruption.

Next to speak, on the report on the issue of establishing in Russia a specialised body or bodies responsible for co-ordinating national efforts on combating and preventing corruption was **Elena Panfilova**, director of the Centre for anti-corruption research and the Transparency International Russia initiative. At the request of participants at the previous seminar, she had focused her report not only on problems directly related to the setting up of an anti-corruption body in Russia but also on analysis of data assessing the level of corruption in the Russian Federation.

The rapporteur began by pointing out that the need to set up a specialised anti-corruption body in Russia was not only due, but long overdue, as the task of actively and comprehensively combating corruption set in 2006 by the country's highest political leadership could not be fulfilled if the current situation was maintained. By December 2006 virtually all more or less significant authorities in Russia had publicly stated their determination to actively participate in combating corruption. Anti-corruption initiatives had been launched by the State Duma, the Russian Federation Government, the Prosecutor General of the Russian Federation, the Higher Court of Arbitration of Russia, the Russian Ministry of Economic Development and Trade, the Russian Ministry of Finance and so on. All those initiatives had in one way or another set the objective of an instrumental fight against corruption but were totally unco-ordinated and chaotic.

It was interesting that, in line with the requirements of the Blueprint for administrative reform for 2006-2008 approved by a Russian Federation Government order of 25 October 2005, the constituent entities of the Federation and Russian state authorities were devising and adopting province-wide and departmental anti-corruption strategies respectively. While this was un-

deniably a constructive process, it was very far removed from any systematic effort, and a paradoxical situation was now being created in which an anti-corruption strategy and plan would exist in individual provinces and state departments but not at national level.

Elena Panfilova then considered the requirements of international anti-corruption legislation regarding the creation of specialised anti-corruption bodies and emphasised the importance in the Russian context of implementing the principle of independence. She also made a detailed analysis of the arguments in favour of combining efforts to prosecute acts of corruption with preventive efforts and set out the basic task facing Russia, which, after transposing these framework requirements to the real institutional and political situation in the country, would have to select the most suitable and effective type of specialised anti-corruption body, which on the one hand would pursue activity fitting harmoniously into the existing legal and institutional system and on the other hand would be as independent as possible from political circumstances and not become a travesty.

The first step had to be a detailed analysis of the state of corruption in Russia. The rapporteur presented a vast array of data from different sources, characterising the level of corruption in the country. According to research by the Public Opinion Foundation as of November 2006, 67% of Russians believed that corruption would never be eradicated from the country, and 79% believed that even raising salaries paid to officials would not help. 28% of Russians had encountered extortion on the part of public servants in recent years, and practically the same number of respondents had given bribes to officials.

In reply to the question as to where the need to "grease palms" arose most frequently, police and the customs were indisputably in the lead (52%). 45% of Russians mentioned traffic police, 33% medical institutions, 26% the prosecutor's office and courts, 21% military registration and enlistment office, 18% education, the same number local authorities; 12% believed that the biggest bribe-takers were federal level officials. It was noteworthy that 70% of Russians condemned bribe-takers, but at the same time most of them would willingly accept bribes if given. Those condemning people who gave bribes were in the minority: 38%.

According to VTSIOM data from November 2006, only 1% of citizens lived in blissful ignorance of such a widespread phenomenon as corruption; the same amount believed that corruption in the country was non-existent. The survey revealed that 78% of respondents defined the level of corruption as "high" and "very high". 43% of respondents believed that the main cause of corruption was greed and immorality of Russian officials and businessmen; 35% inefficiency of the State and the imperfections of law; 18% the low level of legal culture and the low number of law-abiding citizens among the population. The majority (38%) saw the improvement of the legal base as a solution to the corruption problem. 16% of respondents called for the introduction of the death penalty for corrupt officials, while 36% called for the confiscation of property for bribe-takers and members of their family and 26% wished cuts in public service staff. On the other hand, 11% of respondents favoured legalising the least socially damaging types of corruption, such as tips or gifts to doctors and teachers.

According to the Transparency International Global Corruption Barometer for corruption worldwide (November 2006), the share of Russians and members of their family giving bribes in the previous year had amounted to 8% and 9% respectively. Russians viewed the corruption level in personal and family life as very low (1.9 out of 4 points, with 1 equalling zero level of corruption). However, if Russians were asked not about personal bribes, but about corruption in the areas they had to deal with, the situation became clearer. They encountered most corruption when they dealt with police (4 points out of 5 with the average at 3.5). Russians were also very much aware of corruption in legislative authorities, the legal system and business (all at 3.9).

Elena Panfilova also presented data on corruption in the business world (from research by the World Bank, World Economic Forum and European Bank of Reconstruction and Development), with special emphasis on the findings of the National transparency rating of procurement, which showed that by the end of 2006 the total market loss from procurement at overstated prices would reach about 650 billion roubles. At the same time public agents' losses would reach about 300 billion roubles – more than 45% of the total amount. The weight-average price deviation, characterising discrepancy between

market and actual procurement prices averaged 16.1%.

In the light of all these data the rapporteur concluded that corruption in Russia was systematic in nature and all institutions of public administration were affected by it, including law enforcement agencies and the judicial system.

Her conclusion pointed to the need to create a specialised anti-corruption body capable of implementing an integrated anti-corruption programme incorporating three fundamental components: prosecution for corruption offences, prevention of corruption offences and anti-corruption education.

For such a three-pronged approach, the activity of an anti-corruption body had to be based on the following principles:

Legitimacy

The establishment of a national specialised anti-corruption body had to be enshrined by a legal act specifying its objectives, functions, structure, accountability and principles of formation and financing.

Independence

A specialised body had to be independent from the executive authorities of the Russian Federation. Given the specific character of Russia's political and governmental system, it should be accountable only to the Federal Assembly of Russia or the Russian President.

One-man management

Considering the particularities of political and management practice in Russia it was necessary that, firstly, management of the specialised anti-corruption body should not be combined with a management post in any other public institution (law-enforcement agency), and, secondly, the specialised anti-corruption body should be headed by a single manager whose appointment had to be ratified by the Federal Assembly of the Russian Federation (one or both Chambers) at the proposal of the Russian Federation President.

Collegiality

Strategic planning of the specialised anti-corruption body's activity and organisation of its day-to-day operation should be coordinated by a collegial entity (council, board) consisting of highly qualified representatives of state authority, law-enforcement agencies, judicial system and civil society organisations. The principles of forming such a collegial entity should be clearly defined by a legal prescriptive act

establishing a specialised anti-corruption body.

Representation

A specialised anti-corruption body should employ (both for management purposes and day-to-day activity) on a full-time basis the most highly qualified personnel from the federal ministries, departments, regional authorities, specialised civil society organisations and expert institutions having experience in combating corruption. The legal prescriptive act establishing the specialised anti-corruption body should define its staffing principle so that it would include representatives of the Presidential Administration, the Russian Federation (RF) Government, the State Duma of the RF, the Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, the Prosecutor General's Office of the RF, the RF Ministry of Internal Affairs, the RF Ministry of Justice, the RF Ministry of Economic Development and Trade, the RF Ministry of Finance, the Central Bank of the RF, the Federal Financial Monitoring Service, the Chamber of Audit of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes.

Co-ordination

The legal prescriptive act establishing a specialised anti-corruption body should stipulate mandatory co-ordination of activity of state authorities, Russian Federation courts and law-enforcement bodies with the specialised anti-corruption body in order to implement a national anti-corruption strategy.

Transparency

The activity of the specialised anti-corruption body should be as transparent as possible. The legal prescriptive act establishing such a body should make binding provisions for accountability of this body to the public. This could take the form of mandatory detailed annual reports as well as monthly or quarterly progress reports.

Independent financing

In order to avoid pressure on the specialised body from any state or representative authorities, it was necessary to stipulate a form of financing which would be independent as far as possible – e.g. a separate fixed budget line.

Utilising international experience

When setting up the specialised anti-corruption body it was necessary to thoroughly study, analyse and, where possible and relevant, apply international experience in establishing and running such specialised bodies, especially with regard to ensuring independence, determining the number of employees, operational functions etc.

Phasing

Given that the main forces of institutional anti-corruption activity were currently scattered and there was still no common understanding in Russia on what a specialised anti-corruption body should do, the creation of such a body should be planned in several phases.

In the first phase it would be expedient to set up a temporary co-ordination body, consisting of all the interested stakeholders (representatives of the Presidential Administration, RF Government, the State Duma of the RF, Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, Prosecutor General's Office of the RF, RF Ministry of Internal Affairs, RF Ministry of Justice, RF Ministry of Economic Development and Trade, RF Ministry of Finance, Central Bank of the RF, Federal Financial Monitoring Service, Chamber of Audit of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes). Following the same basic principles in its work, the co-ordination body would prepare the way for the creation of the specialised anti-corruption body and devise a national anti-corruption strategy as well as resolving some of the most acute anti-corruption issues in the short term.

Elena Panfilova went on to consider different structures for a specialised anti-corruption body, which would have to closely comply with the key principles underpinning its activity and the main objectives of national anti-corruption strategy in Russia: prosecution for corruption offences, prevention of corruption offences and anti-corruption education.

In the course of discussion, the seminar participants focused on the problem of correlating the tasks of devising national anti-corruption strategy and creating a specialised anti-corruption body. **Mikhail Grishankov** pointed out that, since there was a real demand for proposals for the devising of a national anti-corruption strategy from the country's highest level of

political leadership, the seminar participants had to examine or devise all possible variants to be derived from international experience. It was particularly important in this respect to look at examples of countries where the implementation of anti-corruption programmes and the work of anti-corruption bodies had encountered specific problems.

The representatives of the Prosecutor General's office of Russia explained to the seminar participants how they viewed the problem of organising anti-corruption efforts in Russia. They held the opinion that, since the United Nations Convention against Corruption provided for the possibility of creating a specialised anti-corruption body within the framework of existing law-enforcement agencies, the Prosecutor General's office of Russia could perfectly well take on this function, as it already dealt with many of the tasks to be handled by a specialised anti-corruption body in the framework of its existing powers. To illustrate their point, they gave a detailed description of the work of the Russian Federation Prosecutor General's office where the prevention of corruption was concerned. This function had been made a stronger focus of attention within the Prosecutor General's office in recent times and over a six-month period in 2006 a great many checks had been made to ensure that officials at different levels complied with the restrictions and prohibitions laid down in Russian legislation regulating civil service. They also expressed the view that in the Prosecutor General's office itself this was not such a pressing issue as in the other law-enforcement agencies.

The seminar participants then discussed in detail the question of comparability of data on the level of corruption in Russia. It was said that it was difficult to assess the real state of affairs in the country solely on the basis of public opinion surveys. Factual information from the state authorities themselves was lacking or incomplete in a great many cases. It was pointed out that a state authority and public and specialist organisations should sit down together and explore the possibility of carrying out joint research into the state of corruption in the country using an agreed methodology.

Further discussion centred on the issues of guaranteeing the independence, including in financial matters, of a specialised anti-corruption body, the necessary involvement, including through widespread information, of society and business

in the debate on the systematic combating of corruption and also departmental approaches by different state authorities towards combating corruption. There was specific discussion on the question of priorities, with emphasis on the great importance of devising a system of priorities since, with corruption in Russia on such a broad and all-embracing scale, any attempt to tackle every aspect straight away would result in total chaos.

In conclusion, the seminar participants agreed that, in a context where corruption in the country was of a systematic nature and penetrated all spheres of state administration and the economy, Russia needed to create some form of specialised anti-corruption body. In the context of the situation that had come about, where anti-corruption efforts in their present form were dispersed throughout numerous authorities, ministries and departments, and there was no clear understanding or agreement, in society as a whole or within the state authorities, as to the form, founding principles and objectives of a specialised anti-corruption body, it was now necessary to set up a co-ordination body for combating corruption which could handle the following tasks in the short term: systematisation of available data on the level of corruption in Russia; in-depth investigation into the extent to which authorities in Russia were contaminated by corruption (federal ministries and departments, regional and municipal authorities); gathering of information from federal authorities regarding proposals for ways and means of combating corruption and best practices of departmental and regional anti-corruption programmes; preparation of legislative initiatives aimed at introducing domestic legislation in line with the standards of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption as well as other legislative initiatives geared to fighting corruption within the activities of authorities and institutions; ongoing monitoring of anti-corruption efforts; devising of proposals for the format, functions and composition of a specialised anti-corruption body; devising of proposals for the framing of a national anti-corruption strategy; holding of departmental and public expert debate on the corresponding proposals; drawing up of a legal prescriptive act governing the activity of a specialised anti-corruption body in Russia; drawing up of a legal prescriptive act laying down a national anti-corruption strategy. The tem-

porary co-ordination body had to include representatives of the Presidential Administration, RF Government, the State Duma of the RF, Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, Prosecutor General's Office of the RF, RF Ministry of Internal Affairs, RF Ministry of Justice, RF Ministry of Economic Development and Trade, RF Ministry of Finance, Central Bank of the RF, the Federal Financial Monitoring Service, Chamber of Audit of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes. The creation of a continuously functioning specialised anti-corruption body in Russia had to be founded on operating principles of legitimacy, independence, one-man management, collegiality, representation, transparency, co-ordination, independent financing and utilising international experience.

A seminar of Russian and international experts was held on 25 April 2007 with the aim of presenting recommendations on the creation of a national anti-corruption strategy as well as a specialised body responsible for co-ordinating overall state activity in the area of preventing and combating corruption in the Russian Federation.

Introducing the seminar, the Council of Europe expert **Quentin Reed** stressed that it was extremely important to consider the question of concrete recommendations on the creation of a specialised anti-corruption body in the context of the fundamental thrusts of framing a unified national anti-corruption strategy in Russia. The nature of the strategy would very much hinge on the type of body assigned to implement it.

Elena Panfilova, director of the Centre for anti-corruption research and the Transparency International Russia initiative, presented the base report on the principles and format for creating a specialised anti-corruption body in Russia. She said that, by Presidential decree of 2 February 2007, an Inter-departmental working group had been set up to prepare proposals for implementing the provisions of the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption in Russian Federation legislation. The aim of the working group was to devise proposals, some of them concerning the framing of national anti-corruption strategy and the principles and objectives underlying the functioning of a specialised anti-corrup-

tion body. And while it was impossible to guess what conclusions and findings the inter-departmental group would ultimately arrive at, it could be assumed that, firstly, it would draw inspiration in its decisions from the obligations entered into by Russia under the international conventions it had ratified, and, secondly, it would have to choose a format for the body from three known options for organising anti-corruption efforts: a separate specialised anti-corruption body; a body incorporated into one of the existing law-enforcement agencies; or an advisory/co-ordination body within one of the highest state authorities.

The rapporteur began her report with a brief overview of the international requirements for a specialised body and the possible variants for implementing a blueprint for a specialised anti-corruption body in Russia.

Elena Panfilova pointed out that Article 6 of the United Nations Convention against Corruption stipulated that

"each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

- implementing anti-corruption policy and, where appropriate, overseeing and co-ordinating the implementation of that policy;
- increasing and disseminating knowledge about the prevention of corruption.

Each State Party shall grant such a body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable it/them to carry out its/their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided. The State Parties shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption."

Moreover, Article 36 of the United Nations Convention against Corruption stipulated that

each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement. 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 be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Accordingly, the United Nations convention unequivocally stated that in each country having ratified the convention, including in Russia, an anti-corruption body had to perform a dual function: preventing corruption and prosecuting acts of corruption. This was obviously a primary consideration in choosing the format of a specialised anti-corruption body for Russia.

The requirements of an anti-corruption body were also clearly specified in Article 20 of the Council of Europe Criminal Law Convention on Corruption, which stipulated that countries signing up to the convention

“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 respective State, enabling them to carry out their functions effectively and free from any undue pressure. The States Parties shall ensure that the staff of such entities have adequate training and financial resources for their tasks”.

The format and functioning of a specialised anti-corruption body were set out in even greater detail in Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption. It was stated that countries had to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoyed the independence and autonomy appropriate to their functions, were free from improper influence and had effective means for gathering evidence, protecting the persons who helped the authorities in combating corruption and preserving the confidentiality of investigations. Furthermore, countries had to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks.

In most countries a branch of state authority specialising exclusively in the integrated resolution of corruption problems and independent of other authorities had

yet to be created. However, in those countries where such anti-corruption agencies had been set up, they had impressed by the effectiveness of their work.

When considering the possible variants for implementing a blueprint for a specialised anti-corruption body in Russia, the first consideration was whether existing law-enforcement agencies could be used for this purpose. It was generally thought that the most appropriate authority or rather system for tackling the problem of corruption in Russia is the Prosecutor's Office or *Prokuratura*.

Indeed, there were a multitude of undeniable factors to bear this out. Firstly, under Article 151 of the Russian Federation Code of Criminal Procedure on investigative jurisdiction, a preliminary investigation into crimes against a state authority or the interests of a state service or services of local authorities (chapter 30 of the Russian Federation Criminal Code, pp. 285-293), obviously including corruption offences, was undertaken by investigators from the *Prokuratura*. Secondly, the organs of the *Prokuratura* enjoyed special status within the system of state authorities and were described as a “single centralised structure in which lower-ranking prosecutors are subordinate to higher-ranking prosecutors” (Article 129 of the Constitution of the Russian Federation). Thirdly, the special procedure for appointing the Prosecutor General of the Russian Federation, namely by the Federation Council at the proposal of the Russian Federation President (in accordance with indent “f” [“e” in the original Russian] of Article 83 and indent “i” [“з” in the original Russian] of the Russian Federation Constitution) guaranteed the independence of the *Prokuratura* in carrying out investigations.

At the same time there were doubts as to whether Russia's *Prokuratura* alone would be capable of fulfilling the objectives set for an anti-corruption body by the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. It was stated in the previously quoted part of the convention that such bodies must be responsible for: a) implementing anti-corruption policy and, where appropriate, overseeing and co-ordinating the implementation of that policy; b) increasing and disseminating knowledge about the prevention of corruption. To date there had been no sign of *Prokuratura* bodies devising a fully-fledged anti-corruption policy that would go beyond the framework of

traditional punitive actions. The same point could be made about public education linked to preventing corruption, considered by many within the *Prokuratura* as an ineffectual activity falling within the remit of other departments.

And yet in Federal law no. 2202-1 “On the *Prokuratura* of the Russian Federation” of 17 January 1992 (subsequently amended and supplemented) there were distinct indications of anti-corruption tasks designated in the United Nations and Council of Europe conventions. Article 8 paragraph 1 of the Law stipulated that the Prosecutor General and the prosecutors subordinate to him shall co-ordinate the crime-fighting activity of internal affairs bodies, Federal security service bodies and other law-enforcement agencies. Under Article 4 paragraph 2 of the Law, organs of the *Prokuratura* “shall inform the public of the state of lawfulness”.

In other words, if anti-corruption tasks were indeed assigned to Russia's *Prokuratura*, it would have to raise awareness of the scale of the corruption problem to the level indicated in the United Nations Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. This supposed, among other things, that the *Prokuratura* would take serious steps to prevent corruption, and not only to prosecute acts of corruption, as well as actively participating in the devising of a national anti-corruption strategy.

Creating a separate special anti-corruption department was considered to be a good means of combating corruption in a situation where the law enforcement agencies themselves were substantially contaminated by corruption and, as a result, there was no public confidence in them to carry out such a task. In the majority of States with developed economies specialised anti-corruption agencies were not set up, but the problem of corruption was not of a systematic nature in those countries. For the other countries, where the spread of corruption had hit a critical level that affected the normal, effective functioning of authorities and reached virtually all spheres of public life, the idea of creating a special anti-corruption structure remained highly topical. However, in practice, in most States the continuing trend was to unsuccessfully rely on the traditional law-enforcement agencies or create fanciful administrative institutions to deal with corruption problems, assigning responsibility for anti-corruption measures to a human

rights ombudsman, for example, as was the case in Uganda or Papua-New Guinea.

When discussing the need to set up an autonomous anti-corruption body, various specialists often voiced similar arguments. Some of the arguments in favour of creating a specialised body were as follows: high-quality investigations and other good results were ensured by professional specialisation; a high level of autonomy and profile of a body countered the likelihood of corruption among its officials; specialisation in a given problem area engendered a more thorough approach to work; responsibility for resolving the problem of combating corruption should not be dispersed between a multitude of bodies, so that it was always clear who to call to account for any failings; a new body was guaranteed stronger public trust; clearing the decks and starting from scratch got rid of longstanding departmental bureaucratic problems; a new service was more flexible and mobile.

Other arguments were advanced against creating a separate anti-corruption body: higher running expenses of an independent department; investigation of corruption offences often required departmental co-operation, which would be hampered by the "individuality" of the new service; potential decline in the authority of traditional law-enforcement agencies, particularly if the work of the new body was successful; political impositions stemming from a desire to control the activity of the new body and in certain cases hamper its work.

Special anti-corruption bodies had been created in a whole host of States, including: Hong Kong, Singapore, India, the Philippines etc. The most successful one was generally acknowledged to be the anti-corruption service in Hong Kong. An independent anti-corruption commission had been set up as long ago as 1973. The commission was an independent body subordinate only to the Governor of Hong Kong, and its members were appointed by the Governor for six years, with no possibility of re-election. The commission was structured in accordance with its founding objectives: making involvement in corruption offences carry a greater risk, restructuring bureaucracy with the aim of reducing the causes of corruption, changing public attitudes towards corruption. It was along the same lines that the current anti-corruption bodies in Croatia, Latvia, Lithuania and Slovenia had been created.

It could not be said that Russia had always been in favour of creating a specialised anti-corruption agency. There had been a few precedents but in each case Russian anti-corruption commissions had been advisory or working groups within the structure of existing authorities. In 1992, under Russian Federation Government Instruction no. 1761-r of 17 September 1992, a Government commission had been set up under the leadership of the Chairman of the Russian Federation Government, Yegor Gaydar "to consider issues and devise proposals aimed at combating corruption within the state civil service system and the organisation of financial and legal supervision of economic activity in key sectors of the economy".

In line with Order no. 4891-1 of the Supreme Soviet of the Russian Federation of 28 April 1993, a Special commission for investigating material linked to corruption among officials had been set up within the structure of the Prosecutor General's office of the Russian Federation "for the purpose of objective and multilateral checking and investigation of incidents of corruption, abuses of power and economic infringements". In this connection it had been proposed that the Prosecutor General introduce the post of first deputy prosecutor general as head of the special commission, responsible for its organisational and operational management.

Decree no. 103 of the Russian Federation President of 20 January 1993 had laid down regulations "on the inter-departmental commission of the Russian Federation Security Council for combating crime and corruption; the decision to create that body had been set out in Decree no. 1189 of the Russian Federation President of 8 October 1992 "on measures to protect citizen's rights, maintain law and order and step up the fight against corruption". The functions of the inter-departmental commission entailed: providing the Russian Federation President and the Russian Federation Security Council with information and analytical material; generalising the practice of combating corruption in ministries, departments and executive authorities of the Russian Federation and preparing proposals to prevent and combat such phenomena; organising checks of law-enforcement agencies for preventing crimes and corruption on the instructions of the Russian Federation President; studying international experience in combating crime and corruption and drawing up proposals to utilise

it within the work of the law-enforcement agencies of the Russian Federation.

In 2003 President Putin had created the Council for combating corruption. Under Decree no. 1384 of the Russian Federation President of 24 November 2003 the Council was an advisory body to the President, set up for the purpose of assisting the President in exercising his constitutional powers. Under the Council a Commission for combating corruption and a Commission for resolving conflicts of interest had been set up.

Recent regulatory initiatives aimed at an optimum organisational solution for anti-corruption measures reflected a willingness to rethink earlier approaches. On the basis of Decree no. 129 of the Russian Federation President of 3 February 2007 an Inter-departmental working group had been set up, with responsibility for devising proposals for improving Russian legislation in connection with the signature of anti-corruption conventions. The decree established that, for the carrying out of the tasks assigned to it, the working group was entitled to: request and receive under the established procedure the necessary material from federal authorities, authorities of constituent entities of the Russian Federation and local authorities, as well as organisations; invite to its sittings officials of federal authorities, authorities of constituent entities of the Russian Federation and local authorities, as well as representatives of organisations; set up permanent and/or ad hoc working/expert groups on questions falling within its competence and determine their composition; involve academics and specialists, including under agreements, in individual projects under the established procedure. In particular, the Decree had ordered the Inter-departmental working group to present proposals under the established procedure by 1 August 2007 for making the necessary amendments to Russian Federation legislation to implement international anti-corruption texts, "including with respect to determining/creating a specialised body empowered to co-ordinate anti-corruption efforts".

So it was clear from this that Russia's leadership had been seeking appropriate ways of implementing the functions of a specialised anti-corruption body for quite some time. The Inter-departmental working group set up several months previously had taken on the role of the transitional co-ordination body mentioned at previous seminars, which had to prepare

definitive proposals for the format and function of a specialised anti-corruption body.

If it was decided to create a separate specialised anti-corruption body in Russia, it could embody the best achievements of other countries' specialised anti-corruption bodies which had already demonstrated their effectiveness. The structure of such a body had to reflect the founding principles of its work (one-man management, collegiality, transparency etc), as well as the three basic thrusts of the national anti-corruption strategy (prosecution, prevention and education). In addition, the structure of the specialised anti-corruption body had to take account of the federal structure of the Russian Federation and also cater for the necessity of co-ordinating efforts with different bodies of state authority.

Another option for setting up an anti-corruption body in Russia could be to create a consultative/advisory body for the Russian President or the Russian Federation government, which would comprise representatives of the Presidential Administration, the Russian Federation (RF) Government, the State Duma of the RF, the Federation Council of the RF, the Supreme, Constitutional and Supreme Arbitration Courts of the RF, the Prosecutor General's Office of the RF, the RF Ministry of Internal Affairs, the RF Ministry of Justice, the RF Ministry of Economic Development and Trade, the RF Ministry of Finance, the Central Bank of the RF, the Federal Financial Monitoring Service, Chamber of Audit of the RF, other ministries and departments as well as specialised civil society institutions and expert institutes. Obviously, such a body would operate on a periodical basis and settle questions of the distribution of powers over the running of a specialised anti-corruption body between the participating structures. This also had its pros and cons. The major difficulty in the functioning of a specialised anti-corruption body following this format was settling the issue of how and between which departments the three basic functions of prevention, education and prosecution were to be allocated. There was a danger that, if those functions were completely split up between different departments with no co-ordination between them, the impact of anti-corruption efforts would be minimal.

Whatever the case, when considering approaches to the choice of a specialised anti-corruption body for Russia, one fundamental factor had to be taken into ac-

count: the decision on such a body would be taken like any other highly important decision affecting the structure of state administration in the country; in other words, it would be taken at the level of the Russian Federation President, and there were grounds for assuming that it would be taken in the very near future.

The Chairman of the Slovenian Commission for the Prevention of Corruption and Chairman of the GRECO group, **Drago Kos**, then presented his analysis of approaches to setting up a specialised anti-corruption body. He began by expressing the hope that efforts made at previous seminars to prepare the bases of a national anti-corruption strategy and set up a specialised anti-corruption body would be taken into account and exploited by the Inter-departmental working group preparing proposals for implementing the provisions of the United Nations Convention against Corruption of 31 October 2003 and the Council of Europe Criminal Law Convention on Corruption in Russian Federation legislation.

Dwelling on the practical problems of setting up a specialised anti-corruption body in Russia, Drago Kos stressed that any decisions had to be in line with the United Nations Convention against Corruption and more specifically the choice from three possible formats for such a body. Firstly, Article 6 stated that it had to be an independent, autonomous body within the framework of the constitutional standards of the country in question and it had to deal with questions of anti-corruption strategy.

Article 36 of the United Nations Convention spoke of a specialised body or bodies implementing and putting into practice anti-corruption strategy. Accordingly there was reference to a body or bodies dealing with completely different tasks, namely prosecuting and punishing people for corruption. It was easy enough to assign these functions to existing law-enforcement agencies, such as the militia or prosecution bodies, but the question arose as to how they were to be linked up with the tasks of preventing corruption and educating the public. Moreover, the anti-corruption strategy being adopted in the country and the tasks of implementing it required those bodies to handle a broader range of tasks going beyond their initial brief. This in turn required the involvement and training of additional staff and the input of additional funding and material resources. Implementing a function within the framework of existing

militia or prosecution bodies ran the risk of causing damage to those very bodies, including a bloating of their staff and budget.

It was necessary in any case to give detailed thought to the question of using existing bodies to carry out the functions of a specialised anti-corruption body. This required assessment both of the scale of additional resources, assignments and staff and of whether it was realistic and reasonable to allocate functions to the body concerned that were not related to its fundamental mission.

The question of organising anti-corruption efforts was a very difficult one. From a political viewpoint it was a very sensitive and delicate issue. It was a matter to be handled solely by professionals and could not be given over to politicians alone. Where the practical aspects of combating corruption were concerned, professionals had to be involved, and these had to be both prosecutors and law-enforcement officers with the broadest possible profile.

For that reason, the worst possible move would be to create some consultative body of a temporary, ad hoc nature to deal with general questions of combating corruption in the country. A consultative body of this kind would change very little, with a great deal of discussion resulting in little action. Without serious commitment and resolution and without the input that professionals could provide in activities and at the stages of both drawing up and implementing laws, it would achieve nothing.

It had to be ensured that the decision to be made took this into account. Obviously, it would be very difficult to arrive at the right solution because Russia was a big country and there were already many different structures, ministries and departments, which dealt with these matters to some extent. but it was important to ensure that society and the authorities came to the realisation that any decision would be better than one to set up just another consultative body engaging only in theoretical discussion on the question of combating corruption.

When discussing the reports presented to them the seminar participants analysed in detail a whole host of key issues. Firstly, they considered the functions to be assigned to a specialised anti-corruption body. It was pointed out somewhat unequivocally and firmly that a body tasked with effectively combating corruption had to be assigned operational/search functions (like the one in Latvia for example). This variant, as long as it deployed a clearly

independent specialised body that was fully accountable to Parliament and granted sufficient unambiguous and broad powers, yielded clear results and enjoyed public trust.

Secondly, they agreed that adopting a consultative or advisory format for a specialised anti-corruption body would be more counter-productive than anything else. A theoretical anti-corruption body would not resolve the tasks of combating corruption in Russia. This body had to be independent and wield a sufficiently broad range of powers to be able to really take things forward.

There was also discussion on the inter-relations between combating corruption and combating organised crime, and how those inter-relations could and had to be taken into account when framing a na-

tional anti-corruption strategy and deciding on the format to be adopted for a specialised anti-corruption body. It was said that terrorism, corruption and organised crime had to be fought within the framework of a unified effort in terms of strategies and responsible bodies. It was proposed that the experience gathered in the United Nations and other international institutions be studied in greater detail.

The issue was also raised as regards ensuring real and not fictitious independence for a specialised anti-corruption body. It was pointed out that there was of course no such thing as complete independence. But in order to protect a specialised anti-corruption body as far as possible from pressure from both corrupt politicians and officials and organised crime groups in league with those politicians and officials,

legislation setting up the anti-corruption body had to make it as institutionally far removed as possible from such circles of influence.

The seminar concluded with the rapporteurs and participants discussing the importance of openness and transparency in the activities of a specialised anti-corruption body. While all those present agreed that the specific nature of anti-corruption efforts required a degree of confidentiality and professional secrecy, they also concurred that without maximum publicity for the achievements of such a body's work and widely available information on its structure, tasks, funding and accountability, it would be very difficult to win over the public support and trust required to combat corruption effectively in any country.