

European Partners Against Corruption/
European contact-point network against
corruption

ANTI-CORRUPTION AUTHORITY (ACA) STANDARDS

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

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Anti-Corruption Authority Standards **(ACA Standards)**

Introduction

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

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

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

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

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

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

Conclusions

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

1. The Rule of Law

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

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

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

Underlying instruments

United Nations Convention against Corruption (UNCAC)
Art 5 Preventive anti-corruption policies and practices
Art 6 Preventive anti-corruption body or bodies
Art 65 Implementation of the Convention
Council of Europe Criminal Law Convention on Corruption (CETS 173)
Art 20 Specialised authorities
EPAC Declarations 2004-2011

2. Independence¹

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

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

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

¹ For more elaborations on this Standard, consult the Annex, *10 Guiding Principles and Parameters on the Notion of Independence*

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 6 Preventive anti-corruption body or bodies Art 36 Specialized authorities
Council of Europe Criminal Law Convention on Corruption (CETS 173) Art 20 Specialised authorities
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 3
EPAC Declarations 2004-2011

3. Accountability

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

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

Similar systems need to be set in place to encourage and ensure that the staff members within the ACA are accountable. There must be adequate procedures to ensure compliance with personal and professional standards and to respond to complaints and allegations of inappropriate, unethical behaviour or other misconduct. These procedures should also provide for mechanisms to deal with malicious and unjustified accusations and provide credible and swift exoneration in such cases. These protective mechanisms should not inhibit proper judicial review.

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 1 Statement of purpose Art 8 Codes of conduct for public officials
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 10 Guiding Principle 11 Guiding Principle 13
EPAC Declarations 2004-2011

4. Integrity and Impartiality

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

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

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 1 Statement of purpose Art 5 Preventive anti-corruption policies and practices
Resolution 51/59 UN General Assembly International Code of Conduct for public officials
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 10
EPAC Declarations 2004-2011

5. Accessibility

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

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

The ACA must have access to all necessary information, subject only to limitations or restrictions which are necessary in a democratic society, in order to conduct investigations

into corrupt activities, identify and trace proceeds of corruption, research, understand and disseminate knowledge about and prevent corruption.

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 13 Participation of society Art 32 Protection of witnesses, experts and victims Art 33 Protection of reporting persons Art 34 Consequences of acts of corruption Art 37 Cooperation with law enforcement authorities Art 40 Bank secrecy Art 61 Collection, exchange and analysis of information on corruption
Council of Europe Criminal Law Convention on Corruption (CETS 173) Art 21 Co-operation with and between national authorities Art 22 Protection of collaborators of justice and witnesses
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 16

6. Transparency and Confidentiality

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

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

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 13 Participation of society Art 32 Protection of witnesses, experts and victims Art 33 Protection of reporting persons
Council of Europe Criminal Law Convention on Corruption (CETS 173) Art 22 Protection of collaborators of justice and witnesses

Council of Europe Civil Law Convention on Corruption (CETS 174) Art 9 Protection of employees
Council of Europe Resolution (97) 24 on the twenty Guiding Principles for the fight against corruption Guiding Principle 9 Guiding Principle 14 Guiding Principle 16
EPAC Declarations 2004-2011

7. Resources

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

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

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 6 Preventive anti-corruption body or bodies Art 7 Public sector Art 36 Specialized authorities
Council of Europe Criminal Law Convention on Corruption (CETS 173) Art 20 Specialised authorities
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 3 Guiding Principle 7
EPAC Declarations 2004-2011

8. Recruitment, Career, and Training

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

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

Credible specialist training incorporating strategic and academic analysis as well as practical skills and experience is crucial to provide and maintain the necessary level of qualification.

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Art 6 Preventive anti-corruption body or bodies Art 7 Public sector Art 8 Codes of conduct for public officials Art 36 Specialized authorities
Council of Europe Criminal Law Convention on Corruption (CETS 173) Art 20 Specialised authorities
Council of Europe Resolution (97) 24 on the twenty guiding principles for the fight against corruption Guiding Principle 7
The EU Justice and Home Affairs Council, JAI 473 (M.A.D.R.I.D. Report), from 26 May 2010

9. Cooperation

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

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

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

Underlying instruments

<p>United Nations Convention against Corruption (UNCAC)</p> <ul style="list-style-type: none"> Art 1 Statement of purpose Art 5 Preventive anti-corruption policies and practices Art 12 Private sector Art 13 Participation of society Art 37 Cooperation with law enforcement authorities Art 38 Cooperation between national authorities Art 39 Cooperation between national authorities and the private sector Chapter IV International cooperation Art 55 International cooperation for purposes of confiscation Art 58 Financial intelligence unit Art 59 Bilateral and multilateral agreements and arrangements Art 62 Other measures: implementation of the Convention through economic development and technical assistance Art 63 Conference of the States Parties to the Convention
<p>OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)</p> <ul style="list-style-type: none"> Art 4 Jurisdiction Art 9 Mutual Legal Assistance Art 10 Extradition
<p>Council of Europe Criminal Law Convention on Corruption (CETS 173)</p> <ul style="list-style-type: none"> Art 21 Co-operation with and between national authorities Chapter IV International co-operation
<p>Council of Europe Civil Law Convention on Corruption (CETS 174)</p> <ul style="list-style-type: none"> Art 13 International co-operation
<p>Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption, L 301/38.</p>
<p>Commission Decision of 6.6.2011 establishing an EU Anti-corruption reporting mechanism for periodic assessment ("EU Anti-corruption Report"), C(2011) 3673 final.</p>
<p>The EU Justice and Home Affairs Council, JAI 473 (M.A.D.R.I.D. Report), from 26 May 2010</p>
<p>EPAC Declarations 2004-2011</p>

10. Holistic Approach to Preventing and Fighting Corruption

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

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

Underlying instruments

United Nations Convention against Corruption (UNCAC) Preamble Art 5 Preventive anti-corruption policies and practices Art 13 Participation of society
EPAC Declarations 2004-2011

Annex

EPAC/EACN 10 Guiding Principles and Parameters on the Notion of Independence of AC Bodies²

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

- 1. The backbone of an appropriate, comprehensive and stable statutory/ constitutional legal framework.**
- 2. Appropriate allocation of highly qualified personnel, sufficient (public) funds and resources (including remunerations and incentives), effective and efficient institutional and organisational frameworks free from any inappropriate and undue influence, as well as appropriate professional training possibilities; in addition to that, the ability to decide upon these resources (including personnel) and to use these capabilities at their own discretion without prior consultation or approval.**
- 3. Transparent and objective recruitment (dismissal) procedures/ mechanisms for the head of the ACA and all other personnel, which are based on the principles of efficiency and transparency and objective criteria, and which focus on a proven record of the individual's integrity, skills, education and training, experience and professionalism only; including provisions and factual safeguards against appointments (dismissals) motivated by undue considerations.**
- 4. Terms of office of a minimum of two (parliamentary) legislative periods plus one year each (i.e. in total preferably twelve years or more) for the head of the ACA and all other (key) personnel, without the possibility to be reappointed for a second term of office, and including a transparent system of reasonable and just follow-up careers for those who leave the ACA.**
- 5. Terms of office/employment of ACA personnel on a voluntary basis by the respective individual.**
- 6. The ability (of the ACA) to engage in its activities and carry out its functions – especially to investigate and/or prosecute concrete allegations – effectively and efficiently and without undue influence or undue preliminary or otherwise**

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

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

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

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

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

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

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

Art. 20 on *Specialised authorities* of the Council of Europe's Criminal Law Convention on Corruption⁵ (CoE's CrimLCoC) stipulates: "*Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles*

³ The UNCAC uses the term anti-corruption (AC) "body or bodies". Consequently, the terms "AC authority", "AC agency", "AC organisation" and "AC institution" will be used synonymously.

⁴ The abbreviation "ACA" stands for "AC body", "AC authority", "AC agency", "AC organisation" or "AC institution", respectively.

⁵ The Convention entered into force on 1 July 2002.

of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure." In addition to that, Resolution (97) 24 of the Committee of Ministers of the Council of Europe on *Twenty Guiding Principles for the Fight against Corruption*⁶ (CoE's 20 GPs) in its Principle 3 states: "*[The Committee agrees] to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions, are free from improper influence and have effective means for gathering evidence, protecting the persons who help the authorities in combating corruption and preserving the confidentiality of investigations."*

The most comprehensive global instrument to this date, the United Nations Convention against Corruption (UNCAC)⁷, also called "Mérida Convention"⁸, in its Art. 6 on *Preventive anti-corruption body or bodies*, Chapter II on *Preventive measures*, as well as in Art. 36 on *Specialized authorities*, Chapter III on *Criminalization and law enforcement*, follows similar lines. It requires States Parties not only to ensure - in accordance with the fundamental principles of its (i.e. the State Party's) legal system - the existence of a body or bodies that prevent corruption and a body, bodies or persons specialised in combating corruption through law enforcement, but also to ensure that "*such body or bodies (or persons) shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to enable the body or bodies (be able)*⁹ *to carry out their functions effectively and without any undue influence."*

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

(Global) international instruments are routinely based on a broad consensus and thus have to follow a pattern of common denominators. At the same time, they have to observe, *inter alia*, issues of socio-cultural diversity, national sovereignty, (hidden) (national and international) political agendas as well as different legal systems and backgrounds. It is also for these reasons that they regularly refrain from engaging into in-depth definitional

⁶ The Resolution was adopted by the Committee of the Council of Europe on 6 November 1997.

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

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

⁹ Art. 36 UNCAC.

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

issues¹¹ or from “legal micro-managing”. They rather leave it to the Parties of the instrument how to comply with the more general or “macro-”expectations, requirements and provisions of such (legal) frameworks.

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

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

All that said, let us plunge *in medias res*. To be technically (and rightfully) called independent and to meet the *ratio legis*, the legislative rationale, of “necessary independence”, as laid down, e.g., in Art. 20 on *Specialised authorities* of the CoE’s CrimLCoC, as well as in Art. 6 on *Preventive anti-corruption body or bodies* and Art. 36 on *Specialized authorities* of the UNCAC, anti-corruption agencies, ACAs, shall be granted¹⁶:

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

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

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

¹⁴ Compare Arts. 4, 6, 36 UNCAC.

¹⁵ E.g. the Charta of Human Rights, data protection legislation, *et cetera*.

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

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

Modern societies – and their relations to other entities – are (normally) based upon the rule of law. Also following the more formal constitutional principle of legality¹⁷, the legislative power sets up the (legal) frameworks and, concomitantly, the basis of the public sector's institutions (including rights and obligations, powers and mandates, etc.). In doing so, constitutional legislation requires higher (parliamentary) majorities¹⁸ and *quora* than ordinary laws. It is thus important to establish and maintain an ACA on the basis of comprehensive constitutional legislation.¹⁹ This will help to keep the ACA out of day-to-day politics and (politically motivated) ad hoc legislation. Furthermore, it will strengthen the ACA's legal and factual validity and thus substantially extend its (political) "half-life".²⁰ To put it in the words of the President of GRECO²¹, Drago Kos, reflecting on political turbulences of the ACAs in some European countries in 2008: "Some European agencies have an outstanding international reputation and therefore they have difficulties in their own countries. They share the same fate as many (other) anti-corruption agencies which, for some people, are becoming too successful internally."

2. Appropriate allocation of highly qualified personnel, sufficient (public) funds and resources (including remunerations and incentives), effective and efficient institutional and organisational frameworks free from any inappropriate and undue influence, as well as appropriate professional training possibilities; in addition to that, the ability to decide upon these resources (including personnel) and to use these capabilities at their own discretion without prior consultation or approval.

To function properly, i.e. to fulfil its mandate effectively and efficiently, an ACA needs agents and means. It should thus be reasonably staffed and given adequate remuneration and incentive systems²². These systems²³ should be competitive to other similar institutions, take into account the level of economic development of a country²⁴, allow for decent living conditions and thus help avoid a potential brain drain from the ACA.

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

¹⁸ In most countries 2/3 majority votes *versus* simple majority votes for ordinary laws.

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

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

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

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

²³ Compare Art. 7/1/c UNCAC.

²⁴ Art. 7/1/c UNCAC.

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

Finances and general resources need to be adequate to enable an ACA to fulfil its mandate²⁸. As the prevention of and the fight against corruption are ultimately to be seen as safeguards for social and economic prosperity and the rule of law, they also constitute core tasks of the state as such.²⁹ It is therefore reasonably fair to argue that funding and resources should come from public sources³⁰.

Institutional and organisational frameworks should permit and ensure effective and efficient work and be free from any – even potential – inappropriate and undue influence. This would, e.g., include multi-year budget planning and allocation³¹, long-term rental agreements for facilities, the absence of political party based/focused works councils and employee representation³², etc.

Having resources at hand is one side of the coin, being allowed to use them effectively and efficiently is the other. It is imperative, therefore, that ACAs be given the mandate to decide

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

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

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

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

²⁹ Compare, e.g., Fukuyama, F. (2004), *State Building – Governance and World Order in the Twenty-First Century*, London: Profile Books Ltd., 9, 13, 20, 25, 163; Lambsdorff, J.G. (2007), *The Institutional Economics of Corruption and Reform*, Cambridge: University Press, 39ff.

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

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

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

upon these resources (including personnel)³³ and to use these capabilities at their own discretion without prior consultation or approval. It goes without saying, though, that in doing so, ACAs shall follow the principles of transparency and accountability³⁴ and obey clear rules of procedure within the fundamental principles of a given legal system.

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

The UNCAC, in its Art. 7, highlights the importance of a public sector recruitment, hiring, retention, promotion and retirement system that is, *inter alia*, based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude. This holds true even more so for the sensitive area of recruitment (and management) of human resources for an ACA.³⁷ There is no such thing as a broadly recognised best practice example or standard model, but there are a variety of different approaches and procedures. Observing the principle of checks and balances, a combination of different proceedings, mechanisms and safeguards may ultimately suffice for the outlined requirements. Such procedures and instruments may include: clear and transparent job descriptions; a clear and transparent set of objective criteria in regard to a person's qualifications and requirements, at the same time allowing for less measurable criteria such as social competence and empathy, leadership skills, etc. as long as they are addressed and debated in a transparent and comprehensible way; an open, transparent and reasonably timed advertising process without loopholes; independent recruitment commissions; recruitment in accordance with a procedure affording all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society)³⁸; additional (obligatory/non-obligatory) advisory/consultancy boards³⁹ with the right to remand or veto a decision; systems of internationally recognised benchmarks⁴⁰; systems of complaints, appeals and remedies; systems of legal⁴¹ and political liability in case of non-compliance.

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

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

³⁵ Also included are hiring, retention, promotion and retirement activities.

³⁶ Also included are hiring, retention, promotion and retirement activities.

³⁷ Also compare Art. 11 UNCAC.

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

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

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

⁴¹ Including criminal liability and liability for compensation.

4. Terms of office of a minimum of two (parliamentary) legislative periods⁴² plus one year each (i.e. in total preferably twelve years or more) for the head of the ACA and all other (key) personnel, without the possibility to be reappointed for a second term of office, and including a transparent system of reasonable and just follow-up careers for those who leave the ACA.

In some countries and regions it has become a routine pattern after elections (or major investigations) to dismiss personnel of ACAs. This serves various goals: to get rid of (politically) inconvenient and/or (too) successful individuals, to set the political agenda anew and, in some cases, to serve clientelism and favouritism by installing (in some cases less qualified) political appointees with dependent loyalties⁴³. It is basically for these obvious reasons that the (key) personnel of an ACA shall be granted terms of office extending beyond legislative periods, preferably beyond two of these. For each legislative period one additional year should be added to cover times of *interregnum*, i.e. of party negotiations and government building. As in most countries legislative periods last four or five years, respectively, a total term of office of twelve years for (key) personnel subsequently seems appropriate and recommendable. Second terms of office should not be provided for as they would likely heighten the following risks concerning a possible reappointment: pressure and undue influence on the office holder by the decision-makers on the one hand, and unprofessional and improper adaptiveness by the office holder towards the decision-makers on the other hand.

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

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

Employment in an ACA *no lens volens* often goes along with high levels of visibility, internal and external exposure and sometimes even broad and direct hostility.⁴⁴ At the same time, it requires above-average levels of personal honesty, integrity, resilience, stamina, steadfastness, as well as professional commitment and dedication. Fighting corruption without heart and mind will not work. It is therefore only fair enough and appropriate that

⁴² Legislative periods in most countries last four or five years, respectively.

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

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

such employment is rather based upon voluntary assignment than – in the worst case – a perception of being conscripted into a *Strafkompanie* (punishment battalion).

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

The freedom of decision-making and the freedom of action are imperative for an ACA. This holds true especially for investigating and prosecuting concrete cases of corruption. It ensures – if and where necessary - the applicability of an element of surprise and the sustainability of the momentum of action and, ultimately, of success. This is also why it is self-explanatory that any premature, untimely, undue, excessive, unjustified and illegitimate reporting and/or consultation obligation by the ACA is technically counterproductive and perceptually spoils its independence and, consequently, its legitimacy and credibility. Similarly, it is obvious and does not need to be repeated that the principle of separation of powers needs to be strictly and accurately observed in this context. Especially the political sphere is prone to a tendency to interfere – under whatever labels, titles, arguments and excuses⁴⁵ - in the activities of an ACA, in particular once the performance of the ACA gets (too) successful.

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

As has already been clearly outlined, it is manifest that ACAs in all their activities shall follow the principles of transparency and accountability⁴⁷, shall operate in a clear and transparent governance system, and shall obey comprehensible rules of procedure within the fundamental principles of a given legal system.

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

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

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

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

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

Yet, there is also a common understanding in the AC community that people are often hesitant to openly inform competent bodies on their knowledge of corrupt activities. It is for this very reason that national and international legislation and guidelines call for the protection of witnesses, experts, victims and reporting persons.⁵⁰ States the *Legislative Guide for the Implementation of the United Nations Convention against Corruption* by UNODC: "Unless people feel free to testify and communicate their expertise, experience or knowledge to the authorities, all objectives [of the UNCAC] could be undermined. Consequently, States Parties are mandated to take appropriate measures [...] against potential retaliation or intimidation of witnesses, victims and experts. States are also encouraged to provide procedural and evidentiary rules strengthening those protections as well as extending some protections to persons reporting in good faith to competent authorities about corrupt acts."⁵¹ Means and mechanisms for the protection of witnesses, experts, victims and reporting persons – including public servants and private citizens⁵² as well as employees⁵³ – may include whistleblower protection and witness protection legislation⁵⁴, effective regret instruments, leniency programmes, offering anonymous channels of communication⁵⁵, data protection regulations *et altera*.⁵⁶

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

Corruption as a cross-cutting issue is embedded in the matrix of society's institutions⁵⁷ and involves both actively as well as passively all sectors of the *res publica*. Hence, it is rather a sociological than a purely criminological phenomenon.⁵⁸ Furthermore, it is obvious and

⁴⁸ Principle 16 of the CoE's 20 GPs.

⁴⁹ Compare Art. 9 of the African Union Convention on Preventing and Combating Corruption.

⁵⁰ Compare Arts. 32, 33, 35, 37 UNCAC.

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

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

⁵³ Compare Art. 9 CoE's CivLCoC.

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

⁵⁵ Also see Art. 13/2 UNCAC.

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

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

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

irrefutable that approaches to address and tackle corruption need to be holistic and comprehensive. Concomitantly, all actors, players and stakeholders, including those of civil society, the media, academia and others, need to be approached and involved.⁵⁹ Such direct dialogue and communication helps to build a critical mass, form alliances and gain synergies, but also safeguards the ACA's overall transparency, accountability and legitimacy by, eventually, means of public scrutiny.⁶⁰ On the part of the ACA, this discourse requires direct accessibility by the general public, including by offering channels of anonymous communication⁶¹ for the reporting of any incident that may be considered to constitute a corruption offence. It is – again – self-explanatory that the processing of information shall follow clear rules of procedure and shall be in accordance with the fundamental principles of a given legal system and subject only to limitations or restrictions which are necessary in a democratic society. The dissemination of such information also must not adversely affect investigations and the right to a fair trial.^{62, 63}

The media are often referred to as the fourth branch – beside the legislative, the executive and the judiciary – in the set-up of a modern state. According to the European Court of Human Rights in Strasbourg, the media in a democratic society shall act as a “public watchdog”. It goes without saying that in fulfilling this role, the media need to be free and independent from those they report on and shall broadly receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society⁶⁴. It is perfectly true as well that the media in the past, at present and (hopefully) also in the future play a crucial and important role in acting as this watchdog and, thus, in fighting corruption. However, as there are always two sides of a coin and we are not living in an ideal world, it must not go unnoticed that (some of) the media in some countries have become part of the problem rather than of the solution. In this context, research of the journalism department of Cardiff University on the basis of four quality daily newspapers in the UK (The Times, The Guardian, The Independent and The Daily Telegraph) found out: “*Taken together, these data portray a picture of journalism in which meaningful independent journalistic activity by the press is the exception rather than the rule. We are not talking about investigative journalism here, but the everyday practices of news judgement, fact-finding, balance, criticising and interrogating sources, etc., that are, in theory, central to routine, day-to-day journalism.*”⁶⁵ John Wilson, former controller of editorial policy at the BBC, is quoted even more bluntly in stating: “*News is a way of making money. No one believes that news and journalism are simply a service to democracy.*”⁶⁶ The amalgamation into personal unity of key political decision-makers or powerful business

⁵⁹ Compare Arts. 5/1, 13 UNCAC.

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

⁶¹ Also see Art. 13/2 UNCAC.

⁶² See, e.g., Art. 6 of the European Convention on Human Rights.

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

⁶⁴ Principle 16 of the CoE's 20 GPs.

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

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

entrepreneurs and media moguls, respectively, in some societies tends to reduce the notion of checks and balances and the role of the neutral watchdog to absurdity.⁶⁷ In a nutshell, ACAs may perceive the media as a valuable “brother in arms” in the fight against corruption and in safeguarding the ACAs’ independence, but at the same time, and for no good/factual reason, may find themselves easily and too often at the receiving end of a dreadful media campaign.

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

It has already been outlined that (national and international) cooperation needs to be addressed and promoted as the fourth pillar in a holistic and comprehensive notion of tackling corruption. The UNCAC and the Council of Europe’s Criminal Law Convention on Corruption devote an entire chapter each to this requirement; other international instruments call on parties to work along the same lines.^{68, 69} States (Parties) shall thus cooperate in criminal law and shall consider assisting each other in investigations of and proceedings in civil and administrative matters.⁷⁰ Areas of cooperation may include extradition, transfer of sentenced persons, mutual legal assistance, transfer of criminal proceedings, law enforcement cooperation, joint investigations, and special investigative techniques⁷¹; they may also comprise instruments of spontaneous information and direct communication⁷², enforcement of sentences⁷³ as well as asset recovery⁷⁴.

However, this call for cooperation is not only about working together in the context of criminal and other law matters, about exchanging staff, best practices and standards, about sharing knowledge and expertise or working together in joint investigation teams, but it is also about building alliances and coalitions of like-minded experts and professionals. As the saying “*Nemo propheta in patria*”, “A prophet has no honour in his own country”, is matter-

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

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

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

⁷⁰ Art. 43 UNCAC.

⁷¹ Arts. 44-50 UNCAC.

⁷² Arts. 28, 30 CoE’s CrimLCoC.

⁷³ Art. 6/1 Council of the European Union: Convention on the Protection of the European Communities’ Financial Interests.

⁷⁴ Chapter V of the UNCAC.

of-factly true for ACAs in particular, cooperating and liaising is especially about offering and safeguarding international visibility and professional backup in times of national turmoil, crisis and undue criticism. Consequently, it is about contributing to maintaining operational autonomy and independence.⁷⁵

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

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

A most common way of attacking an ACA and thus paralysing it or spoiling its reputation is to accuse the body and/or its (key) personnel and functionaries of wrongdoings. However absurd, fictitious, farcical, unrelated or insignificant they are, they often serve the purpose by deflecting general attention from the real thing, i.e. a corruption offence at stake and under investigation. Frequent discussions and case samples⁷⁷ exemplify this unfortunate but global “wag-the-dog phenomenon”.

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

It is frequently argued that such advisory/oversight function should be executed by Parliament, a (special) board of parliamentarians, members of government or other (boards of) politicians. This approach must be strongly opposed as such a setting – without pushing the foray into too deep an epistemological water – would *nolens volens* come

⁷⁵ What has been said in other paragraphs on matters of accountability and transparency applies *mutatis mutandis*.

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

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

along with at least three caveats/contradicting factors⁷⁸: (1) There is regularly a clear conflict of interest for politics, at least as (widespread) political corruption is concerned; (2) investigations into corrupt practices are - ultimately - of law enforcement and judicial nature. Observing the important principle of separation of powers, one branch overseeing and monitoring the other - in our case the legislative or executive keeping a check on the judiciary - would significantly violate this key principle and building block of the concept of the modern state; (3) anti-corruption measures and individual corruption cases would unavoidably and inescapably be instrumentalised for day-to-day political scandal-mongering and for specific party-political ends.⁷⁹ In a similar vein, it has proven unrealistic that sensitive data and (other) details of investigations can be kept in confidence once they reach the political arena.⁸⁰

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

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

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

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