

Preventing and Combating Corruption

Summary Report of IACA's Tailor-Made Anti-Corruption Course for Experts from
Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan

23 - 25 September 2019

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IMPRINT

Publisher and Layout: International Anti-Corruption Academy (IACA)

Münchendorfer Str. 2, 2361 Laxenburg, Austria

www.iaca.int

Citation: IACA 2020. Preventing and Combating Corruption - Summary Report of IACA's Tailor-Made Anti-Corruption Course for Experts from Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan. International Anti-Corruption Academy (IACA), Laxenburg, 2020

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Background

The International Anti-Corruption Academy (IACA) is an international organization dedicated to developing and sharing knowledge about corruption risks, creating a basis for new and holistic approaches to anti-corruption education and research, and providing networking opportunities for the stakeholders dealing with research, mitigation, and management of anti-corruption risks.

The Academy provides, on a yearly basis standardized trainings: International Anti-Corruption Summer Academy and Regional Summer Academy. In addition to thematic programmes, IACA offers tailor-made trainings individually designed to respond to the unique needs of a specific organization, corporation, or institution. The trainings also provide a basis for discussion about existing and future challenges for mitigation of corruption risks in different sectors or regions.

The 2019 IACA's Tailor-Made Anti-Corruption Course for Experts from Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan was co-sponsored by the Government of the Russian Federation. The creation of this Report was inspired by the course taking place from 23-25 September 2019. The course was delivered by high-level experts from different areas of anti-corruption and compliance, including, *inter alia* (in alphabetical order):

- Dr. Eduard Ivanov, Senior Research Associate at the International Anti-Corruption Academy, lectured on *Modern Challenges & Trends in Combating Corruption and Anti-Money Laundering/Countering Financing of Terrorism and Anti-Corruption Compliance*.
- Jooyeon Jo, Senior Prosecutor and Legal Attaché at the Embassy of Republic of Korea in Vienna, shared his expertise in *Extradition and Asset Recovery*.
- Alexey Konov, Director of the Anti-Corruption Center of the National Research University Higher School of Economics, discussed *Corruption Risk Assessment in Public and Private Sector*.
- Dr. Katalin Pallai, Independent Policy Expert, lectured on *Ethical Decision Making and Organizational Integrity*.
- Tom Willems, Fraud and Corruption Investigator at the European Anti-Fraud Office (OLAF) of the European Commission, analyzed *Corruption and Fraud Investigations & Interview Techniques*.

The training brought together anti-corruption and compliance practitioners from Armenia, Belarus, Kazakhstan, Kyrgyzstan, and the Russian Federation. The training started with an insight into modern challenges and trends in combating corruption. Furthermore, international legal instruments were discussed. Additionally, it offered participants deeper and more comprehensive insights into particular topics and areas of anti-corruption and compliance practices such as business ethics, organizational integrity, corruption risk assessment, comparative aspects of anti-money laundering/countering financing of terrorism and anti-corruption compliance legal regimes and practices. The training also provided an overview of corruption and fraud investigations.

Chapter 1: International Efforts to Prevent and Combat Corruption

1.1. Modern Challenges & Trends in Combating Corruption

Corruption is a global challenge for the international community. Dr. Ivanov started his lecture with identifying several distinctive features of modern corruption:

- Connection of corruption with organized crime and terrorism
- Corruption relationships in the private sector
- The use of the international financial system for committing corruption offences
- In some cases, involvement of political leaders and senior public officials in long-term, stable corruption relationships¹

Corruption facilitates organized crime and terrorism. Criminals use corruption relations for the movement of persons, goods, and vehicles across customs and state borders. Corrupt officials support smuggling of migrants at several stages along the journey to Europe.² Corruption is one of the prerequisites for non-cooperation in combating other types of crime.

In the lecturer's opinion, for many years corruption was associated with the public sector. Nowadays, various forms of corruption are becoming more and more common in the private sector. Typical examples of corruption in the private sector are: bribery in the tender process, extortion of bribes by managers of supermarket chains from suppliers for access to the chain, and providing illegal financial services.

In addition, corruption relationships in financial institutions and supervisory bodies allow misuse of the international financial system for criminal purposes.

Systemic corruption creates numerous risks for governments and society:

- Loss of effectiveness of the public administration system
- The inability of governments to respond adequately to emerging threats
- Illegal influence on election results and decision-making processes by governmental authorities
- Loss of public trust in government and political institutions

Countries develop various measures to increase effectiveness of prevention and combating corruption:

- Imposing additional restrictions for civil servants
- Increasing transparency in the private sector, e.g. identifying beneficial owners
- Strengthening the role of financial intelligence units in combating corruption
- Strengthening corporate and individual liability for corruption offences
- Supporting collective action initiatives

An important step towards transparency in the private sector was the establishment of legal obligations to identify beneficial owners. The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation stipulated that countries establish

¹ Petrobras case in Brazil, Investigation against the former President of South Korea Park Geun-hye.

² Europol, 2016. *Migrant smuggling in the EU*. [pdf] Europol. Available at: <<https://www.europol.europa.eu/newsroom/news/europol-launches-european-migrant-smuggling-centre>> [Accessed 13 November 2019].

legal mechanisms to identify beneficial owners of legal entities and legal arrangements.³ Countries have been taking measures to implement these norms into national anti-money laundering laws and regulations. Originating from the Anti-Money Laundering (AML) / Combating the Financing of Terrorism (CFT) fields, the idea of identification of beneficial owners is also important for anti-corruption. In 2011, the joint United Nations Office on Drugs and Crime (UNODC) and the World Bank Stolen Asset Recovery Initiative (StAR) published “The Puppet Masters,” a comprehensive study on large-scale corruption by high-level public officials which paid special attention to the use of shell companies, trusts, and foundations.⁴ In 2017, UNODC established a working group on beneficial ownership transparency which aims to prepare an updated version of “The Puppet Masters” focusing on best practices for identifying beneficial owners.

Countries use various approaches to build systems of beneficial ownership transparency. The fourth EU Anti-Money Laundering Directive (Directive (EU) 2015/849) calls for EU member states to establish registers of beneficial owners.⁵ The fifth EU Anti-Money Laundering Directive (Directive (EU) 2018/843) provided for the obligations of EU member states to establish registers of legal entities by 10 January 2020 and registers of legal arrangements by 10 March 2020. The Commission shall ensure the interconnection of registers referred to in Articles 30 and 31 in cooperation with the Member States by 10 March 2021.⁶ Four Member States of the Eurasian Economic Union adopted amendments to AML/CFT laws establishing obligations of financial institutions and designated non-financial businesses and professions to take measures to identify beneficial owners among their customers. The Russian Federal Law “On Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism” also established obligations for all legal entities to know their beneficial owners.⁷

One of the trends in combating corruption in Russia is an active participation of Rosfinmonitoring (the Russian Financial Intelligence Unit (FIU)) in preventing and detecting corruption. Rosfinmonitoring is responsible for financial investigations of money-laundering cases related to corruption offences. The microanalysis of financial information allows for the identification of financial institutions providing services for payments related to corruption offences.

In accordance with Federal Law No. 231- FZ dated 3 December 2012, which came into force on 1 January 2013, Rosfinmonitoring should also provide information about the transactions of state and municipal servants by written requests of federal ministers, heads of subjects of

³ FATF, 2012. *International Standards on Combating Money Laundering, the Financing of Terrorism and Proliferation*. [pdf] Paris: FATF. Available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf> [Accessed 12 November 2019].

⁴ Van der Does de Willebois, E., et al, 2011. *The Puppet Masters. How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. [pdf] Washington, DC: The International Bank for Reconstruction and Development/The World Bank. Available at: <<https://star.worldbank.org/star/publication/puppet-masters>> [Accessed 11 November 2019].

⁵ European Parliament and Council Directive 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC. Available at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849>>.

⁶ European Parliament and Council Directive 2018/843 May 30, 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:156:FULL&from=EN>>.

⁷ Federal Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2001. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_32834/>.

the Russian Federation, and the Head of the Central Bank of the Russian Federation for purposes of controlled incomes and costs.

The procedure for submitting requests and the list of positions of state and municipal servants are regulated by Decree of the President of the Russian Federation No. 309 dated 2 April 2013.⁸ FIU's information about obligatory, controlled, and suspicious transactions of public servants can be compared with their declarations of incomes and assets. This is an effective way to identify total transactions which are significantly higher than the declared official incomes of public servants.

Countries put a lot of efforts into developing effective mechanisms of corporate and individual liability for corruption offences. Depending on their legal systems and doctrines, they implement criminal or administrative as well as civil corporate liability. In the Russian Federation, legal entities are not subject to criminal liability. There are ongoing debates in the professional community on the question of whether the Russian Criminal Code has to be revised.

The statistical data for 2017-2019 from the Register of legal entities brought to administrative liability under Article 19.28 of the Code of Administrative Offences demonstrates that Russian courts actively apply Article 19.28 of the Code of Administrative Offences.⁹

Year	Number of legal entities brought to administrative responsibility under Article 19.28 of the Code of Administrative Offences
2017	428
2018	383
2019	240

Corporate liability should by no means allow individuals to avoid liability for corruption offences. In the United States, the Yates Memo gave a clear message to all U.S. attorneys that individual accountability for corporate wrongdoing is a key priority. According to the memo, corporations should provide all information about individual misconduct if they want to cooperate and seek to settle a corporate case. No corporate resolution should provide protection from individual criminal or civil liability.¹⁰ According to the FCPA Corporate Enforcement Policy, to receive credit for full cooperation companies shall disclose all facts related to involvement in the criminal activity by the company's officers, employees, or agents.¹¹

⁸ Decree on Measures for Implementation of Certain Provisions of the Federal Law "On Fighting Corruption". 2013. Russian Federation: The President of the Russian Federation. Available at: <<http://ivo.garant.ru/#/document/70350274/paragraph/1:0>>.

⁹ The Prosecutor General's Office of the Russian Federation, 2017. *The Register of Legal Entities Brought to Administrative Liability Under Article 19.28 of the Code of Administrative Offences*. [online] Available at: <<https://genproc.gov.ru/anticor/register-of-illegal-remuneration/>> [Accessed 27 December 2019].

¹⁰ U.S. Department of Justice, 2015. *Memorandum for the Assistant Attorney General, et al., from Sally Quillian Yates on Individual Accountability for Corporate Wrongdoing*. [pdf] Washington, DC: U.S. Department of Justice. Available at: <<https://www.justice.gov/archives/dag/file/769036/download>> [Accessed 10 November 2019].

¹¹ U.S. Department of Justice, 2019. *Justice Manual. 9-47.120 - FCPA Corporate Enforcement Policy*. [online] Washington, DC: U.S. Department of Justice. Available at: <<https://www.justice.gov/jm/jm-9-47000-foreign-corrup-practices-act-1977>> [Accessed 27 December 2019].

Compliance officers are responsible for proper functioning of compliance programmes. They can be subject to liability among other company managers. A recent example is the settlement reached in May 2017 by Thomas E. Haider, the former Chief Compliance Officer of MoneyGram International Inc., and the United States Department of Justice and Financial Crimes Enforcement Network (FinCEN). Mr. Haider was accused of failing to ensure compliance in MoneyGram with AML law. He agreed to pay a \$250,000 penalty and be barred from working as a compliance officer for any money transferring company for three years.¹²

Recognizing the importance of law enforcement measures in combating corruption, we should not underestimate the role of public-private collaboration and joining forces against corruption. Collective Action initiatives are becoming a popular form of collaboration between governments, the private sector, and other stakeholders.

The World Bank Institute defines Collective Action as “a collaborative and sustained process of cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations, and levels the playing field between competitors.”¹³

The Basel Institute on Governance defines three types of collective actions: an anti-corruption declaration, a standard setting or principles-based initiative that can also include a certification model to monitor and audit adherence to an agreement not to bribe, and an integrity pact.¹⁴

During his lecture, Dr. Ivanov mentioned that Collective Action should have clear aims in the fight against corruption, should be an ongoing process rather than a single action, and should involve several participants.

The Collective Action initiative can include but not be limited to the following actions:

- Signing anti-corruption declarations
- Setting standards
- Developing and supporting external communication with government, law enforcement bodies, media, civil society
- Conducting training
- Providing consulting and other forms of assistance
- Conducting monitoring and regular assessments of impact

There are several examples of Collective Action initiatives in EAEU Member States. In 2014, the Chamber of Commerce and Industry of the Kyrgyz Republic and twenty main business associations signed the Charter “Business against corruption in Kyrgyzstan.”¹⁵

¹² Cassin, R., 2017. Former MoneyGram compliance chief pays \$ 250,000 penalty for AML failures. *The FCPA Blog*, [blog] 5 May. Available at: <<http://www.fcpablog.com/blog/2017/5/5/former-moneygram-compliance-chief-pays-250000-penalty-for-am.html#sthash.HwyOBivX.dpuf>> [Accessed 14 November 2019].

¹³ The World Bank Institute, 2008. *Fighting Corruption through Collective Action. A Guide for Business*. [pdf], p.11. Available at:

<https://www.globalcompact.de/wAssets/docs/Korruptionspraevention/Publikationen/fighting_corruption_through_collective_action.pdf> [Accessed 20 November 2019].

¹⁴ Basel Institute on Governance, 2018. *Collective Action / ICCA*. [online] Available at: <https://www.collective-action.com/resources/collective_action> [Accessed 28 January 2020].

¹⁵ Chamber of Commerce and Industry of the Kyrgyz Republic, 2014. *Charter “Business against corruption in Kyrgyzstan.”* [online] Available at <<http://en.cci.kg/khartija-biznes-kyrgyzstana-protiv-korrupcii.html>> [Accessed 10 February 2020].

Kazakhstan participates in the Extractive Industries Transparency Initiative (EITI), which is a global standard to promote the open and accountable management of oil, gas, and mineral resources.¹⁶

In 2012, the main business associations of the Russian Federation signed the Anti-Corruption Charter of Russian Business. Parties to the Charter include: the Chamber of Commerce and Industry, the Russian Union of Industrialists and Entrepreneurs, the All-Russian Public Organization “Delovaja Rossija” (Business Russia), and the All-Russian Public Organization of Small and Medium Businesses “Opora Russia.” The Charter is based on several main principles developed to prevent and combat corruption. The Charter covers relationships both within the business community and between businesses and government authorities. The Russian Union of Industrialists and Entrepreneurs keeps the Register of parties to the Charter.¹⁷

1.2. Money Laundering & Assets Recovery

During his lecture, Mr. Jo shared the experience of the Republic of Korea in preventing and combating corruption and money laundering, and law enforcement cooperation in assets recovery.

He started with a brief overview of Korean history and provided participants with several important dates:

- 1945 - Korea became Independent from Imperialism
- 1948 - Two governments in Korea
- 1950 ~1953 - Korean War
- 1953 ~1987 - Political Turmoil
- Since 1987 - Concrete Democracy in the Republic of Korea

The Republic of Korea has been demonstrating a stable economic growth. In 1960, GDP per capita was only \$79, and in 2018 it increased to \$30,000. Along with other factors, effective anti-corruption measures were important for the economic development of the Republic of Korea.

The lecturer described the role of anti-corruption authorities in creating an environment for fair economy. Anti-corruption authorities promote the rule of law and fair competition in the process of public procurement, prevent bribery and kickbacks, and support spreading transparency into private sector.

Mr. Jo shared with participants his experience of investigation and prosecution of corrupt persons and provided some suggestions. For instance, he underlined that in the process of gathering evidences any trivial clue may develop into a big case. He also mentioned that for an investigator it is important to avoid owing something to informants. Further, reports of informants should include all the details such as date, venue, weather, credit cards used. Mr. Jo also pointed out that oral reports should be verified by objective evidences. In addition, finding financial flows is critical for the successful investigation. According to the lecturer,

¹⁶ The Extractive Industries Transparency Initiative (EITI), 2017. *Kazakhstan*. [online] Available at: <<https://eiti.org/kazakhstan>> [Accessed 12 November 2019].

¹⁷ Commission on Crime Prevention and Criminal Justice (CCPCJ), 2013. *The Anti-Corruption Charter of the Russian Business and the Charter Road Map*. [pdf] Vienna: CCPCJ. Available at: <https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_22/_E-CN15-2013-CRP08/E-CN15-2013-CRP8_E.pdf> [Accessed 16 November 2019].

forensic accounting is an effective tool for investigators to detect financial transactions related to corruption.

Mr. Jo mentioned the nexus between corruption and money laundering and provided participants with analysis of money laundering schemes. Money laundering is “(i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”¹⁸

The process of money laundering consists of three stages: placement, layering and integration.¹⁹ Placement is an initial entry of illicit money into the financial system. Layering is a process of separating the funds from their sources, often using anonymous shell companies. At the integration stage money returns to the criminals from legitimate-looking sources. In the lecturer’s opinion, criminals legalize profits from various predicate offences, such as drug trafficking, smuggling, trade in counterfeit goods, human trafficking, illegal arm trafficking, procurement fraud and corruption. It is very difficult to estimate the amounts of legalized proceeds.

According to the lecturer, proceeds from illegal activities are integrated in financial system to make it appear that it belongs to legitimate sources. Corrupt officials hide the sources of funds by moving money where it is less likely to attract attention of law enforcement authorities.

Anti-money laundering measures can be an effective instrument to combat corruption. Systemic analysis of financial flows allows to identify transactions of corrupt officials and potential targets for anti-corruption investigations. Detection of money laundering schemes includes identification of criminal infrastructure, service providers who help corrupt officials to hide, disguise and transfer illegal assets. The comprehensive investigation can simplify the following confiscation of illegal proceeds.

Investigation of grand money laundering cases is usually a very complicated process. Investigators shall analyze a vast amount of legal and financial documentation, and economic analysis is just as important as criminal investigation. A serious obstacle for investigators is that records of money laundering service providers are usually incomplete. Moreover, some evidences, money, and suspects are often abroad, and success of the investigation depends on the level of international cooperation between law enforcement and judicial authorities. Investigation of grand money laundering cases related to corruption can be very sensitive for various political powers.

Based on his solid practical experience in investigation and prosecution, Mr. Jo provided participants with the money laundering case flow that includes ten stages:

- Collecting data
- Identifying suspicious criminal activities based on the collected data
- Executing court order
- Identifying suspects by analyzing financial records, calls and emails history
- Analyzing financial data related to suspicion

¹⁸ United Nations Convention against Transnational Organized Crime. 2000. New York: United Nations. Available at: <<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>>.

¹⁹ Booth, R., et al, 2011. *Money Laundering Law and Regulation*. Oxford: Oxford University Press. pp. 3-4.

- Analyzing the sized evidences, such as secret fund books and digital devices
- Charting and documenting the money tracking results
- Questioning and identifying the relations between key figures
- Confiscation of criminal assets
- Assets recovery

Identification and freezing of all criminal assets are preconditions for the successful confiscation. Investigators shall identify corporate and private bank accounts, saving accounts, real estate, vehicles, and other movable and immovable property related to the offence.

Domestic and international cooperation between the competent authorities plays an important role for successful investigation and prosecution of money laundering, as well as for the following confiscation and assets recovery. According to the lecturer, a national Financial Intelligence Unit (FIU) can insure and coordinate cooperation of all relevant agencies at the domestic level. Laws, regulations, memorandums of understanding, and other domestic legal acts should establish a necessary legal background for cooperation between the FIU and other domestic authorities.

Effectiveness of international cooperation in investigation and prosecution of money laundering and in assets recovery depends on multilateral and bilateral treaties, common definitions of money laundering in national legislations, and possibilities to share useful information with foreign partners without numerous domestic burdens. Implementation of international anti-money laundering treaties and the FATF Standards in most countries, including offshore jurisdictions is another important factor.

According to Mr. Jo, the investigation against the former President of the Republic of Korea was the first example of successful mutual legal assistance between the Republic of Korea and the United States. In 2014, based on the requests of Korean authorities the U.S. Department of Justice seized a house in Newport Beach and the investments in Pennsylvania. In 2015, the proceeds from criminal offences committed by the former President had been returned to the Republic of Korea.

The lecturer underlined that success of investigation and prosecution depends significantly on digital tools. He presented digital analysis system of the Korean Prosecutor's Office, which allows to consolidate and analyze bank and telephone company's records. The results of analysis can be used to develop investigative leads, to identify hidden links between companies and natural persons, and to collect necessary evidences.

Chapter 2: Anti-Corruption Compliance in Public and Private Sector

2.1. Ethical Decision Making

Dr. Pallai explained the role of ethical decision making in preventing corruption and in maintaining an effective anti-corruption compliance management system.

According to the lecturer, ethics includes generally accepted values and norms that guide daily behaviour. Integrity can be described as acting in accordance with values and norms. Organizations require ethics/integrity management to ensure ethical behaviour of employees and third parties.

Dr. Pallai analyzed what employees have been taking into consideration when they shall make decisions. Usually, employees consider applicable laws and regulations including internal rules of the organization. At the same time, they think about individual, organizational, and social values. Possible consequences of a specific action and reference space also affect their decisions.

There is a general trend that more and more organizations design and implement values-based compliance programmes. According to Transparency International, defining the main principles and values of an organization is a prerequisite for developing the code of conduct and the anti-corruption compliance programme.²⁰ The International Chamber of Commerce recommends to include the review of business ethics competencies in the appraisal and promotion of management and measuring the achievement of targets not only against financial indicators but also against the way the targets have been met and specifically against the compliance with the Enterprise's anti-corruption policy.²¹

Compliance with formal legal requirements and internal rules should not be underestimated. However, organizations are not able to describe all possible scenarios in internal documents. Sometimes real-life situations are much more complicated than senior managers and lawyers could imagine. Experience of ethical decision making is crucial when employees face ethical dilemmas. According to the lecturer, ethical dilemma is a situation where values are at stake and where a choice has to be made from several alternatives, while:

- good reasons can be given for each of these alternatives
- considered action has both positive and negative consequences for oneself, others, and the environment

Dr. Pallai also described ethical dilemmas as situations where there is no win-win, where you are “damned if you do and damned if you don’t.”

Compliance with organizational principles and values is an important part of compliance management system. For taking decision in the situation of ethical dilemma, basic knowledge of internal rules and procedures is not enough. Employees should have competence to apply them considering organizational values. Special ethical training can provide employees with necessary knowledge and practical skills required in complicated situations. It is important to design training programmes taking into account the functions of employees and the real challenges they may face exercising their functions. Some large enterprises provide trainings

²⁰ Transparency International, 2013. *Business Principles for Countering Bribery*. [online] Available at: <https://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery> [Accessed 15 December 2019].

²¹ International Chamber of Commerce, 2011. *ICC Rules on Combating Corruption*. [pdf] Paris: International Chamber of Commerce. Available at: <<https://cdn.iccwbo.org/content/uploads/sites/3/2011/10/ICC-Rules-on-Combating-Corruption-2011.pdf>> [Accessed 15 December 2019].

and methodological support to third parties, especially to small and medium-sized enterprises (SMEs). This support enables SMEs to better understand values of business partners, to improve anti-corruption compliance programmes, and to compensate the lack of resources.

Taking decision in case of ethical dilemma implies serious responsibility. Ethics and compliance officers should be able to provide employees and, if necessary, third parties with professional advice and support.

Dr. Pallai paid special attention to the role of behavioural science in designing and implementing an effective compliance programme. The anti-corruption compliance programme should influence behaviour of employees to prevent their involvement into crime of corruption and unethical behaviour in general. According to the concept of the Nobel Laureate Professor Gary S. Becker from the University of Chicago, criminals are rational individuals. People's attitude toward ethical behaviour is based on pure rational cost-benefit analysis.²² Based on this rational concept, we could come to the conclusion that an effective prevention model should minimize possibilities to cheat, maximize risk of being caught and include hard sanctions.

However, according to the lecturer, dishonesty does not correlate with cost-benefit analysis. People are driven by two opposing motivations: obtaining easy gain and viewing themselves as honorable people. They are looking for opportunity to benefit without damaging self-image.

Dr. Pallai presented the process of influencing behaviour as an organizational iceberg. The rapid process of direct intervention is just the tip of the iceberg. It includes such components as infrastructure, rules, procedures, control mechanisms. The main hidden part of the iceberg is a long-term process of indirect influence. It includes education, promoting values, building trust and gaining experience. For an effective corruption control it is important to work both on rules and values. Integrity management is a consistent, systemic and continuous effort that systematically targets both the rules and values of the organization.

2.2. Organizational Integrity

In the frame of her second lecture, Dr. Pallai developed ideas on organizational integrity and integrity management that had been presented in the first lecture, provided an overview of the Organisation for Economic Co-operation and Development (OECD) document "Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation,"²³ and shared experience of several countries in promoting organizational integrity.

According to the OECD, integrity management can be seen as a complex and never-ending balancing exercise between the rules-based and the values-based approaches. "Integrity management refers to the activities undertaken to stimulate and enforce integrity and prevent corruption and other integrity violations within a particular organization. The integrity management framework of an organization then refers to the whole of those instruments within that organization, taking into consideration their interdependence, as well the processes and structures that bring those instruments to life."²⁴

²² Becker, G., 1968. Crime and Punishment: An Economic Approach. *Journal of Political Economy*, 76 (2), pp. 169-217.

²³ Organisation for Economic Co-operation and Development (OECD), 2009. *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*. [pdf] Paris: OECD. Available at: <[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF\(2009\)1](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=GOV/PGC/GF(2009)1)> [Accessed 16 December 2019].

²⁴ OECD, 2009.

Rules and procedures, culture and values are important components of the integrity management system.

Internal control and compliance focus on rules in order to limit discretion and set external incentives. At the same time, according to Dr. Pallai, more rules decrease the value of rules. Employees can feel themselves not respected and trusted. Too many rules can work against intrinsic motivation and have negative influences on employees which are as follows:

- decrease moral responsibility
- lead to ethical fading
- limit adaptive responses and creativity

Ethics approach can bring necessary balance. Acceptance by employees is crucial for successful implementation and application of organizational rules. Building shared values and norms can create healthy environment and intolerance to cheating in an organization. According to the FCPA Resource Guide, “a strong ethical culture directly supports compliance programmes.”²⁵ The Guide criticizes a “check-the-box.” “A well-designed compliance program that is not enforced in good faith, such as when corporate management explicitly or implicitly encourages employees to engage in misconduct to achieve business objectives, will be ineffective.”²⁶ The U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission evaluate both compliance with the FCPA and ethical rules.

The tone from the top plays an important role in promoting organizational values. The UNODC underlines in its Practical Guide that “the ‘tone from the top’ should reflect irrevocable support and appraisal of the company’s fundamental values, such as integrity, transparency and accountability.”²⁷ The UK Ministry of Justice’s Guidance includes the top-level commitment as one of the six principles for developing procedures to prevent bribery.²⁸

In daily life, employees of large enterprises communicate much more with middle management than with top management. Middle management should also promote business integrity and zero tolerance of corruption, and support delivering the key messages of the company’s training and communication.²⁹ According to the FCPA Resource Guide, “by adhering to ethical standards, senior managers will inspire middle managers to reinforce those standards. Compliant middle managers, in turn, will encourage employees to strive to attain those standards throughout the organizational structure.”³⁰

²⁵ Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012. *A Resource Guide to the U.S. Foreign Corrupt Practices Act*. [pdf], p.1157. Washington, DC: U.S. Department of Justice and U.S. Securities and Exchange Commission. Available at: <<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>> [Accessed 20 December 2019].

²⁶ Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012.

²⁷ United Nations Office on Drugs and Crime (UNODC), 2013. *An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide*. [pdf], p. 20. Vienna: United Nations. Available at: <https://www.unodc.org/documents/corruption/Publications/2013/13-84498_Ebook.pdf> [Accessed 20 December 2019].

²⁸ UK Ministry of Justice, 2012. *Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010)*. [pdf], p. 23. London: UK Ministry of Justice. Available at: <<https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>> [Accessed 20 December 2019].

²⁹ UNODC, 2013. p. 69.

³⁰ Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, 2012. p. 57.

If building shared values and norms is successful, compliance is no longer just an approach, an activity or a responsibility of a department. Compliance becomes the outcome.

According to the lecturer, the integrity management framework is based on three pillars: instruments, processes and structures.

Dr. Pallai provided participants with a classification of integrity management instruments developed by the OECD. According to the functions that should be fulfilled in a sound integrity management framework, the integrity instruments are divided into four groups. The first group includes instruments for determining and defining integrity:

- Risk analysis
- Analysis of ethical dilemmas
- Consultation of staff and stakeholders
- Code of conduct or code of ethics
- Non-written standard setting
- Structural measures in the core of the integrity management framework
- Structural measures in the complementary part of the integrity management framework

The second group contains instruments for guiding towards integrity:

- Exemplary behaviour by management
- Integrity training
- Oath, signing an “integrity declaration”
- Integrating integrity in the regular discourse of the organization
- Coaching and counselling for integrity
- Assessing the fairness of personnel management processes

The instruments in the third group can be used for monitoring integrity. They are:

- Passive monitoring and establishing reporting channels, and
- Active monitoring

The fourth group contains instruments for enforcing integrity:

- Investigations and sanctions, disciplinary processes
- Appropriate internal and external communication about integrity violations³¹

There are two layers in the integrity management framework. The first layer includes core measures. Implementation of these measures is the main task of ethics and compliance department. The second layer consists of complementary measures that should be implemented by other departments.³²

Dr. Pallai shared with participants some examples of good practices in organizational integrity management. In 2013, an institute of integrity advisors was established in Hungary. The role of integrity advisor is to:

- advise the head of the organization on integrity and anti-corruption policy
- facilitate and lead the internal control and anti-corruption risk analysis and management process

³¹ OECD, 2009. p.p. 27-59.

³² OECD, 2009. p. 22.

- provide ethics training and counselling to staff
- develop and operate the confidential reporting system

The integrity advisor exercises functions of the secretary of Integrity Working Group in an organization. The Integrity Working Group works on integrity development with periodic meetings, provides steering and evaluation for the integrated risk management process, and supports leadership to deal with key integrity issues and breaches.

Another interesting example of practical implementation of the integrity management is an institute of integrity coordinators and counsellors in the Netherlands. Large organizations establish even Integrity Bureaus.³³

There are following main functions of integrity coordinators:

- designing integrity policy
- developing code of ethics and code of conduct
- preparing and updating regulations to reduce integrity risks
- supervising processes with high risk of misconduct
- conducting regular talks with the two confidential integrity counsellors
- creating awareness of integrity among employees
- maintaining organizational discussion on integrity
- providing annual report to and maintaining contact with management

Integrity counsellors provide confidential support for employees when they face ethical dilemmas, operate the confidential reporting system or Integrity Reporting Center in large organizations, cooperate with integrity coordinators. Integrity counsellors report to integrity coordinators or the management.

The lecturer underlined that the integrity management system can achieve good results, such as:

- Integrity management becomes a systemic approach in the organization
- Integrity professionals have voice
- Integrity is permanently on the agenda and becomes a part of the mind-set and operation
- Having good tone and examples at the top
- Supporting structure and processes for raising awareness and open discussion of dilemmas are created
- Environment of trust and respect is created
- Open dialogue for continuous improvement is supported
- Employees have an opportunity to report and correct potential mistakes and misconduct

Modern studies demonstrate that investments in ethics pay off. In 2018 the Institute of Business Ethics carried out the “Ethics and Work Survey” in Australia and New Zealand³⁴,

³³ Huberts, L. and Hoekstra, A., 2016. *Integrity Management in the Public Sector: The Dutch Approach*. [pdf] The Hague: BIOS. Available at: <<https://www.government.nl/documents/reports/2016/01/18/integrity-management-in-the-public-sector-the-dutch-approach>> [Accessed 28 January 2020].

³⁴ Institute of Business Ethics, 2018. *Ethics and Work: 2018 survey of employees – Australia, New Zealand and United Kingdom*. [pdf] London: Institute of Business Ethics. Available at: <<https://www.ibe.org.uk/uploads/assets/67091793-4ebb-4f95-82eeef8331011484/ibesurveyreportethicsatwork2018surveyofemployeesausnzukint.pdf>> [Accessed 22 December 2019].

Canada³⁵, Singapore³⁶ and eight European countries³⁷ which showed interesting results. For instance, according to the survey in Europe, organizations with ethics programmes act more responsibly (86 %) than organizations without ethics programmes (57 %); employees in organizations with ethics programmes are more likely to speak up about misconduct (73%) than in organizations without (42%); managers of organizations with ethics programmes are better at dealing with ethics issues raised by employees (73 %) than their colleagues in organizations that did not implement ethics programmes (28%).³⁸

2.3. Corruption Risk Assessment in Public/Private Sector

During his lecture, Mr. Konov presented an effective model of corruption risk assessment applicable to the public and private sector.

According to the lecturer, corruption risk in an organization means possibility of committing corruption offence by an employee of the organization. Corruption risk assessment is a process of identifying, analyzing, and categorizing the risk of corruption.

Mr. Konov referred to two useful sources for the anti-corruption risk assessment: the United Nations Global Compact Guide for Anti-Corruption Risk Assessment³⁹ and Regional Cooperation Council's Corruption Risk Assessment in Public Institutions in South East Europe: Comparative Research and Methodology.⁴⁰

The corruption risk assessment should allow to tailor anti-corruption measures in an organization considering existing schemes of corruption offences in an industry/sector. In absence of deep analysis of real corrupt practices and schemes organizations quite often apply the one-size-fits-all approach without any justification of particular measures. Another aim of the risk assessment is to define the list of positions vulnerable to corrupt practices and propose appropriate mitigation measures, including special restrictions for the listed positions. The typical mistake is defining the list of positions just according to the hierarchical principle or the very broad interpretation of corrupt opportunities for certain employees.

According to the lecturer, the right approach to the corruption risk assessment includes:

- Describing functions and processes in each unit/department
- Defining the “critical points” where employees have power to distribute the benefits
- Describing possible corruption schemes for each critical point
- Identifying the possible role of employees in each corruption scheme

³⁵ Institute of Business Ethics and Stewardship Institute, 2019. *Ethics and Work: 2018 survey of employees – Canada*. [pdf] London: Institute of Business Ethics/St. Prex: Stewardship Institute. Available at: <<https://www.ibe.org.uk/uploads/assets/cc8691cd-38a2-4844-97f5c952cc421452/ibesurveyreportethicsatwork2018surveyofemployeescanadaint.pdf>> [Accessed 22 December 2019].

³⁶ Pressat, 2019. *A quarter of Singaporean employees felt pressured to compromise ethical standards, reveals Institute of Business Ethics' survey*. [press release] 23 September 2019. Available at: <<https://pressat.co.uk/releases/a-quarter-of-singaporean-employees-felt-pressured-to-compromise-ethical-standards-reveals-institute-of-business-ethics-survey-0f1579b58ca9b4d287c33ae9ff079b0c/>> [Accessed 28 January 2020].

³⁷ Institute of Business Ethics, 2018. *Ethics and Work: 2018 survey of employees – Europe*. [pdf] London: Institute of Business Ethics. Available at: <<https://www.ibe.org.uk/uploads/assets/ba9cd14a-a195-4c79-b12c68f7b06fd203/IBESurveyReportEthicsatWork2018surveyofemployeesEuropeINT.pdf>> [Accessed 22 December 2019].

³⁸ Institute of Business Ethics, 2018. *Ethics and Work: 2018 Survey of employees – Europe*.

³⁹ UN Global Compact, 2013. *A Guide for Anti-Corruption Risk Assessment*. [pdf] New York: UN Global Compact. Available at: <https://www.unglobalcompact.org/docs/issues_doc/Anti-Corruption/RiskAssessmentGuide.pdf> [Accessed 15 December 2019].

⁴⁰ Selinšek, L., 2015. *Corruption Risk Assessment in Public Institutions in South East Europe: Comparative Research and Methodology*. [pdf] Sarajevo: Regional Cooperation Council. Available at: <http://rai-see.org/wp-content/uploads/2015/10/CRA_in_public_ins_in_SEE-WEB_final.pdf> [Accessed 10 December 2019].

- Categorizing the corruption risks
- Developing the corruption risk map

The corruption risk map defines the existing or possible corruption schemes and mitigation measures in the critical points. The mitigation measures may include:

- Improving management processes
- Addressing regulatory gaps
- Increasing effectiveness of control measures
- Ongoing monitoring of financial transactions

Mr. Konov proposed eight principles of corruption risk assessment:

- Analysis of management processes, rather than personal qualities of employees
- Concentration on risks of committing corruption offences, rather than on risks of non-compliance with restrictions and prohibitions
- Assessment of corruption risks in all organizational functions
- Rational allocation of available resources
- Combination of impartiality and understanding of assessed management processes
- Detailed description of corruption risks
- Developing anti-corruption measures based on the corruption risk assessment
- Conducting corruption risk assessment on the regular basis

The process of corruption risk assessment consists of several stages. The aim of the first stage is preparation for the risk assessment. This stage includes defining the unit or department responsible for the risk assessment, approval of the risk assessment methodology and timeline by senior management, defining the list of necessary documents, issuing the order or other internal document on the corruption risk assessment.

The second stage is the description of management processes. In the framework of this stage the risk assessment team analyzes internal documents and external environment, describes main business functions and processes, conducts interviews with employees, and identifies prerequisites for corruption in internal documents.

The third stage is the identification of corruption risks. At this stage the risk assessment team should identify critical points in each function. The lecturer emphasized that the best way to identify functions vulnerable for corruption is to think like a criminal.

The aim of the fourth stage is the analysis of corruption risks. The team members should try to understand how a corrupt employee can obtain personal gain from her/his function, whether she/he can commit corruption offences alone, and if not, who from other employees can be involved and why. Another important question for corrupt employees is how to bypass the existing control mechanisms and procedures. The outcome of this stage is description of corruption risk (passport of corruption risk).

The passport of corruption risk may include:

- Description of benefits distributed in the framework of particular function
- List of potential beneficiaries
- Short and detailed descriptions of possible corruption schemes
- List of employees' positions critical for implementation of corruption schemes
- Description of personal gain that can be obtained by corrupt employees
- Possible ways of illicit payments to corrupt employees

- Internal control mechanisms and procedures in critical points
- Possible ways to bypass the internal control

Corruption risks should be categorized within the framework of the fifth stage. The risk assessment team should assess the probability of occurrence, and the potential impact of occurrence, including legal, financial, reputational, and other possible negative consequences. In the public sector, the possible harm to national security shall be also considered. According to the lecturer, the significance of risk equals to the probability of the risk multiplied by its potential impact (*significance of risk = probability x potential impact*).

The aim of the sixth stage is to develop proposals on mitigation measures. The mitigation measures may include organizational measures, such as detailed regulation of business processes, use of IT-solutions in critical points, implementation of the four-eyes principle, and control measures, such as anti-corruption expertise of internal documents, internal audit, and prevention of conflict of interest.

In the final, seventh stage, the risk assessment team should draft the final report that includes the general register of corruption risks, registers of corruption risks for all functions, proposals on the defining high-risk positions, and proposals on the amendment of the anti-corruption plan.

Mr. Konov shared the Russian experience of corruption risk assessment in public sector with participants. On 13 March 2012, the President of the Russian Federation approved the National Plan for the Fight against Corruption for the Period 2012-2013, which established obligations for all federal government authorities to conduct regular corruption risk assessments and to define lists of positions in public service which have high level of corruption risk.⁴¹ To support the implementation of the National Plan, the Ministry of Labour and Social Protection of the Russian Federation published the Letter “On conducting corruption risk assessment in the federal government authorities” together with the Guidelines for the conducting assessment of corruption risks arising from the performance of functions.⁴² The Guidelines paid special attention to the functions of control and supervision, management of state property, provision of public services, public procurement, licensing, and some others.

In practice, federal governmental authorities define functions vulnerable for corruption based on the criminal statistics, information provided by the law enforcement authorities, publications in media, citizens’ appeals, and materials of commissions on compliance with requirements on official conduct and regulation of the conflict of interest. The lists of functions should be approved by the heads of the federal government authorities.

According to Mr. Konov, public procurement is one of the most vulnerable areas for corruption.

The UNCAC defined a general framework for anti-corruption provisions in national public procurement legislation of the States Parties to the Convention. According to Article 9 of the UNCAC, each country is obliged to establish appropriate systems for public procurement, based on transparency, competition, and objectivity in decision-making. An effective system of domestic review, including appeal, the public distribution of information relating to procurement procedures and contracts, and the use of objective, predetermined, and

⁴¹ Decree on the National Plan for the Fight against Corruption for the Period 2012-2013. 2012. Russian Federation: The President of the Russian Federation. Available at: <<http://www.kremlin.ru/acts/bank/34928>>.

⁴² Letter on Conducting Corruption Risks Assessment in the Federal Government Authorities. 2014. Russian Federation: Ministry of Labor and Social Protection Available at: <<https://rosmintrud.ru/ministry/programms/anticorruption/9/8>>.

transparent criteria for public procurement decisions are listed among the fundamental anti-corruption safeguards in any national procurement system.

Mr. Konov described distinctive features of corruption offences and shared good practices of corruption prevention in public procurement. According to the lecturer, the typical aims of corrupt officials involved in the public procurement process are buying luxury goods, obtaining profitable contracts for the companies controlled by their family members or other close relatives, and receiving kick-backs. In many cases corrupt officials buy the luxury goods such as expensive cars or furniture for their offices to demonstrate their important role in the society. When businessmen visit corrupt officials, they should understand that they deal with “serious and solid” persons and be ready for solid kickbacks.

The process of committing corruption offence in public procurement can be divided into three stages. The first stage includes planning and preparation of the offence or several offences. As a rule, corrupt officials plan a significant budget of the procurement including their personal gain. To increase the budget and mask over-pricing they often plan for non-standard, long-term work, especially in the construction sector. The typical example is a road construction in regions with a very specific climate. Corrupt official can always explain that the price of work is higher than the usual market price due to specific materials or technologies required under such climatic conditions.

At the preparation stage it is important to define several companies that will participate in the procurement. Corrupt officials can use already existing companies under own control, establish new companies, or “cooperate” with the market participants. Several companies participating in the corrupt deal can help to manipulate prices and demonstrate necessary competition. Depending on the industry, corrupt officials may need “loyal” supporting infrastructure – auditors, lawyers, and technical experts.

At the second stage corrupt officials organize and conduct public procurement. Usually, they include personal benefits in the price of goods or services or formulate the conditions of procurement in such a way that may allow them to accept lower quality services as sufficient services according to the contract. The description of technologies or materials can be very general, and contractors can reduce real costs significantly using the cheaper technical solutions than in the initial calculation. The difference between calculated and real costs can be transferred to the front companies’ accounts for the fictitious services, and shared between participants of the corruption scheme.

Another “important task” for corrupt officials at this stage is to exclude from the project other companies participating in the procurement. To achieve this goal, corrupt officials have various options. They can:

- Select the non-competitive procurement method
- Officially limit the circle of potential participants of the procurement
- Hide information about the procurement
- Determine the procurement conditions that are unprofitable for the ordinary market participants who are not involved in the corrupt deal
- Determine difficult requirements for the participation in the procurement
- Define the criteria for determining the winner that most probably only the participant involved in the corrupt deal can meet
- Provide for the possibility of canceling the procurement in case an undesirable participant wins

The procurement conditions in the construction sector can include the requirements to have the particular rare licence that many companies in the industry usually do not have or to have particular equipment. In the academic field, it can be the requirement to have particular number of professors among the staff. The unprofitable conditions can be changed in the later stages due to new unforeseeable circumstances.

Corrupt officials are not always successful in their “business.” Sometimes they shall recognize the victory of independent participants of the procurement because of very high personal risk of the different decision. In such cases, they make the lives of the winners miserable at all stages of the contract execution to prevent their participation in the next procurements.

The lecturer proposed several effective measures to prevent corruption in public procurement. First of all, the detailed legal regulation of the procurement process can reduce the role of subjective discretion of public officials. Digitization and automation are another important factor that can increase the transparency of the procurement process.

Mr. Konov provided participants with a brief overview of the research project in Russia aimed at the increasing effectiveness of anti-corruption measures in public procurement, including legislation, supervision, access to information on public procurement, and use of new IT-solutions and tools. One of the first outcomes of the project was a description of 100 typical elements and 200 indicators of corruption offences in public procurement. At the next step, a special analytical IT-system shall be created. This system will be able to analyze the procurement process using indicators of corruption offences. The project shall be completed in 2020.

The lecturer underlined that conflict of interest increases the risk of committing corruption offences. In a broad sense, conflict of interest means any link that with a high probability can induce a public official to use the power given by the state to benefit or harm the persons concerned. Conflict of interest regulation is widely recognized as one of the key elements of corruption prevention in public procurement. The general aim of conflict of interest regulation is to prevent a situation in which official’s private-capacity interest could improperly influence the performance of their official duties and responsibilities.⁴³

According to the lecturer, conflict of interest regulation includes three main elements: prevention, identification, and resolving. Prevention is a system of restrictions, prohibitions, and other measures that do not allow public officials to find themselves in conflict of interest situations. Identification is a system of measures that allows for the timely reception and analysis of information about personal interests. Resolving means a limitation of participation in decision-making (committing actions) affecting personal interests.

It is not easy to identify and confirm a conflict of interest and it is even more difficult to resolve it. Therefore, special attention should be paid to preventive measures. It is important to build a system of restrictions and carefully handle potential conflicts of interest situations. Many existing restrictions in public service were adopted to prevent conflicts of interest. There are bans on receiving gifts, having additional paid jobs, possession of securities, and being in subordination of relatives.

The main instrument for the identification of conflicts of interest is a written declaration. As a rule, public officials are obliged to declare conflicts of interest. Depending on the national law, declarations can be submitted when public officials are appointed to a position, on a periodical

⁴³ OECD, 2003. *Guidelines for Managing Conflict of Interest in the Public Service*. [pdf], p.15. Paris: OECD. Available at: <<http://www.oecd.org/governance/ethics/48994419.pdf>> [Accessed 17 December 2019].

basis, and when essential circumstances changed. The lecturer recommended the combination of periodical reporting with situational reporting. The declaration forms should collect data about existing interests and/or conflicts of interest. It can include detailed questions about particular interests.

Resolving a conflict of interest is a complicated process. There are several ways to resolve a conflict of interest: preserving individual interests, strengthening the supervision of actions regarding related persons, suspension from actions regarding related persons, creating barriers to influencing related persons, eliminating interests, and dismissal. Preserving individual interests is possible if expressly provided for by law or if it was approved by an authorizing body. To eliminate personal interest, a public official can terminate other paid activities, return gifts, or sell the “problematic” assets. It should be taken into account whether the official has already received substantial remuneration in the framework of other paid activities from an organization or person. In some cases, the termination of the employment relationship may not be enough.

The periodical internal and external audit can also have positive impact on corruption prevention in public procurement. To increase effectiveness of the audit government agencies can develop indicators of corruption in the procurement process. These indicators can be used by auditors to identify possible misconduct.

The role of civil society should not be underestimated. The information about public procurement should be transparent and publicly available. In this case civil society organizations and other stakeholders have an opportunity to exercise public control and inform governmental authorities, media, and society in general about possible misconduct. Many infrastructure projects such as road construction, construction of hospitals, kindergartens, schools, stadiums have direct impact on daily lives of many people. There is no doubt that civil society has serious ground to be involved in the public scrutiny and to cooperate with government authorities in countering corruption.

Finally, the inevitability of punishment for corruption offences, including disqualification of corrupt officials is important for prevention corruption. The successful investigations should be highlighted in the media in order to achieve a general preventive effect.

2.4. Anti-Money Laundering and Countering Financing of Terrorism and Anti-Corruption Compliance

Corruption and money laundering have a lot of connections. In this regard it is not clear why approaches to regulation of AML/CFT compliance and anti-corruption compliance are so different.

According to Dr. Ivanov, regulation of AML/CFT compliance is a typical example of the classic model of legal regulation. International law defines a general framework of AML/CFT compliance. The most important comprehensive international legal acts in this field are the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, the United Nations Convention against Transnational Organized Crime of 2000, and the International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (the FATF Standards) of 2012. The UNCAC also contains provisions on preventing and combating money laundering. The rules of international law are implemented in national laws and regulations. In total, the FATF framework includes 204 states and territories. The FATF Standards define, in detail, obligations of financial institutions and designated non-financial businesses and professions.

The international anti-corruption law established a general obligation of states to cooperate with the private sector. The obligations of companies and formal requirements for anti-corruption compliance programmes were defined neither in international treaties nor in customary international law. The international soft law consisting of more than 30 non-binding standards and guidelines aims to compensate for lack of regulation, and support companies in designing and implementing anti-corruption compliance programmes.⁴⁴ Many countries do not have laws and regulations on anti-corruption compliance. In this regard companies in these countries consider foreign laws which have transnational application and compliance programmes of multinational corporations.

The obvious question arises as to whether AML/CFT and anti-corruption compliance are so different that they require two different approaches in legal regulation. From a very simplified point of view, the aim of AML/CFT compliance is to identify suspicious transactions and report them to the authorized governmental agency. AML/CFT compliance is very technical. The aim of anti-corruption compliance is to influence the behaviour of staff members and other persons associated with a company to prevent corruption. Companies develop AML/CFT compliance programmes based on relevant legal rules. For anti-corruption compliance programmes, ethical principles and corporate values are of significant importance. At the same time, both types of compliance programmes are aimed at crime prevention. Moreover, a closer look at the structures of compliance programmes demonstrates that several components of AML/CFT and anti-corruption compliance are quite similar. Both programmes include due diligence, risk management, identification of suspicious transactions, training, monitoring, and evaluation.

As a rule, AML/CFT compliance is mandatory for financial institutions and designated non-financial businesses and professions, while implementation of anti-corruption compliance usually depends on shareholders and general management of companies. The main reasons for companies to implement anti-corruption compliance management systems can be classified into three groups: moral reasons, legal obligations and incentives, and market requirements.

The Russian approach to implementation of anti-corruption compliance is rather an exception. Federal Law No. 273-FZ “On Combating Corruption” established obligations for all organizations acting in the Russian Federation to take measures for the prevention of corruption, such as:

- Appointment of special officers or units responsible for countering corruption in a company
- Cooperation with law enforcement agencies
- Development and introduction of standards and procedures designed to ensure the ethical operation of the organization
- Adoption of a code of business ethics or corporate conduct
- Prevention and resolution of conflicts of interest
- Prohibition of maintaining unofficial accounting and use of forged documents

However, it is too early to say that Russia has been implementing mandatory anti-corruption compliance comparable to AML/CFT compliance. The liability for violation of AML/CFT law is very strict. The Central Bank of Russia may immediately revoke a banking license if a bank does not have an AML/CFT compliance system in place. There is no special liability under

⁴⁴Ivanov, E., 2019. *Overview of Anti-Corruption Compliance Standards and Guidelines*. [pdf] Laxenburg: International Anti-Corruption Academy (IACA). Available at: <https://www.iaca.int/images/Research/Overview_of_Compliance_Standards_and_Guidelines.pdf> [Accessed 27 December 2019].

Russian law for not having an anti-corruption compliance programme in a company. However, the Prosecutor General's Office, which is responsible for supervising the implementation of anti-corruption legislation, is entitled to order or request a court order for companies to implement measures in accordance with Article 13.3.

The Ministry of Labour and Social Protection of the Russian Federation published the Guidelines for the development and adoption of measures for prevention and countering corruption in organizations on 8 November 2013.⁴⁵ The Guidelines aim to support the implementation of anti-corruption compliance programmes in organizations.

Comparing the legal regulations of AML/CFT compliance and anti-corruption compliance, we can always identify pro and contra arguments. The strict hard law approach to the regulation of AML/CFT compliance can be criticized for creating a lot of paperwork for financial institutions. It requires sufficient resources and funding. Some businessmen describe it as a very formal “one-size-fits-all” approach. At the same time, all the legal requirements are very clear. Financial institutions and other entities that have obligations under AML/CFT law can be punished only for violation of formal rules.

The soft law as a legal base for anti-corruption compliance in many countries is more flexible. It gives more space to maneuver in designing and implementing anti-corruption compliance programmes but it also means more responsibility. Dr. Ivanov mentioned that the soft law approach creates particular problems for companies. They develop compliance programmes based on soft law but can be penalized for non-prevention of corruption under hard criminal law. In the absence of clear legal rules and criteria, room for discretion in the assessment of anti-corruption compliance programmes is huge. In the lecturer's opinion, in countries with corrupt judicial systems such legal uncertainty can even become a prerequisite for other corruption offences, for example, extortion of a bribe by a judge for the positive assessment of a compliance programme.

As a rule, in the field of AML/CFT compliance, regulators and/or financial intelligence units are responsible for the supervision of compliance with AML/CFT laws and regulations. This supervision includes providing financial institutions and designated non-financial businesses and professions with guidance and official clarifications, and conducting supervisory inspections. It can also include a function of the approval of particular compliance-related documents.

For anti-corruption compliance regulation, the supervisory functions of governmental agencies are exceptions. A question about public evaluation of anti-corruption compliance management systems usually arises when a company is going to use it as a defense in a judicial trial. In the lecturer's opinion, the certification of anti-corruption compliance management systems, which nowadays is becoming an international trend, is an attempt to replace supervision in some aspects.

According to the lecturer, supervision in general and supervisory inspections in particular are quite often criticized by private sector for unnecessary bureaucracy and creating additional burdens for business. At the same time, supervisory bodies share responsibility with financial institutions for the quality of compliance programmes.

⁴⁵ Ministry of Labor and Social Protection of the Russian Federation, 2013. *Guidelines for the development and adoption of measures for prevention and countering corruption in organizations*. [online] Available at: <<https://rosmintrud.ru/docs/mintrud/employment/26>> [Accessed 24 November 2019].

Companies which provide certification services are not bound by strict legal rules and may use a more flexible approach for the evaluation of compliance programmes. However, the legal significance of certification is not clear. Courts may but are not obliged to consider certificates in criminal, administrative, or civil proceedings.

One officer, unit, or department can be in charge of AML/CFT compliance depending on the size of the financial institution or company, amount of work, and in some cases, on legal requirements. The most typical solutions are to have a specialized AML/CFT unit or department or an AML/CFT unit as part of a compliance or legal department.

In defining a place for anti-corruption compliance in the corporate structure, companies usually choose between three possible solutions. According to the lecturer, they can establish a special compliance unit or department, include anti-corruption compliance on the list of functions of the legal department, or task the security department with handling anti-corruption.

Comparative analyses of AML/CFT and anti-corruption compliance programmes demonstrate that several policies are quite similar. In both types of compliance, companies have to conduct customer/counterparty/third party due diligence and risk assessment. The process of due diligence starts with identification. In AML/CFT compliance, financial institutions and designated non-financial businesses and professions are required to identify their customers, customer representatives, beneficial owners, and beneficiaries. In anti-corruption compliance, companies as a rule conduct due diligence on all their counterparties.

After publication of the new International Standards on Combating Money Laundering, the Financing of Terrorism, and Proliferation (FATF, 2012), mechanisms for the identification of beneficial owners were implemented in national AML/CFT legislation and compliance programmes of financial institutions and other subjects having obligations under AML/CFT laws.

Russia's AML/CFT law defines a beneficial owner as a natural person who ultimately, directly or indirectly (through third parties), owns (with predominantly more than 25 percent interest in capital) a client, a legal entity, or has the ability to control the actions of the client.⁴⁶ All Russian companies are obliged to know their beneficial owners and provide this information to financial institutions and to relevant governmental agencies. The definition of a "beneficial owner" in the Republic of Kazakhstan is similar.⁴⁷ The Republic of Armenia adopted a 20 percent threshold.⁴⁸ The Republic of Belarus adopted a 10 percent threshold.⁴⁹ The definition in the AML/CFT law of the Kyrgyz Republic combines descriptions of beneficial owners and beneficiaries. A beneficial owner (beneficiary) is defined as a person who owns money or property and on behalf of whom and/or at whose expense the client performs an operation (transaction) with money or property, or in accordance with the contract concluded between such a person and the client has the possibility, directly or indirectly, to influence the client's

⁴⁶ Federal Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2001. Russian Federation: Federal Assembly. Available at: <http://www.consultant.ru/document/cons_doc_LAW_32834/>.

⁴⁷ Law on Combating Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism. 2009. Republic of Kazakhstan: Parliament. Available at: <https://online.zakon.kz/Document/?doc_id=30466908>.

⁴⁸ Law on Combating Money Laundering and Terrorism Financing. 2008. Republic of Armenia: National Assembly. Available at: <https://www.cba.am/Storage/EN/FDK/Regulation_old/law_on_combating_money_laundering_and_terrorism_financing_eng.pdf>.

⁴⁹ Law on Measures to Prevent Legalization of Proceeds Gained from Crime, Financing of Terrorist Activity and Proliferation of Mass Destruction Weapons. 2014. Republic of Belarus: Parliament. Available at: <http://base.spininform.ru/show_doc.fwx?rgn=68802>.

transactions involving money or property.⁵⁰ There are two main practical challenges in the process of the identification of beneficial owners: complex corporate structures in various jurisdictions and beneficial ownership based on informal relations and control.

In the case of complex corporate structures, financial institutions usually request that their customers provide information and documents related to the last company in the chain and natural persons/owners of that company. This procedure is sufficient to fulfil the formal requirements of AML/CFT laws. A situation where financial institutions request the documents of all companies in the chain is rather an exception. Available open sources of information such as registers of companies and beneficial owners as well as commercial databases can be used in addition to information provided by the customers. If a customer is not able to provide information about beneficial owners and information from open sources is not available, financial institutions may recognize the executive body of the customer as a beneficial owner or reject opening a bank account or signing a contract.

In both types of compliance, companies pay special attention to the transactions of public officials. AML/CFT compliance programmes contain obligations to identify politically exposed persons (PEPs) and their relatives, and to analyze their transactions. Financial institutions may take measures to identify sources of incomes of PEPs. In anti-corruption compliance, lower level public officials may also be objects of enhanced due diligence.

Risk assessment is a key component for effective AML/CFT and anti-corruption compliance programmes. AML/CFT compliance programmes take into consideration a wide range of risks related to various predicted offences and money laundering typologies. However, according to the lecturer's experience, the risks of money laundering related to corruption, e.g. geographical risks, are usually specifically underlined in guidelines and AML/CFT compliance programmes. Transparency International's (TI) Corruption Perceptions Index is often considered for geographical risks assessments.

The scope of reporting obligation in anti-corruption compliance depends on the laws of a country. National criminal law can establish obligations to report corruption offences relating to serious or organized crime or having a particular threshold of imprisonment as a liability. In other cases, disclosure of information depends on the compliance policy. In AML/CFT compliance, financial institutions and designated non-financial businesses and professions are obliged to report mandatory controlled transactions in accordance with national laws and to report suspicious transactions as defined in the AML/CFT compliance programme. So, in both types of compliance, we see a combination of binding obligations to report and discretionary reporting.

In the lecturer's opinion, the "technical" part of an anti-corruption compliance programme is very similar to the corresponding parts of AML/CFT compliance programmes. AML/CFT and anti-corruption compliance functions can be exercised by one compliance unit or department. It would help avoid the unnecessary duplication of several procedures (due diligence, risk assessment, analysis of transactions, training) and reduce the costs of the compliance function. In small and medium-sized enterprises (SMEs), one compliance officer can be responsible for both types of compliance. At the very least, cooperation between AML/CFT and anti-corruption compliance officers (units) in a company can create opportunities to prevent crime in a more effective way. The harmonization of AML/CFT and anti-corruption laws,

⁵⁰ Law on Combating the Legalization (Laundering) of Criminal Proceeds and Financing of Terrorist or Extremist Activities. 2006. Kyrgyz Republic: Supreme Council. Available at: <<http://cbd.minjust.gov.kg/act/view/ru-ru/1926>>.

unification of definitions, and technical parts of compliance programmes could be very helpful for financial institutions and companies which have obligations under AML/CFT law.

Chapter 3: Corruption and Fraud Investigations & Interview Techniques

Mr. Willems shared with the participants his solid experience of investigating and interviewing in fraud and corruption cases. He underlined that investigators shall respect the rule of law and follow the procedures defined in the laws and regulations.

International law defines and protects the rights of every interviewee, including the right to remain silent and not to incriminate oneself. According to the article 6 of the European Convention on Human Rights, everyone charged with a criminal offence “has right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require,”⁵¹ and coercion and unauthorized pressure are prohibited. These fundamental rights are integrated in national constitutional and criminal procedure laws.

The lecturer provided an overview of models of investigative interviewing typical for the western law enforcement authorities. The Reid⁵² model was introduced in the United States in 1962. Distinctive features of the Reid technique are an accusing interrogation style aimed at obtaining a confession. The method entails aspects of behavioural analysis, including asking behavioural observation questions and non-verbal lie detection.⁵³

The PEACE model was developed in the United Kingdom in 1992, after changes in criminal procedure law allowed for more transparency in the investigation process. The model stands for an approach focussing on information-gathering, rather than being confession-driven. The aim of every interview is to obtain accurate, complete and reliable information, mainly by asking open-ended questions. An important concept is “rapport,” this is the development and maintenance of a good working relation between the interviewer and the interviewee, based on a relation of trust and mutual understanding.

The acronym PEACE refers to the five stages of the model:

- Preparation and planning
- Engage and explain
- Account, clarification and challenge
- Closure
- Evaluation⁵⁴

A wide number of states apply the PEACE model and the UN promotes it as a humane and efficient approach.⁵⁵

In the aftermath of reports on interview practices in Guantanamo, the United States authorities created the High-Value Detainee Interrogation Group (HIG) in 2009, composed of representatives of the main law enforcement and intelligence agencies of the United States.

⁵¹ European Convention on Human Rights. 1950. Rome: Council of Europe. Available at: <https://www.echr.coe.int/Documents/Convention_ENG.pdf>.

⁵² Named after John E. Reid.

⁵³ Inbau, F. E., et al., 2013. *Criminal Interrogation and Confessions*. 5th ed. Burlington, MA: Jones & Bartlett Learning.

⁵⁴ See e.g. Tudor-Owen, J., et al., 2015. Starting from Scratch: Planning Practices of Police Recruits in Western Australia. *Australasian Policing*, 2015, 7 (2), [online] Available at: <https://www.researchgate.net/publication/291834132_Starting_from_scratch_Planning_practices_of_police_recruit_s_in_Western_Australia> [Accessed 26 December 2019].

⁵⁵ Convention against Torture Initiative (CTI), 2017. *Investigative Interviewing for Criminal Cases*. [pdf], p. 4. Geneva: Convention against Torture Initiative (CTI). Available at: <https://cti2024.org/content/docs/CTI-Training_Tool_1-Final.pdf> [Accessed 26 December 2019].

The HIG financed over 100 scientific studies on interviewing, principally for intelligence purposes, but also relevant to law enforcement. These research projects lead to the identification and validation of strategic and tactical interviewing techniques⁵⁶ and best practices.⁵⁷

By contrast to the PEACE model, the HIG model envisages the interview of antagonistic (meaning opposing or hostile) interviewees and includes influence and persuasion tactics as means to achieve cooperation. It integrates different evidence-based interview approaches to propose a model including what comes prior to an interview (“Planning & Analysis”), components essential to the interview itself (“The Interview”), and what comes at the end of an interview (“Closing”).

According to the lecturer, the PEACE model is arguably the best model existing for interviewing in relation to many types of crime, in particular because of its focus on building rapport and using open-ended questions.

Establishing rapport is indeed a precondition for the successful interview. The lecturer defined the rapport as non-adversarial, productive working relation between the interviewer and the interviewee based on mutual respect and trust. To build trust, the interviewer should obtain credibility. Mr. Willems mentioned three important characteristics of the interviewer’s behaviour that can help to build credibility: expert authority, trustworthiness, and goodwill. Interviewer’s integrity means that the interviewer will do what he/she says. It should be also clear to the interviewee that the interviewer is able to do what he/she said or promised. Finally, the interviewer should demonstrate benevolence. It should be visible that he/she wants to do what he/she said.

Interviewers use a combination of verbal and non-verbal skills to establish rapport, integrating signs of attention, positivity and synchronization of behaviour. Any interview is always a stressful situation for the interviewee. To have an effective dialog, the interviewer should reduce normal anxiety of the interviewee.

Selection of the most effective interview model and tools depends on the type of crime. At the preparation stage, the interviewer should define objectives of the interview and the main questions, analyze profile of the perpetrator, identify available evidences, and assess the risk of false confession. According to Mr. Willems, objectives of the interview in corruption and fraud investigation are essentially information gathering, but also obtaining confession to establish *mens rea* (criminal intent). Perpetrators involved in corruption crime and fraud are usually highly educated and rational persons. The investigator should develop the right arguments to create incentives for these people to cooperate. As a rule, investigators have numerous documents, including account statements, transaction reports, financial reports that may be used as evidences. For the evaluation of available evidences, it is important to receive comments of the interviewee. The risk of false confession in corruption and fraud investigations is lower than in investigations of other types of crime.

Further, Mr. Willems presented the BINT (behaviourally informed interviewing) model of investigative interviewing as a model for the future. This model is a new approach to interviewing suspects in fraud and corruption investigations, which integrates the latest insights from behavioural sciences. It is a combination of the information gathering approach

⁵⁶ High-Value Detainee Interrogation Group, 2016. *Interrogation: A review of the Science*. [online] Washington DC: Federal Bureau of Investigation. Available at: <<https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf/view>> [Accessed 03 February 2020].

⁵⁷ High-Value Detainee Interrogation Group, 2016. *Interrogation Best Practices*. [online] Washington DC: Federal Bureau of Investigation. Available at: <<https://www.fbi.gov/file-repository/hig-report-august-2016.pdf/view>> [Accessed 03 February 2020].

with the use of influence and persuasion tactics based on how people judge and take decisions.

Social influence tactics, for instance, consider and implement scientific findings that:

- people like others who are similar to them
- people do more for scarce goods or services
- in situations of uncertainty many people do what others do
- once people commit, they try to remain consistent
- people have an automatic reaction towards authority
- people reciprocate gestures and don't like to owe something to somebody

BINT also relies strongly on an understanding of mechanisms of dual processing. This refers to findings in social and cognitive psychology that people have an intuitive and a calculated mode of processing information, which can lead to different choices.⁵⁸

The lecturer explained that BINT provides with a prism of tactics that combines leveraging the power of adaptive rules, understanding people's motivations, operationalizing dual process thinking (see above), and the use of arguments that enable or remove blockers to a preferred outcome.

Adaptive rules are non-negotiable, universal principles of human existence, including the need for autonomy, self-enhancement, and living in a stable environment. Motivations are internal impulses for behaviour: sensations (pain or pleasure), anticipation of outcome (hope or fear), and belonging (inclusion in society). The interviewer can develop a choice design based on an understanding of dual processing which takes into account the various enablers and blockers that people respond to when they take decisions (to cooperate or not). The interviewer can use all the described elements to prepare and conduct an interview successfully and obtain the required outcomes.

⁵⁸ Kahneman, D., 2011. *Thinking, fast and slow*. New York: Farrar, Straus and Giroux.

Conclusion

The training at IACA provided a broad overview of international and national efforts aimed at preventing and combating corruption with special focus on the modern challenges, trends and best practices. The Summary Report of IACA's Tailor-Made Anti-Corruption Course for Experts from Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan consists of three chapters and summarizes the main ideas presented in lectures and discussions.

Chapter one highlights the international efforts to curb corruption, connections between corruption and other types of crime, and new challenges for the international community. It gives insights into current trends in combating corruption such as the implementation of new measures to increase transparency and enhance effectiveness of international cooperation in assets recovery.

Chapter two focuses on the implementation of anti-corruption compliance programmes in the public and private sector. It gives an overview of best practices in promoting ethical decision making, organizational integrity and values, and implementing integrity management. Special attention is paid to corruption risk assessment and corruption prevention in the public procurement. Chapter two also includes comparative analysis of legal regulations and the key components of AML/CFT and anti-corruption compliance in business sector.

Chapter three provides readers with an overview of various models and best practices of investigative interviewing. Special attention is paid to the PEACE model that is effective for investigating many types of crime. The new BINT model is presented as a model for the future.

The report can be used for developing anti-corruption policies and drafting anti-corruption laws and regulations, and for designing and implementing anti-corruption compliance programmes in organizations.

Additional information about the Tailor-Made Anti-Corruption Courses for Experts from Russia, Armenia, Belarus, Kazakhstan, and Kyrgyzstan is available at IACA website.



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International Anti-Corruption Academy

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