

## **EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES**

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### **TEN GUIDING PRINCIPLES ON HOW TO AVOID THE INSTITUTIONAL FAILURE OF ACAS**

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Irrespective of their format and powers, ACAs face various obstacles to the exercise of their mandate which, in a certain way, explain the poor results that some of them have obtained: 1) difficulties (of a technical, statute-related and cultural nature) in detecting/exposing corruption by means of complaints; 2) difficulties in obtaining information on corruption from other public bodies; 3) difficulties in establishing a good working climate with the decision-makers; 4) etc.... Peter Larmour has already sketched some of these factors during our second roundtable hence I will avoid a lengthier description.

Whatever those conditions of failure may be, there is generally a discrepancy between the results expected and those achieved, which cannot be ignored in this analysis.

These factors ultimately complicate the life of these agencies in their initial phase of institutionalisation and, in some cases, may even determine their disappearance or relegate them to oblivion, thus completely disempowering them.

The objective of this initiative was to highlight and discuss the various factors accounting for institutional failure/success of the various agencies, by focusing on their repressive and preventive capacities.

I will now turn to the more policy-oriented side of the story. What can be done to avoid or minimise the risks of institutional failure?

Very briefly, I shall try to list a set of guiding principles that emerged both out of the discussions during the three-day conference and ongoing research on how to help ACAs overcoming some of the obstacles described above. It is not a question of offering a panacea, in that each specific case is a specific case, but it should be understood as a pro-active reflection.

The remarks I am about to make are not directed simply to ACA officials, but also to decision-makers. They concern different stages of the process of institutionalization of ACAs.

*Rule 1: Think first, then act*

A series of questions to be considered from the outset:

- 1) What are the motives or imperatives underlying the creation of an anticorruption agency?
- 2) What is the extent of the phenomenon, the types of transaction and the risk sectors in question?
- 3) Considerations regarding statutes: what format or type of agency? What mission and powers? What operational definition of corruption, in accordance with the mission? Where to locate it and how to delineate the different jurisdictions among the bodies with powers in these matters? What report rules? What recruitment rules and processes? What type and size of budget?

- 4) Are any other more economic solutions possible? Are they a viable alternative?
- 5) Other statutory issues, such as rules of tenure.

*Rule 2: Reach pro-active forms of consensus (not immobilising ones)*

The creation of an anticorruption agency cannot be seen as the product of the majority in power or as an instrument that can be manipulated by the political power. This perception reduces its credibility in the eyes of domestic public opinion (and the international community).

*Rule 3: Avoid traps and gaps in the authority's statutes*

One way to avoid unforeseen or deliberate traps and gaps in the authority's statutes is to open up the process of drafting the statutes to the fundamental contribution of various privileged actors and specialists on the subject. The legislative process in these matters should be of the *open source* type, i.e. the product of a broad process of deliberation in which a hearing is given not only to party leaders but also professionals in the sector (the judiciary, researchers, attorneys, the police), academics and specialists in the field of corruption and control policies, journalists who deal regularly with the topic of institutional reform (especially in the legal field) or study corruption and financial crime, NGOs involved in the fight against corruption, representatives of the international community, etc.

*Rule 4: Promote a leadership and a social composition with integrity and dedication*

The life of an institution also takes in its leadership and social composition. The tendency to nominate a leader or leaders with “a good track record” in another organisation is fairly general.

The personnel should be selected on the basis of competitive, term contract recruitment with the possibility of renewal and attractive benefit packages.

Merit should be balanced with motivation, dedication, and appropriation of the values of the organisation.

*Rule 5: Define a strategy of resource management*

The definition of a strategy that adapts the means available to the objectives established, in time, is the recipe of the “possible” and perhaps the most important rule for avoiding institutional paralysis or failure in the agency.

The definition of what is “appropriate” is susceptible to contrasting interpretations and varies in accordance with what is available in each country. Excessive resources is a situation that rarely occurs, though it may be an incentive to 'take it easy' and produce little. The lack of resources is more usual and may have a demotivating effect that is, in turn, a cause of failure.

In the first years of its existence, it is almost impossible for an agency to succeed in effectively developing operations in all the areas of its responsibility. It is necessary to establish priorities and adopt a strategy of incremental growth/consolidation. Success should be built on the basis of small victories achieved in areas of lower visibility, though with a structural impact on citizens' lives.

*Rule 6: Create communication strategies and an IT-based complaints system*

ACAs err (make a mistake) in not having a communication strategy, both in relation to the partner bodies with which they need to create close cooperation and in relation to public opinion in general. The communication strategy must, inevitably, involve the creation of an interactive and user-friendly portal.

At this level, too, it is essential to create online complaints systems that allow citizens to remain anonymous and monitor the cases.

The agency's communications strategy also includes the need to inform citizens of the activities being carried out, investigations in progress and results achieved. For this reason, it is of fundamental importance to establish a set of indicators that evaluate the entity's degree of effectiveness, including, among other things, statistical information on the cases handled. The absence of a credible self-evaluation system offers the opportunity for subjective interpretations of the agency's effectiveness.

*Rule 7: Flexibility, adaptability and informality*

To a large extent, the institutionalisation and empowerment of these bodies involves their capacity to break rules and overcome conventions without putting at risk the principles that govern their action.

What is expected of these bodies is that they do not restrict themselves to the letter of the law but comply with its spirit and have others do the same.

Like other independent regulatory bodies, the institutionalisation and success of an ACA involves its capacity to define, implement and monitor/assess, independently, a control policy and learn from the results obtained. This process takes place through a constant tension between the parameters of its statutes, which govern and set the bounds to the body's action, and its factual capacity to reach the objectives set and accomplish its mission.

#### *Rule 8: Build up strategic alliances*

As already mentioned, ACAs are not born in an institutional vacuum. Each ACA is only an element in a system of national integrity.

It is indispensable to establish healthy relationships of inter-institutional co-operation with the other organisations responsible for the prevention of and fight against corruption (in particular the criminal investigation forces, police, public prosecution service, courts, state supervisory bodies, etc.).

#### *Rule 9: Integrate the ACA into international cooperation networks*

It is also crucial for an ACA to be integrated into international cooperation networks and to participate in forums that offer an exchange of experience and applied knowledge and promote socialisation between members of the various agencies (which greatly reduces the costs of communication in cases that require international cooperation).

#### *Rule 10: Anchor ACA action in civil society*

The activity of control is not restricted to the action of entities belonging to the state apparatus. Other participants from civil society also play an important role.

ACA action should be anchored in civil society, since the ultimate purpose of this body is to seek a change of values in society with regard to the occurrence of corruption.

This cannot be achieved if we work with our backs turned to the press, distrust the NGOs that work on this topic or undervalue the admonitions of specialists and academics.

Citizen support for an anticorruption agency is of vital importance to the guarantee of the body's independence, effectiveness and durability.

These are just a few thoughts on how to avoid or combat the institutional failure of ACAs.

Since the document was not previously submitted for discussion, I would sincerely appreciate your comments and feedback.

## **Acknowledgements**

I would also like to profit from the occasion to say a few words of appreciation.

First of all, I would like to thank our trainees, for having accepted our invitation. I hope you leave Lisbon with the impression that nothing of this was in vain.

The same goes to the OLAF officials and other participants. We were very pleased that the event was of interest to you.

A special thanks to our guest speakers, especially those who have travelled from so far away. We will be touch concerning the future publication of your papers.

I would also like to thank our sponsors: OLAF, The Portuguese Foundation for Science and Technology, The Luso-American Foundation, Transparency International (TI) and Caixa Geral de Depósitos (CGD).

A final word of appreciation goes to our staff. They have been very dedicated and helpful throughout. I would be grateful if we could give them a round of applauses.