



BRIEF

ALERT



New National Anti-Corruption Strategy: What is it For and Why Doesn't it Work?

Belgrade, September 2023



Why is the Strategy necessary and which aspects of its preparation were wrong?

There are strong indications that the adoption of the new Strategy for the Fight against Corruption in Serbia, regarding whose proposed draft the [public debate](#) lasted until 5 September 2023, was less the result of long-term and careful consideration of past and future public policies in this area, and more of a desire to complete the job before the publication of the European Commission's new report on Serbia's progress.

The previous EC [report](#), which was published in the fall of 2022, contained a statement that "Serbia has still to prepare a new anti-corruption strategy and action plan, and establish an effective coordination mechanism to operationalise prevention and repression policy goals and thoroughly address corruption". One of the three mentioned key tasks was to "prepare, adopt and start implementing a new anti-corruption strategy underpinned by a credible and realistic action plan as well as an effective coordination mechanism". The remaining two main recommendations refer to the fulfilment of GRECO's recommendations and to the improvement of the prosecution of corruption, especially at a high level.

Serbia has not had a national anti-corruption planning document for almost five years. The previous anti-corruption strategy, [adopted](#) by the National Assembly on 1 July 2013 within the package of pre-election promises of the new ruling party, which extensively promoted the fight against corruption and used it as the backbone of its campaign, almost imperceptibly expired on 31 December 2018. The Action Plan for its implementation, [adopted](#) at the end of August 2013, remained largely unfulfilled. It was not even possible to assess the results of the implemented activities without any doubt. The Agency for the Fight against Corruption (now called the Agency for the Prevention of Corruption) regularly [reported](#) to the National Assembly on the collected data and its own conclusions concerning the implementation of planning documents, but the Assembly never discussed these reports - not even after the five-year period of validity of the planning documents had expired.

Paradoxically, although the Strategy is now presented as one of the key priorities for Serbia's European integration, the previous planning documents were, in a way, victims of precisely that process. Namely, the Action Plan from 2014 was "revised" on 30 June 2016, after the adoption of the [Action Plan for Chapter 23](#) (AP 23) of the Serbia-EU negotiations. It was noticeable that this document was treated as more important than the action plans that were adopted by the Government of Serbia, and special reporting and monitoring channels were established for it. The AP 23 contained numerous activities from the original (national) anti-corruption plan, and these were given priority in practice. Over time, it turned out that those in charge began caring less and less about the fulfilment of the "European" action plan, so it too

remained largely unfulfilled despite the revision of 2020, which mostly involved the postponement of deadlines.

The prEUgovor coalition, and especially Transparency Serbia as its member that possessed relevant expertise, [persistently advocated](#) for the adoption of a national strategic document for the fight against corruption regardless of the obligations undertaken in the field of EU integration. There were several reasons for this. Planning the fight against corruption exclusively as part of EU integration sends the wrong message to citizens - that the fight against corruption would not even be necessary if we were not on the European path, or that there would be no need to give it any thought. In addition, the formulation of the transitional criteria, to be realised through the AP 23, included only some of the areas in which Serbia ought to be fighting corruption. This further means that, in the absence of a national planning document, even if the "European" document had been fully realised, some of the important problems would have remained unresolved.

The beginning of the preparation of the new Strategy kept being delayed. Its adoption was planned for the first time as part of the [Operational Plan for the Prevention of Corruption in Areas of Special Risk](#) at the end of 2021. At that time, it was planned to establish a Working Group for the development of the new Strategy in the first quarter of 2022, but the Group [started](#) working only in March 2023. Even the announcement that the Strategy was to be drafted, which was made in the "Operational Plan", was an unnecessary step as that work could have started in 2021, in parallel with the preparation of the Operational Plan regarding certain areas. Instead, the Government decided that the Operational Plan (as stated in the Plan itself) would serve as "the main basis for the development of a new ambitious national strategy", i.e. that it was to "bridge the period between the previous planning documents in the area of the fight against corruption and the future national strategy".

The Working Group, chaired by the State Secretary of the Ministry of Justice, has 10 members from the judiciary and 9 from non-governmental organisations or the private sector, while other members represent relevant ministries, the Government of Serbia and independent state bodies. Unlike 10 years ago, when the previous Strategy was drawn up, this time the Agency for the Prevention of Corruption did not participate in the Working Group, but was rather just an observer. The role of the international [project](#) was extremely significant, because it was the consultants that prepared a description of the state of affairs concerning the prevention and repression of corruption, and proposed areas that should be covered even before the Working Group held its first meeting. Engaged consultants then led the work of sub-groups that identified risks in various areas, to finally also create the first drafts of the Strategy and the Action Plan. The Working Group reviewed these from 1 to 3 August 2023.



Although risk analyses for individual areas (which have not been published) contain numerous high-quality findings and recommendations, the proposed Strategy and Action Plan, as end products, are currently still far from providing a complete answer to the problems of combating corruption in Serbia. This major shortcoming can be largely attributed to the inadequate document drafting process, also including the following:

1. Partial approach to drafting, where risk analyses were prepared only for certain thematic areas, and not for the system as a whole, as a result of which the activities were defined in a similar way;
2. Simultaneous preparation of the Strategy and the Action Plan, which does not allow sufficient time for the preparation and consideration of each of the documents. As a result of this, the Working Group did not even decide on some of the most important issues (e.g. the general goal of the Strategy, the description of the state of affairs);
3. The proposed drafts that were offered for public debate are not fully the result of the Working Group's decisions. Instead, after the meeting and the submission of written comments, they were formulated by the Ministry of Justice (possibly in cooperation with consultants).

Who should adopt the Strategy?

The [proposed draft](#) that was offered for public debate envisages that the Strategy be adopted by the Government of Serbia.

There are several reasons why this strategy should be adopted by the National Assembly instead of the Government. The first concerns the continuity with the current practice. Both previous anti-corruption strategies (of 2005 and of 2013) were adopted by the National Assembly. When it comes to strategic documents, this was not the prevailing practice in the past decades either; however, it was correctly assessed that the right place to discuss the direction of the fight against corruption would be highest representative body.

The second, even more important reason is fundamental - when the strategy is adopted by the executive branch of power, there is no reason to envisage in it any obligations for the legislative or judicial branches, for the President of the Republic or for independent state authorities, which are also necessary for a successful fight against corruption. For example, previous anti-corruption strategies and their accompanying action plans included the obligation of the Assembly to consider reports of independent state bodies and pass laws; in the new planning document, among other things, it would be necessary to establish the obligation of the National Assembly to improve the Code of Conduct and

its implementation, and to publish certain data about its work (e.g. on lobbying).

Finally, since the [Law on Prevention of Corruption](#) stipulates that the Agency is to report on the implementation of this document to the National Assembly (and not to the Government), it is obvious that the adoption of the act by the Assembly would be the most logical solution.

As a counter-argument, it is stated that the [Law on the Planning System of the Republic of Serbia](#) of 2018 prescribes that strategies are to be adopted by the Government, except when otherwise prescribed by a special law (Article 38, paragraph 1). However, the same Law linked the concept of strategy to "public policies established by Government regulation" (Article 11, paragraph 1). That regulation is in fact the [Decree on the Methodology of Public Policy Management, Analysis of the Effects of Public Policies and Regulations, and the Content of Individual Public Policy Documents](#), whose [Annex 11](#) lists the "areas for planning and implementing public policies". Fight against corruption is not mentioned as one of those areas. In other words, regardless of the intention of those who passed the Law on the Planning System to give priority to the Government when adopting strategies, there is no reason to believe that there is some legal obstacle that prevents the National Assembly from adopting this specific Strategy. It is in fact authorised to do so (without any limitations in terms of areas to which the strategy could refer) by Article 8 of the [Law on the National Assembly](#).

The description of the state of affairs does not reflect the essence of the problem

The part of the Strategy that contains the description of the current situation and the goals that the Strategy itself should achieve does not fully reflect the essence of the matter. Below are selected parts of the text that was proposed by *Transparency Serbia*, a member of the prEUgovor coalition, which were not included in the proposed draft (and for which neither the Strategy nor the Action Plan offer adequate solutions):

To achieve effects in the prevention and fight against corruption, the legal system must be harmonised, and the provisions of regulations that are aimed at preventing or fighting corruption should be designed in a way that would lead to the achievement of that goal. This means, among other things, that: regulations should regulate all important relationships and not leave legal gaps; they should be clear and not leave room for different interpretations; they should be designed in such a way as to reduce the discretion in the application of the rules only to the level that is necessary; they should ensure an adequate level of transparency and supervision of the implementation of the rules; and should contain deterrent sanctions in case of violation of the rules.



Specific anti-corruption regulations should be designed in such a way as to provide an answer to the observed systemic deficiencies that enable or make it easier for corruption to occur, remain undetected, or remain unpunished in an appropriate manner.

The application of anti-corruption regulations must be regularly analysed in order to determine the effects and potential implementation challenges. The regulation of the normative framework for the fight against corruption implies not only work on improving existing regulations and adopting new ones, but also the prevention of harmful changes which would violate the existing system of protection against corruption through abolition of existing regulations or certain norms from those regulations, adoption of regulations that are adapted to individual interests, violation of the unity of the legal system through individual laws as opposed to systemic ones, adoption of arbitrary authentic interpretations, and the like.

At the normative level, the system for fighting corruption will be improved in several ways:

- 1. Strengthening the system for identifying and eliminating risks of corruption in the new regulations.*
- 2. Discontinuation of the practice of passing regulations only for one case or a limited number of cases, thus violating the established legal system in the specific area.*
- 3. Solving observed problems of importance for the prevention and repression of corruption by adopting new regulations and by amending, supplementing or repealing existing regulations based on the recommendations of international and domestic institutions and conducted analyses.*

Amendments to the Constitution of the Republic of Serbia of 2022 were limited only to the judiciary. However, it was noted that there was a need to consider other issues that are important for the improvement of the legal framework for the fight against corruption at the time of the next constitutional reform. Among others, this also includes the following issues: the status of MPs; the scope of immunity of public officials when it comes to corrupt criminal acts; defining the concept of conflict of interest and harmonising the norms governing conflict of interest and incompatible functions/offices; method of establishment and the status of independent state bodies; stronger guarantees of transparency of the work of state authorities; guarantees concerning the unity of the legal order; introduction of restrictions for the purpose of protecting public funds when undertaking obligations and concluding inter-state agreements.

In connection with the detection, prosecution and punishment of corruption, the biggest problem is the enormous difference between the number of real and discovered cases, as well as insufficient proactivity in the investigation of corruption-related criminal acts. This is particularly reflected in the fact that a large number of substantiated suspicions of corruption, which were presented in public, have remained

uninvestigated. Although the problem can be solved primarily by improving the work practices of repressive state authorities, this should be taken into account also when improving regulations, in order to create an adequate basis for the above authorities' actions.

What will be changed in the anti-corruption regulations?

A major drawback of the proposed drafts that were offered for public debate is that the directions and the process of improvement of the regulations are not sufficiently visible, even where certain enactments that need to be changed have been identified. A typical solution envisaged in the proposed Action Plan is the preparation of an analysis of the need to amend the regulations, to be followed by draft amendments and supplements to the act in question, based on the findings of the analysis. At the same time, the areas that would have to be included in the analysis (with the possibility of the analysis being even wider), that is, in the future changes to the laws, have not been identified.

Such an approach is unjustified and leads to loss of valuable time. Namely, in many areas there are already analyses that point to deficiencies in regulations, and there was much talk about this within the thematic sub-groups during the preparation of the Strategy itself. Therefore, there is no reason to wait for making changes to the laws – in problems that have already been recognised, work on changing the laws can begin immediately. In parallel with this work, it is possible to conduct additional analyses which would point to additional problems that should be solved as well.

In addition to the above-mentioned loss of time, there is another obvious problem - insufficient transparency and participation in the preparation of analyses. The current draft Action Plan does not clearly show who would analyse the need for changes to the regulations, who exactly would be involved in the process, and to what extent the interested professional public would be able to influence the scope and content. Why is this important? If future amendments to the regulations are to be based on analyses, public participation that is present only at a later stage, when the draft amendments to the law are presented for public debate, may prove to be too late, and the proposals may be rejected for formal reasons as they might relate to issues that were not included in the draft. Moreover, if the needs analysis leads to the conclusion that "it is not necessary to change the regulation", there will be no public debate to begin with.

The implementation of earlier planning documents that contained similarly defined activities abounds in bad practice examples that provide many reasons for concern. When the analysis is carried out by representatives of the state authorities (e.g. a ministry or another authority responsible for supervising the implementation of the law), there is a risk that problems related to inadequate



supervision will not be recognised, or that there will be no recognition of the importance of issues that cause problems for the economy, associations and citizens. When the existing recommendations of international organisations or harmonisation with EU standards are taken as a basis for the analysis, there is a risk that issues which are not part of the recommendations or standards will remain unaddressed. Things are slightly better when the analysis is prepared by an external consultant, but only apparently. The work and even the selection of such consultants must be confirmed by representatives of the beneficiary institution; consequently, there are incentives for the analysis to ignore problems and proposals for solving them if the representatives of the state authorities oppose them. In the end, the activity contained in the Action Plan can be implemented in full without producing any essential change.

To overcome these problems, we suggest that the process of drafting analyses be open, that the authority or consultant engaged to prepare the analysis be obliged to consider all the issues pointed out by the representatives of the interested public, and that a debate be opened about the prepared analyses before they are used as bases for drafting amendments to the law. In addition, when preparing the analysis of norms, it is necessary to also envisage the adequate role of all other state authorities and bodies, in addition to that of the one that will be doing the job (this is most often the line ministry). This primarily refers to the Agency for the Prevention of Corruption and the Anti-Corruption Council of the Government of Serbia, which could contribute to the quality of analyses in all areas.

Inadequate planning of state authorities' capacity building

The proposed Action Plan contains many activities that have to do with strengthening the capacities of certain state bodies. It is extremely inappropriate for a planning document to talk about filling a number of job positions *based on the existing Classification of Job Positions*, as these are staffing needs that have long been recognised, but have not been realised. A planning document can envisage changes in the number of employees and engaged persons in case of added competences, or as a result of an analysis that shows that this is necessary within the existing ones - for example, because the analysis showed that the body should plan and conduct a significantly greater number of controls.

This is where we arrive at the key problem of the proposed Strategy and Action Plan. To be able to adequately plan the strengthening of the capacity of state authorities charged with combating corruption, it is necessary to first set the goals of their work as precisely as possible. These currently do not exist. Such goals did exist in the 2013 Action Plan, but their flaw was that they were insufficiently ambitious (e.g. increasing the number of detected or sanctioned irregularities by 30% over a period of five years). Having learned from those experiences, we believe that it is necessary to plan the capacities of, for example, the public prosecutor's office not only based on the existing number of cases (reported criminal offences containing an element of corruption), but also based on the need for the public prosecutor's office to proactively investigate all the cases of suspicion of corruption that were made public in a substantiated fashion. Similarly, it does not make much sense to plan to strengthen the capacity of the Agency for the Prevention of Corruption or the Public Procurement Office (the same example applies to all other state bodies) percentage-wise, in relation to the existing number of employees; instead, it should be done in relation to the need to e.g. control twice as many reports on the assets and income of public officials in 2024 or to subject a certain percentage of public procurement procedures to monitoring.

Insufficiently ambitious goals

In contrast to insufficiently precise indicators of success at the level of individual activities, there are objective criteria at the level of the general goal of the Strategy. The *Transparency International's* composite Corruption Perceptions Index, which has been regularly providing data on Serbia for more than two decades, was proposed as one of the criteria for evaluating the success of the implementation of the Strategy as a whole ("impact indicator"). The last published value of this index was 36 (for the year 2022), and it is the worst recorded result since the time the index started using the scale from 0 to 100 (in 2012). In the draft Strategy and its Action Plan, it was proposed that that the index for 2028 be improved to 38. The lack of ambition is eloquently expressed by the fact that the [current global average](#) is 43, and that the average of the European continent is 57. The average of the European Union, whose member Serbia wishes to become, is 64.



Recommendations

- The National Anti-Corruption Strategy should be adopted by the National Assembly, and it is only then that the Government of Serbia should adopt the final version of the Action Plan, based on the adopted Strategy.
- The Strategy and the Action Plan should also deal with the issues that have been left out this time, because they relate to the competences of the executive authorities, which implies important supplements to the existing drafts of these acts.
- The Strategy and the Action Plan should show a clear determination to eliminate all known shortcomings of the legal system for the fight against corruption (e.g. insufficient compliance, legal gaps, discretion in the application of rules, absence of analysis of the results of application, harmful changes, violation of the unity of the legal system by special laws, arbitrary authentic interpretations).
- In the repression of corruption, emphasis should be on proactivity, that is, on investigating all substantiated suspicions of corruption, as well as on the link between repression and prevention (elimination of deficiencies in the system that were observed based on discovered cases of corruption).
- The Strategy and the Action Plan should envisage consideration of the need to supplement the Constitution of Serbia.
- Wherever certain problems in the regulations have been already recognised, the process of amending and supplementing the anti-corruption laws should begin without delay.
- Work on analyses that are envisaged prior to amending a law must be fully open to the public.
- Strengthening the capacity of state authorities should be planned primarily in relation to the need to respond to new tasks and the increase of the scope of activities.
- More ambitious “targets” should be set as objectives of the Strategy, as well as regarding certain activities contained in the Action Plan, in order to at least try to implement these planning documents in a way that would significantly improve the situation in the area of the fight against corruption.

About prEUgovor

Coalition prEUgovor is a network of civil society organisations formed in order to monitor the implementation of policies relating to the accession negotiations between Serbia and the EU, with an emphasis on Chapters 23 and 24 of the Acquis. In doing so, the coalition aims to use the EU integration process to help accomplish substantial progress in the further democratisation of the Serbian society.

Members of the coalition are:

Anti-Trafficking Action (ASTRA)

www.astra.rs

Autonomous Women's Centre (AWC)

www.womenngo.org.rs

Belgrade Centre for Security Policy (BCSP)

www.bezbednost.org

Centre for Applied European Studies (CPES)

www.cpes.org.rs

Centre for Investigative Journalism in Serbia (CINS)

www.cins.rs

Group 484

www.grupa484.org.rs


Transparency Serbia (TS)

www.transparentnost.org.rs

PrEUgovor's key product is the [semiannual report](#) on the progress of Serbia in Cluster 1.



Follow prEUgovor activities on:

 www.preugovor.org

 [prEUgovor](https://www.facebook.com/prEUgovor)

 [prEUgovor](https://www.x.com/prEUgovor)

