

## **RECOMMENDATIONS FOR BOLSTERING THE INDEPENDENCE OF THE CORRUPTION PREVENTION AND COMBATING BUREAU (KNAB): ISSUES OF INSTITUTIONAL SUBORDINATION AND APPOINTMENT AND DISMISSAL POLICIES FOR THE KNAB DIRECTOR**

### **Foreword**

The Society for Transparency – Delna (DELNA) and the Centre for Public Policy PROVIDUS recommends strengthening the independence of the Corruption Prevention Bureau (KNAB). This report has been compiled by anti-corruption expert Inese Voika and Gundars Jankovs.

These recommendations have been prepared taking into account the recommendations of international organizations to Latvia, in particular the Council of Europe's Group of States against Corruption (GRECO) Evaluation report for Latvia (round 4)<sup>1</sup>, and the European Commission's and OECD's recommendations on improving KNAB's performance.<sup>2</sup> The recommendations also refer to proposals contained in a 2014 report to the Council of Ministers on improving the work of KNAB.

In this paper we address two issues of interest to international organizations: institutional subordination and the appointment and dismissal policies for the KNAB director. A third issue – the independence of budget management – remains outside the purview of this report.

Our report includes an overview of the structures and operations of the most effective European anti-corruption offices, focusing on issues of institutional subordination, appointment and dismissal of management.

The report draws on proposals made by DELNA and PROVIDUS during a public discussion January 23, 2015, organized in cooperation with the State Chancellery on institutional development models for KNAB, strengthening its independence and accountability.

These proposals should be subject to further discussion by experts and stakeholders in order to design the best regulatory model, enabling effective anti-corruption work to take place in Latvia. The continued engagement of international experts is crucial. A number of experts already have in-depth experience with issues pertaining to KNAB, and their viewpoints should be included in the discussion. Particular attention should be paid to OSCE recommendations for strengthening the independence of KNAB, which were prepared at the request of the Speaker of Parliament Solvita Āboltiņa during the second half of 2014.<sup>3</sup>

---

1 Fourth Evaluation Round, Evaluation Report Latvia, Greco, December 7, 2012, Greco Eval IV Rep (2012) 3E  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4\(2012\)3\\_Latvia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4(2012)3_Latvia_EN.pdf).

2 "Phase1 Report on Implementing the OECD Anti-bribery Convention in Latvia", June 2014, European Commission, "Annex to the EU Anti-Corruption Report on Latvia", 03.02.2014,  
[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_latvia\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_latvia_chapter_en.pdf).

<sup>3</sup> EDSO/ODIHR. OPINION On the Law on the Bureau on Prevention and Combating of Corruption of Latvia, 17.09.2014,  
<http://www.osce.org/odihr/126883?download=true>.

We are grateful to those that contributed to this report, participating in discussions, offering analysis and recommendations, and participating in the public discussion organized by DELNA, PROVIDUS and the State Chancellery on January 23, 2015: Dace Akule, Valts Kalniņš, Pauls Raudseps, Valdis Liepiņš, Diāna Kurpniece, Andris Tauriņš, Mārcis Gobiņš, Ilze Gulēna, Pēteris Tērmanis, Jānis Bernāts, Vita Tērauda, Rasma Kārkliņa, Gundars Jankovs, Inese Voika, Gabriel Kuris.

## **Summary of Conclusions and Recommendations**

- 1) It does not make sense at this time break up KNAB, dividing its functions between various institutions. No benefits can be identified from the point of view of effective anti-corruption work or from a resource optimization perspective. Scattering the functions among different institutions would result in a loss of synergy, and hence a decrease of impact.
- 2) It is also not recommended to shift the institutional hierarchy, moving KNAB from the oversight of the prime minister to any one particular minister. This does nothing to lessen the political oversight problem, which has been criticized by international experts. It does, in fact, exacerbate the problem. Individual ministers are generally representatives of a single party, while the prime minister must balance the interests of multiple parties.
- 3) A reorganization of KNAB, which would significantly change KNABs current functions, should be scrupulously examined, focusing on the goals, the resources available and the results to be achieved. Before any steps are taken, there must be confidence that a new model will result in significant improvement that cannot be achieved within the existing institutional model.
- 4) Continued engagement of international experts in searching for improvements in the KNAB institutional model should be encouraged. This would create ex ante opportunities to evaluate the impact of planned changes, reducing the risk of negative impact of poorly planned policy changes.
- 5) The string of lawsuits between the prime minister and the KNAB leadership prove that the legal framework for KNAB independence is robust. The lawsuits have tied up resources and have diminished KNABs public image. However, one must accept these situations as inevitable, because the justice system is used both by honest people and by those harboring ulterior motives. It is important that in the final judgments the interests of KNAB as an institution prevail.
- 6) The proposal by the State Chancellery's working group, that a special commission convened by the State Chancellery should have final say in dispute resolution between the prime minister and the KNAB director, should not be supported. This proposal represents a significant curtailment of the independence of KNAB.
- 7) In order to promote accountability and the effective work of KNAB, oversight mechanisms must be strengthened in a manner that does not impinge on KNAB's independence. We recommend strengthening the self-governing mechanisms within KNAB. The Law on KNAB (paragraph 3) provides for an internal council. We propose amending the law to include regulations on the principles of operation, responsibility for the operation of the council and for implementation of the council's decisions. The dissolution of this council, as foreseen in the proposals put forth by the State Chancellery, should not be supported. This would reduce the possibility of internal control and coordination within KNAB. Other mechanisms are not recommended at this time, as the court should be the final arbiter in disputes

between an independent institution – KNAB and the official entrusted with oversight – the prime minister.

8) In order to promote a joint responsibility for corruption prevention in the executive branch as a whole, and to promote cooperation among institutions in achieving this goal, we propose to establish council with the mandate of providing oversight for the implementation of the corruption prevention guidelines. The council would include official bodies engaged in anti-corruption work, such as the ministries of the Interior, Finance, Justice, et.al, and other civil society stakeholders.

9) A key to success for KNAB is the quality of management: active, honest leadership that enjoys public support and can motivate KNAB staff and cooperation partners. That is why appointment and dismissal procedures must be improved:

(a) The appointment procedure for KNAB must be enshrined in the law<sup>4</sup> and should include an obligatory review of leadership skills, consistent with those leadership skills and qualities expected of high level public officials.<sup>5</sup>

(b) In order to secure an independent evaluation process, and create accountability for those public officials engaged in decision-making in the evaluation process, the evaluation committee leadership should be entrusted to an independently elected public official, such as the Prosecutor General or the Chief Justice of the Supreme Court. The option of delegating this leadership function to another public official should be disallowed.

(c) The law should provide non-governmental organizations the opportunity to be observers during the appointment and dismissal process.

(d) The KNAB law should more precisely define the terminology used in the dismissal process. The term “non-compliance with the post” should be detailed, in order to reduce the risk of manipulation and unwarranted interference in the work of KNAB from the oversight body.<sup>6</sup>

(e) The law should clearly separate the process of a periodic professional performance review from the process of evaluating compliance with the post, including setting out different compositions of the evaluation committees employed in each case.

(f) The KNAB Code of Ethics should be supplemented with a section on the work of the KNAB director and deputy directors, focusing on management functions. The KNAB Ethics Council should be charged with monitoring compliance with the Code of Ethics.

10) Taking into account the role of the KNAB deputy director, who substitutes for the director during the director’s absence, and the need to strengthen the legitimacy of the deputy director’s role, we recommend:

a) Outlining the appointment process of the deputy director in the Law on KNAB. This process should be based on general selection criteria: an open competition, transparency, clear evaluation criteria, etc.

b) The law should also include a provision for a periodic performance review for the deputy director.

11) A broad public discussion is needed on issues surrounding the independence of KNAB and the effective work of KNAB, but this discussion needs to be underpinned by substantive analysis:

a) Expanding the mandate of KNAB, including a mandate to work on corruption issues in the private sector;

---

4 Council of Ministers’ Regulation Nr. 671.

5 Council of Ministers’ Regulation Nr.494.

6 Law on the Corruption Prevention Bureau, paragraph 5, part 6, point 12.

- b) Broadening the candidate pool for KNAB director, by eliminating the current requirement of a law degree;
- c) Further discussion is needed on the recommendation from international experts to establish a small, professional external oversight committee. Such a committee would be appointed by parliament, and would offer an independent view of the work of KNAB to the Prime Minister and to Parliament. .

## Introduction: Lessons learned from anti-corruption agencies in other countries

A number of publications in the Princeton University series “Innovations for Successful Societies” document the creation and operations of the most successful anti-corruption agencies around the globe<sup>7</sup>. Conclusions can also be drawn from other publications on the efficacy of anti-corruption agencies. The last European Commission review is the 2013 Report on Corruption in EU member states.<sup>8</sup>

The most successful agencies in Europe and globally have often been the subject of criticism about politicization, especially if they have focused on investigating high level corruption, affecting members of parliament, ministers and other high level political actors. The heads of anti-corruption agencies, which have produced good results, have often been denied re-appointment to a second term. This was the case, for example, in Indonesia, where the director of the anti-corruption agency had great successes in his first years in office.<sup>9</sup> The head of the Slovenian anti-corruption agency stepped down voluntarily at the close of 2013, accusing the political elite of intransigence in attempts to reform a corruption-ridden government and state enterprise system<sup>10</sup>. In Latvia, Aigars Kalvitis’ government searched for excuses to fire KNAB director Aleksejs Loskutovs. Kalvitis was successful in 2008<sup>11</sup>. These examples show that opposition to the work of the anti-corruption agency can be a testimony to the weakness of the agency, or in fact, a testimony to its success.

The best examples of anti-corruption agencies globally prove that the greatest achievements occur when the agency mandate combines combating corruption with corruption prevention. For example, the Slovenian agency, which was created with only a corruption prevention mandate, acquired over time the right to request information, and to mete out administrative fines<sup>12</sup>. In Croatia, the anti-corruption agency’s functions resemble that of a prosecutors’ office, but with the addition of operational activities and some prevention activities such as the right to initiate legislation and conduct educational activities.<sup>13</sup>

The Lithuanian example illustrates that without changing the legal mandate it can be possible to change the profile of the agency. Over the last ten years the Lithuanian anti-corruption agency has moved from combating corruption to offering policy options for systemic change to prevent corruption. In the latest EU report, the Lithuanian agency is criticized for moving away from investigating high profile corruption cases. The report recommends a more balanced use of resources between corruption combating and prevention activities.<sup>14</sup>

---

7 Innovation for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/focus-areas/anti-corruption> .

8 Anti-Corruption Report, Annex Latvia, European Commission, Brussels, 03.02.2014, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_latvia\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_latvia_chapter_en.pdf) .

9 Holding the High Ground with Public Support: Indonesia's Anti-Corruption Commission Digs In, 2007-2011, G.Kuris, Princeton University, September 2012.

10 “Slovenian Commission Resigns”, Slovenian Times, 29.11.2013. <http://www.sloveniatimes.com/corruption-prevention-commission-resigns> .

11 “Saeima Removes Loskutovs from Office”, Tvnet, 29.06.2008, [http://www.tvnet.lv/zinas/latvija/222856-saeima\\_atbrivo\\_loskutovu\\_no\\_knab\\_prieksnieka\\_amata](http://www.tvnet.lv/zinas/latvija/222856-saeima_atbrivo_loskutovu_no_knab_prieksnieka_amata) .

12 Toothless but Forceful: Slovenia's Anti-Corruption Watchdog Exposes Systemic Graft, 2004-2013, G.Kuris, Princeton University, April 2013.

13 Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012, G.Kuris, Princeton University, April 2013

14 Balancing Responsibilities: Evolution of Lithuania's Anti-Corruption Agency, 1997-2007, G.Kuris, Princeton.

In accordance with expert analysis, the effectiveness of anti-corruption agencies depends on the following factors:<sup>15</sup>

1. Political support
2. Independence of operations
3. Strategic operations and cooperation with other institutions
4. Adequate resources for achievement of goals
5. A supportive legal framework
6. Professional and specialized staff
7. Leadership, which sets a good example
8. Cooperation with civil society
9. Transparency and well-reasoned decisions
10. Trust

An adequate legal framework under which an anti-corruption agency operates is a pre-condition for success. Quality leadership is, however, equally important for successful agency performance. Quality leadership is marked by:

- Active and honest leadership, which commands public support, takes substantive action against corruption, and is able to motivate staff and cooperation partners. These are the leadership qualities that effect change. Anti-corruption agencies in Croatia and Slovenia have been successful in focusing public attention on the existence and negative impact of political corruption. Both countries succeeded in changing public attitudes and the actions of government, even though one country has an anti-corruption agency focused on combating corruption, but the other – on preventing corruption.

---

15 *Korupcijas* °C 2005, second semester, , 2006, Providus, I.Voika, 19.lpp.

## International Recommendations for Bolstering the Independence of KNAB

International reports on anti-corruption institutions in Latvia<sup>16</sup> emphasize the importance of bolstering the independence of KNAB, focusing attention on three issues:

- 1) The prime minister is entrusted with oversight of KNAB, which increases the risk of political influence;
- 2) The appointment and dismissal procedures for the director of KNAB create a risk of political influence because the prime minister is entrusted with proposing a candidate to the parliament for approval;
- 3) KNAB's budget allocation needs parliamentary approval.

This report will review the first two issues. The question of budgetary independence should be the focus of a separate analysis, taking into account that budgetary independence issues exist for other independent agencies in Latvia.<sup>17</sup>

While institutional independence has been at the forefront of public discussions, budgetary independence has not. In fact, KNAB has been in the situation of returning unspent monies to the public budget.<sup>18</sup> Former KNAB Director Normunds Vilnītis, who was removed by parliament in 2011, returned almost one million lats to the government budget during the period 2008 – 2011. Even though in the autumn of 2009 Vilnītis was publicly critical about the budget crisis and its impact on the KNAB budget, warning that budget cuts would hamper KNAB's ability to do its job, KNAB did in fact return almost half a million lats to the budget at the close of 2009.<sup>19</sup>

### 1. The Legal Status of an Anti-corruption Agency

#### 1.1. The Functions of an Anti-Corruption Agency

The UN Convention Against Corruption, Article 36, indicates that member states should ensure the existence of a specialized anti-corruption body. Furthermore, the convention provides that "Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence".<sup>20</sup>

The Jakarta Statement on Principles for Anti-Corruption Agencies (ACAs) indicates that: „ACAs shall have clear mandates to tackle corruption through prevention, education, awareness raising, investigation and

---

16 European Union Anti-Corruption Report 2013, [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm); National Integrity System, „Society for Transparency – TI” (DELNA), 2011.

17 Delna publicly criticizes the manner in which the budget is appropriated for an independent institution, the State Audit Office. National Integrity System. Society for Transparency – TI (DELNA), 2012. Pp. 114-115. <http://delna.lv/wp-content/uploads/2014/02/84538240-Latvijas-Valstisk%C4%81-godapr%C4%81ta-sist%C4%93mas-nov%C4%93rt%C4%93jums-2012.pdf>.

18 LETA news report, <http://www.delfi.lv/news/national/politics/deputati-kritize-knab-sefu-vilniti-par-iestades-budzeta-izlietojumu.d?id=39085699>.

19 DELFI news report: <http://www.delfi.lv/news/national/politics/vilnitis-nakamgad-paredz-knab-darba-vajinasanos.d?id=26646035>.

20 UN Convention Against Corruption. [http://www.knab.gov.lv/uploads/free/konvencijas/ano\\_pretkorupcijas\\_konvencija.pdf](http://www.knab.gov.lv/uploads/free/konvencijas/ano_pretkorupcijas_konvencija.pdf).

prosecution, either through one agency or multiple coordinated agencies.”<sup>21</sup> “This statement on principles was adopted at a November 2012 conference in Indonesia gathering global anti-corruption agency representatives and representatives of international organizations.

Globally there is great diversity in how states organize anti-corruption activities. Some states establish specialized anti-corruption agencies entrusted with some prevention functions. Others have specialized corruption prevention agencies with diverse functions, but charge other law enforcement agencies, for example special police departments, with combating corruption. The extremely successful Hong Kong and Singapore models have since the 1970s encouraged countries to adopt an anti-corruption agency model with a broad mandate, covering combating, prevention and education.<sup>22</sup>

Latvia followed the Hong Kong model, when in 1998 it traded its consultative body, the Corruption Prevention Council, operating under the auspices of the Ministry of Justice, for an anti-corruption agency with a broad mandate, including rights of investigation.

The creation of KNAB, during 1998 – 2002, was based on in-depth analysis of legal and governance models, conducted by the Corruption Prevention Council and supported by the EU PHARE program in Latvia. This analysis clearly pointed to the benefits of creating a separate anti-corruption agency that would combine both a combating and prevention mandate:

- 1) Combating corruption as a criminal offense is cited in the functions of seven different law enforcement bodies in Latvia, but none of these had corruption as their primary focus. In the late 1990ties and early 2000’s the Security Police took charge of the most corruption cases, even though its primary focus was not corruption.
- 2) KNAB anti-corruption work would lack legitimacy if it was not given a mandate for operational and investigative actions. Since 1998 the work of the Corruption Prevention Council was criticized as ineffectual due to the absence of this type of a mandate.
- 3) Global examples of the effectiveness of combining corruption combating and prevention work in Hong Kong and Lithuania, led to the conclusion that this had the potential to change public attitudes towards corruption, which was desirable also in Latvia.

Widespread corruption, especially political corruption, in Latvia was an important factor in ensuring international partner, such as NATO and the EU, support to the creation of KNAB. In Estonia, the corruption landscape was not perceived as so dire, and the creation of a specialized anti-corruption agency there was not supported. However, the latest international reports note the need for Estonia to improve its anti-corruption efforts, possibly by overcoming the splintering of anti-corruption responsibilities among a range of institutions.<sup>23</sup>

A central anti-corruption agency usually serves as a coordinator of anti-corruption policies and activities. This coordination is more effective if the agency has the authority and will to seriously engage in anti-corruption work. If there is a lack of political will, this coordination can easily become formal and bureaucratic, contributing little to the reduction of corruption.

---

<sup>21</sup> Jakarta Statement on Principles for Anti-Corruption Agencies, November 2012, [https://www.iaca.int/images/sub/activities/EPAC/Jakarta\\_Statement.pdf](https://www.iaca.int/images/sub/activities/EPAC/Jakarta_Statement.pdf).

<sup>22</sup> Anti Corruption Agencies Between Empowerment and Irrelevance, EUI Working Papers, RSCAS 08/2009, <http://ancorage-net.org/content/documents/anti-corruption%20agencies%20between%20empowerment%20and%20irrelevance.pdf>.

<sup>23</sup> GRECO urges Estonia to sharpen its corruption prevention policy concerning members of Parliament, judges and prosecutors, 08.01.2013, [http://www.coe.int/t/dghl/monitoring/greco/news/News%2820130108%29Eval4Estonia\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/news/News%2820130108%29Eval4Estonia_en.asp).



KNAB is not a typical law enforcement agency with a straightforward mandate of combating crime. KNAB has the following functions:

- 1) Anti-corruption policy planning and corruption prevention activities;
- 2) Investigation of criminal acts in public service;
- 3) Carrying out investigative and operation activities to discover criminal offences;
- 4) Controlling fulfillment of financial regulations by political parties;
- 5) Preventing conflicts of interest in public service<sup>24</sup>.

Over its 12 years of operations, KNAB has gained an international reputation. International reports and reports from the academic community have described the KNAB mandate and analyzed its operations, lauding KNAB as a success story and commending KNAB for achievements on many fronts, especially in its oversight of political party financing and combating corruption.<sup>25</sup>

At this point in time it would not be practical to divide the functions of KNAB among different institutions, or to change the oversight of KNAB from the prime minister to a different minister, as has been suggested in public discussions<sup>26</sup> and by a working group led by Ilze Pētersonē - Godmanē<sup>27</sup>. One cannot identify any substantive benefits from these actions, nor do they offer any resource saving potential.

Any proposed reorganization of KNAB, which would bring significant changes to its mandate, must be carefully analyzed taking into account the goal, the necessary resources, and the potential for results. Steps leading to reorganization should be taken only if there is clear consensus that the new model will bring such improvements in anti-corruption work that cannot be achieved within the current model. Given the crucial role that KNAB plays in providing oversight to the political party system, it is especially important that any systemic changes to KNAB take place transparently, respecting the need for public dialogue and participation at every stage of decision-making. This would help alleviate accusations of politicization accompanying public discussions on the reorganization of KNAB.

## **1.2. Assessment of Oversight Models for Anti-Corruption Agencies**

European common practice provides different oversight models for independent agencies. The most important parameters of oversight are:

- 1) who provides oversight, and how extensive is the mandate;
- 2) who appoints the agency leadership (see chapter 2).

---

<sup>24</sup> Law on KNAB, Chapter 3.

<sup>25</sup> Surmounting State Capture: Latvia's Anti-Corruption Agency Spurs Reforms, 2002-2011, G.Kuris, Princeton University, October 2012.

<sup>26</sup> "Kalinmeiers proposes the split up of KNAB, handing of the party finance control function to the State Audit Office:" LSM, 12.09.2014.

<http://www.lsm.lv/lv/raksts/latvija/zinas/kalinmeijers-varetu-diskutet-par-knab-sadaliishanu-partiju-finans.a98114/>.

<sup>27</sup> Report of the working group created by Prime Minister's Resolution Nr. 234 (June 20, 2014). 2014.

[http://www.mk.gov.lv/sites/default/files/editor/ijg\\_zinojums\\_040914\\_final\\_1.pdf](http://www.mk.gov.lv/sites/default/files/editor/ijg_zinojums_040914_final_1.pdf).

### **1.2.1. An Anti-corruption agency within the Prosecutor General's Office**

The Croatian anti-corruption agency has been internationally lauded as successful. Historical circumstance led to its placement within the office of the Prosecutor General. The agency head is a prosecutor, with a mandate equal to a Deputy Prosecutor General. Experts have observed that, despite the success of the Croatian model, the agency's location within the Prosecutor General's Office comes with limitations. Prosecutors hold some special privileges, for example, the right to sanction phone tapping. They do not, however, have the right to engage in operational activities and other activities aimed at collecting evidence in a criminal proceeding. To ensure effective investigations in corruption cases, the Croatian agency was given a special mandate to oversee police work, and a special judges' panel was appointed for trying corruption cases. In order to create a more comprehensive anti-corruption agency, the Croatian agency mandate has been gradually supplemented, however, most of its staff is engaged in investigative work<sup>28</sup>.

The key to the efficacy of KNAB in combating corruption has been the right to engage in operational and investigative activities themselves, without needing to hand this off to the police, as they would if they were operating under the auspices of the Prosecutor General. Taking into account the limited capacity of the police (including the Economic and Financial police), if the police were entrusted with the operational and investigative activities for combating corruption, this would in all likelihood result in the creation of a specialized division. This division would be well-connected with other criminal investigation departments, but would be divorced from the information flow on corruption, which is available currently within KNAB. Efficacy of this type of reorganization remains questionable.

Given the current range of functions entrusted to KNAB, most of them are not appropriate to the prosecutor's office, for example enforcement of conflict of interest legislation, or oversight over political party financing.

In Latvia, the Prosecutor General's office has an independent agency controlling money laundering. As observed by the Council of Ministers working group chaired by Ilze Pētersonē – Godmanē, "there is no conflict of functions between the Prosecutor General's Office and this agency, as there would be if one were to place KNAB within the Prosecutor General's office".<sup>29</sup>

The Prosecutor's Office has oversight over KNAB in its pre-trial investigations and operational activities<sup>30</sup>.

KNAB should retain its entire mandate in combating corruption, as it has proven its effectiveness. The suggestion to shift KNAB into the Prosecutor General's Office, or to move oversight of KNAB to the Prosecutor General would create the need to strip KNAB of some vital functions, which would in turn fragment anti-corruption work and diminish its effectiveness.

### **1.2.2. Subordination of the Anti-Corruption Agency to the President**

In Slovenia and Lithuania, oversight of the anti-corruption agency is provided by the President. In both countries, the President is elected in a general election, and both constitutions detail the presidential

---

<sup>28</sup> Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012, G.Kuris, Princeton University, April 2013.

<sup>29</sup> Report of the working group created by Prime Minister's Resolution Nr. 234 (June 20, 2014). 2014.

[http://www.mk.gov.lv/sites/default/files/editor/jpg\\_zinojums\\_040914\\_final\\_1.pdf](http://www.mk.gov.lv/sites/default/files/editor/jpg_zinojums_040914_final_1.pdf).

<sup>30</sup> Law on the Prosecution, paragraph 2, part 1.

prerogative of appointing or presenting for appointment public officials, including the head of the anti-corruption agency, judges, etc. The Constitution of Latvia does not foresee these functions for the President.

The anti-corruption agencies in Slovenia and Lithuania are independent agencies. In Lithuania, the agency is a law enforcement agency, reporting to parliament and the President. In Slovenia, it is a government agency without the mandate of a law enforcement agency.

The Presidents of both Slovenia and Lithuania have a direct role to play in choosing the head of the anti-corruption agency. In Lithuania the agency head is accountable to both the parliament and the President, submitting a twice yearly report. In Slovenia the agency head is accountable to parliament. Taking into account the independence of the agency in Slovenia, Slovenia law provides for supplementary control mechanisms. Firstly, the agency is subject to audit, and the results are presented to the President and to parliament. Secondly, most decisions taken by the Slovenian anti-corruption agency must be made public, in order to encourage accountability to civil society.<sup>31</sup>

### **1.2.3. Subordination of the Anti-Corruption Agency to the Prime Minister**

In Poland, the anti-corruption agency is directly subordinate to the prime minister. This creates immediate risks of politicization, as is noted in international reports.<sup>32</sup>

In Latvia, KNAB activities in combating corruption are subject to oversight by the Prosecutor General, but the agency itself falls under the prime minister's oversight responsibilities. According to Latvian law, this is the most arms-length type of oversight possible in the executive branch of government<sup>33</sup>. The prime minister has the right to interfere only in cases where the KNAB director's decisions violate the law.

The Prosecutor General's oversight of KNAB corruption combating activities has not created any issues over the 12 years of operations, and this also consistent with international recommendations in this area.

In order to lessen suspicions surrounding the prime minister's possible influence over KNAB decision-making, solutions must be found to minimize the prime minister's direct involvement.

The State Chancellery's working group led by Elita Dreimane suggested setting up a special committee for dispute resolution between the KNAB Director and the Prime Minister, with the final say in disputes resting with the Council of Ministers<sup>34</sup>. This type of decision-making structure would impinge on the independence of KNAB and should not be supported. If Latvia were to re-establish a Civil Service Administration, it could be entrusted with the oversight function over the legality of KNAB decisions. The re-establishment of a Civil Service Administration would be beneficial due to other considerations, such

---

<sup>31</sup> Toothless but Forceful: Slovenia's Anti-Corruption Watchdog Exposes Systemic Graft, 2004-2013, G.Kuris, Princeton University, April 2013.

<sup>32</sup> Anti-Corruption Report, Annex Poland, European Commission, Brussels, 03.02.2014 [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_poland\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_poland_chapter_en.pdf).

<sup>33</sup> Law on the Structure of Government, paragraph 7, part 5.

<sup>34</sup> Working report. 15.09.2014. [http://www.mk.gov.lv/sites/default/files/editor/dienesta\\_zinojums.pdf](http://www.mk.gov.lv/sites/default/files/editor/dienesta_zinojums.pdf).

as its potential role in the protection of whistle-blowers. However, creating a new Civil Service Administration is not currently on the political agenda, and therefore it is futile to speculate on its potential role vis-à-vis KNAB.

The string of lawsuits between the prime minister and the KNAB leadership prove that the legal framework for KNAB independence is robust. The lawsuits have tied up resources and have diminished KNABs public image. However, one must accept these situations as inevitable, because the justice system is used both by honest people and by those harboring ulterior motives. It is important that in the final judgments the interests of KNAB as an institution prevail.

KNAB public communication on governance issues has an important role to play in bolstering the independence of KNAB. Public perceptions of conflicts between the KNAB leadership and the oversight institution are just as important as the real facts of appropriate or inappropriate influence. Public trust in KNAB remains an important source of KNABs effectiveness.

### **1.3. Recommendations for Bolstering the Independence of KNAB While Retaining Oversight by the Prime Minister**

Measures can be taken to improve KNABs accountability and effectiveness, without compromising its independence.

#### **1.3.1. Strengthening KNABs Internal Council**

The Law on KNAB provides for an internal council, comprising the Director, his deputies and division heads, which strives to create an internal balance given the independent nature of KNAB and the broad mandate given the Director. The internal council is a consultative body.<sup>35</sup>

The Law on KNAB should be amended to outline not only the mandate of this internal council, but also guidelines for its work, creating an obligation for the Director to use this internal cooperation and control instrument, and creating responsibilities for the work of this council. The elimination of this internal council, as suggested by the State Chancellery working group, should not be supported, because this would reduce internal coordination and control capabilities within the organization.

#### **1.3.2. Anti-Corruption Strategy Development and Implementation Oversight**

The UN Convention Against Corruption states that it is the responsibility of the state to create an effective and well-coordinated anti-corruption strategy, creating appropriate agencies and appropriate mandates.<sup>36</sup> In practice, this works best if the agency has the authority and the will to take a serious approach to anti-corruption. If not, coordination can become formal and bureaucratic, and provide no value added for reducing corruption.

The working group chaired by Ilze Pētersone – Godmane concluded that KNAB is in a conflicted position, being tasked with both designing the anti-corruption strategy and implementing this strategy.

---

<sup>35</sup> Law on KNAB, paragraph 3, part 2.

<sup>36</sup> UN Convention Against Corruption, para.6, part 1.

In order to minimize this conflict and to promote a joint responsibility for corruption prevention in the executive branch as a whole, and to promote cooperation among institutions in achieving this goal, we propose to establish a council with the mandate of providing oversight for the implementation of the corruption prevention guidelines. The council would include official bodies engaged in anti-corruption work, such as the ministries of the Interior, which supervises the State Police, Finance, which is responsible for oversight of financial disclosure regulations for public officials, Justice, which is responsible for international cooperation and legislative reform, and others, including civil society stakeholders.

Pētersone-Godmane's working group's proposal for closer coordination among law enforcement agencies on the implementation of the National Crime Combating Strategy<sup>37</sup> should be supported. Informal coordination and cooperation is taking place, but the creation of more formal coordination and cooperation mechanisms could improve performance.

### **1.3.3. Creation of an External Oversight Council**

Further discussion is needed on the recommendation from international experts to establish a small, professional external oversight committee. Such a committee would be appointed by parliament, and would offer an independent view of the work of KNAB to the Prime Minister and to Parliament. Appointment of Council members could be made upon recommendations from the State Audit Office, the Prosecutor General and the parliamentary committee on anti-corruption.

The establishment of such a committee, as one way to bolster KNABs performance and independence has been suggested by a number of international experts, for example in the OSCE report<sup>38</sup>, and during Gabriel Kuris' presentation in Riga in January of 2015<sup>39</sup>.

Further detailing is needed on the contribution of this council to improving KNABs performance, on the mandate given to the council, its access to information from KNAB and its right to operate freely with this information, and to its financing.

## **2. Independence of Appointment and Dismissal Procedures for the Head of an Anti-Corruption Agency**

The Jakarta Statement of Principles asserts that anti-corruption agency heads "shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence."<sup>40</sup>

The first Slovenian anti-corruption agency in 2004 had five commissioners. The President appointed the agency head and deputy; the parliament, prime minister and judicial oversight body each appointed one commissioner. In 2010 the law was revised reducing the number of commissioners to three, all of whom are appointed by the president. To bolster the independence of the agency, the new law set out a recruitment and evaluation procedure that placed limitations on presidential prerogative. This included

---

<sup>37</sup> Report of the working group created by Prime Minister's Resolution Nr. 234 (June 20, 2014). 2014.

[http://www.mk.gov.lv/sites/default/files/editor/igp\\_zinojums\\_040914\\_final\\_1.pdf](http://www.mk.gov.lv/sites/default/files/editor/igp_zinojums_040914_final_1.pdf).

<sup>38</sup> Opinion On the Law on the Bureau on Prevention and Combating of Corruption of Latvia. OSCE/ODHIR, 17.11.2014.

<sup>39</sup> 'Raising an Effective Watchdog', Gabriel Kuris, 23.01.2015, Riga, Presentation, [http://www.mk.gov.lv/sites/default/files/editor/gkuris\\_latvia\\_presentation\\_1-23-2015.pdf](http://www.mk.gov.lv/sites/default/files/editor/gkuris_latvia_presentation_1-23-2015.pdf)

<sup>40</sup> Jakarta Statement on Principles for Anti-Corruption Agencies, November 2012.

an open competition, evaluated by a commission including representatives from various government institutions and civil society. This same commission conducts the dismissal procedures.<sup>41</sup>

The choice of head of the anti-corruption agency in Slovenia has never been left to the president alone, it has required engagement of a representative commission, or included the opportunity for others to nominate individuals to a collegial body.

In Lithuania, the anti-corruption agency is subject to oversight by the President. There has never been an attempt by the President to dismiss the leadership of the agency. However, the agency has experienced radical shifts in its operations, shifting from combating corruption in early 2000 to a focus on prevention. This has led to questions about the President's motives in personnel choices for the agency's leadership.

In Croatia, the head of the anti-corruption agency is chosen by the Prosecutor General. He does not, however, have free reign in making this appointment; he must seek parliamentary approval.

## **2.1. Improvements in the Appointment and Dismissal Procedures for the KNAB Director**

The KNAB Director enjoys a high degree of independence, and the procedures for dismissal are necessarily complex. This is why particular attention should be paid to appointment procedures, so that evaluation of candidates results in candidates that are up to the task. Improvements in the appointment procedure are necessary.

The current KNAB Director Jaroslav Strejčenoks has been heavily and publicly criticized for professional deficiencies in his management and leadership skills. This professional deficit is mentioned as one of the key factors underpinning KNAB's internal disarray. Strejčenoks' latest performance review yielded a grade of C,<sup>42</sup> which according to the Society for Transparency – TI (DELNA) is not up to standard for a high level public official.<sup>43</sup> During the competition, in which Strejčenoks was deemed the most qualified candidate, management skills were not evaluated. At that time, DELNA's representatives recommended including an appraisal of management skills in the evaluation procedure, but the evaluation commission led by the State Chancellery did not take this recommendation on board, citing no legal requirement to do so, coupled with a lack of time and money to expand and thus delay the evaluation procedures.<sup>44</sup>

The quality of leadership is crucial for a high performing KNAB. Internationally recognized methodology on creating effective anti-corruption institutions asserts that good leaders create effective institutions.<sup>45</sup> Good leaders are active, honest, enjoy public support and are able to motivate staff and cooperation partners.

### **2.1.1. Strengthening the Independence of the Evaluation Commission**

---

<sup>41</sup> Toothless but Forceful: Slovenia's Anti-Corruption Watchdog Exposes Systemic Graft, 2004-2013, G.Kuris, Princeton University, April 2013.

<sup>42</sup> J. Strejčenoks' performance review was conducted under a system in force until spring of 2013. The State Chancellery did, however, allow the continued use of this system in cases where performance reviews were mandated every 2 years. <http://likumi.lv/doc.php?id=3496>.

<sup>43</sup> DELNA press release: <http://delna.lv/2013/11/29/j-strelcenoka-zinasanas-nav-atbilstosas-knab-vadisanai/>.

<sup>44</sup> Interview with Inese Voika on observations during the work of the 2011 KNAB director evaluation commission 15.01.2015.

<sup>45</sup> *Korupcijas* °C 2005, second semester. , 2006, Providus, I.Voika, p. 19.

The leadership and members of the evaluation commission need to be personally accountable for the choice made by the commission. A change of leadership for this commission should be considered, replacing the head of the State Chancellery as commission head with an independent, parliament approved public official such as the Prosecutor General or the Chief Justice of the Supreme Court.

The OSCE report notes that the current regulations on the work of the evaluation commission allow commission members to delegate their responsibilities as commission members to other public officials. The OSCE recommends eliminating this opportunity, in order to increase the legitimacy of the work of the evaluation commission and the accountability of commission members for a high quality result.

### **2.1.2. Engaging Civil Society in the Appointment and Dismissal Process**

Civil society engagement in the KNAB director appointment and dismissal procedures would improve transparency and legitimacy. The Law on KNAB does not currently provide for this engagement. Council of Ministers regulations, however, do provide an opportunity to engage civil society representatives in the evaluation process.<sup>46</sup> The Law should enshrine the possibility for NGOs to be observers during the appointment and dismissal procedures, as recommended by the OSCE.<sup>47</sup>

### **2.1.3. Introducing a Management Skills Assessment**

The appointment procedure for the KNAB director should be supplemented with an obligatory assessment of management skills, as appropriate for high level public officials.<sup>48</sup>

### **2.1.4. Separation of Performance Reviews from Dismissal Procedures**

Following Prime Minister L. Straujuma's initiative to conduct a regular performance review of KNAB Director J. Strelčenoks, questions were raised about whether this type of a review could be construed as politically motivated pressure on the KNAB Director and whether the Prime Minister had the right to initiate such a review. The Law on KNAB needs to be amended to clarify these issues. A regular performance review must be clearly separated from an extraordinary review pending dismissal. Separate commissions should be convened for these two distinct purposes. Taking into account that the commission described in the Law on KNAB (article 5, part 7) evaluates information provided by the prime minister or the Prosecutor General<sup>49</sup>, this commission should be comprised of people who have not had a role in the gathering and analysis of this information. The commission mentioned in the law should thus serve as an additional guarantor of the independence of KNAB.

### **2.1.5. Defining the Content of the Term "Non-compliance with the Post"**

The Director of KNAB has a special status. His appointment and dismissal is not governed by the Civil Service Law, or by the Labor Law. For this reason, a more precise detailing is needed of the reasons for which his actions could be deemed non-compliant and lead to dismissal. The term "non-compliance with the post" should be detailed in the Law on KNAB, in order to reduce the risk of manipulation and

---

<sup>46</sup> Council of Ministers regulation Nr. 671, 8.pants, <http://likumi.lv/ta/id/251858-korupcijas-noversanas-un-apkarosanas-biroja-prieksnieka-amata-pretendentu-atlases-kartiba>.

<sup>47</sup> Opinion On the Law on the Bureau on Prevention and Combating of Corruption of Latvia. OSCE/ODHIR, 17.11.2014.

<sup>48</sup> Council of Ministers regulation Nr.494.

<sup>49</sup> Council of Ministers regulation Nr.818.

unwarranted interference in the work of KNAB from the oversight body<sup>50</sup>

A precedent for this detailing exists in the Law on the Prosecution Service. KNAB, however, is a part of the executive branch of government, and as such the head of KNAB has the authority to directly influence his staff. The Prosecutor General has no such authority over prosecutors. Therefore, the appropriate model for the KNAB director would be to borrow from not only the dismissal procedure for the Prosecutor General, which is rather unspecific, but also from the procedures laid out for prosecutors, which include among reasons for dismissal repeated negative performance reviews.<sup>51</sup> This issue needs to be carefully examined in order to not impinge on the independence of the KNAB director, but to clarify the parameters of this independence.

#### **2.1.6. A Stricter Code of Ethics for the KNAB Director**

International expert Gabriel Kuris recommends augmenting the KNAB Director's accountability mechanisms with a Code of Ethics, which would define public standards for the work of the KNAB director.<sup>52</sup> For example, the anti-corruption agency in Indonesia has a strict Code of Ethics for its leadership, which includes among others the requirement to publicly inform about all meetings held.<sup>53</sup> We recommend a Code of Ethics for the KNAB Director and his deputies, which would be based on the existing Code of Ethics for KNAB, but supplemented with provisions applicable to management. Compliance with this Code of Ethics should be entrusted to the external KNAB council, recommended earlier in this report. Failure to comply could be grounds for assessing non-compliance with post, similar to the provisions found in the Law on Prosecution.

#### **2.2. Recruitment and Appointment of Deputy Directors**

Currently the appointment of deputy directors is entrusted to the KNAB Director. Deputy directors have, however, a crucial role to play in securing KNAB's independence, because in the KNAB Director's absence, the Deputy Director takes over.

Principles of good governance would require that these positions be filled through open competition, but this has never been the case in KNAB's 12 year history. In 2014 the KNAB Director repeatedly attempted to fire his Deputy Director for Combating Corruption. Twice the deputy was reinstated by the prime minister; once the court reinstated the deputy upon judgment of irregularities in the firing procedure.

Many countries apply similar procedures to the appointment of deputy directors as for the director, requiring parliamentary approval, or approval of the Prosecutor General (as in Croatia). In Latvia there is precedent for having both the head and deputy of an independent agency approved by parliament (as for the Financial and Capital Market Commission), or in the case of a collegial body providing agency leadership (Competition Council, Public Utilities Regulatory Commission) subjecting all members of the body to parliamentary approval.

---

<sup>50</sup> Law on KNAB, paragraph 5, part 6, point 12.

<sup>51</sup> Law on the Prosecution, paragraphs 40 and 41.

<sup>52</sup> Presentation "Raising an Effective Watchdog". Gabriel Kuris, Rīga, 23.01.2015.

<sup>53</sup> Holding the High Ground with Public Support: Indonesia's Anti-Corruption Commission Digs In, 2007-2011, G.Kuris, Princeton University, September 2012.



The recruitment of deputies via open procedures and appointment by parliament would unequivocally offer them a stronger mandate and resistance to political interference.

There is however reason to pause in the case of Latvia. Such a procedure may in fact create political obstacles to strengthening KNAB as an institution. Given the political sensitivity of KNAB's mandate and its potential to interfere in the work of public officials, the requirement to move three appointments through parliament could increase politicization around these appointments. Historically in Latvia, the need for political compromise in approving parliamentary appointments has often led to the appointment of neutral or weak candidates to head independent institutions.

The OSCE recommendations recommend strengthening the legitimacy of the deputy directors by including their appointment procedures in the Law on KNAB.<sup>54</sup>

### **2.2.1. Include the Deputy Director Appointment Procedure in the Law on KNAB**

Taking into account the deputy director's role in KNAB, stepping in during the Director's absence, the deputy director's role would be legitimized by outlining the appointment procedure in the Law on KNAB. The appointment procedure should be based on general selection criteria: open competition, transparency, clear evaluation criteria, etc.

### **2.2.2. Include Provisions for Performance Review and a Code of Ethics for the Deputy Director in the Law on KNAB**

To raise the professional standards, and ensure accountability for these standards, the Law on KNAB should be amended to include periodic performance reviews for the deputy director, and the Code of Ethics should be revised to include specific requirements applicable to the deputy director.

## **3. Conclusion**

Evaluating international models for anti-corruption agency work, taking into account the traditions and practices in the Latvian public sector, we recommend that improvements in the appointment and dismissal procedures for the KNAB director be enshrined in the law, but that institutional oversight of KNAB remains unchanged. Additionally, selection and appointment procedures for deputy directors should be improved, and internal mechanisms such as the internal council and Code of Ethics reactivated.

The OSCE report, prepared at the behest of the Speaker of Parliament in Latvia contains more recommendations outside the purview of this report, but which address the scope of KNAB's mandate and improving KNAB's performance. One of these is a broadening of KNAB's mandate to cover corruption issues in the private sector.

These are issues for further analysis, and should be discussed openly among a broad group of stakeholders. The continued engagement of international experts to search for ways to improve KNAB would be an effective instrument to alleviate suspicions of politicization of reforms.

---

<sup>54</sup> Opinion On the Law on the Bureau on Prevention and Combating of Corruption of Latvia. OSCE/ODHIR, 17.11.2014.