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# *Anti-corruption assessment of legislation in Lithuania*

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*Tirana, Albania*  
*November 14, 2014*



## *Content:*

- 1. Briefly about Special Investigation Service of the Republik of Lithuania*
- 2. The legal framework of anti-corruption assessment of legislation*
- 3. Examples*



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# *1. Special Investigation Service of the Republik of Lithuania*

*(Let's use abbreviation - STT)*





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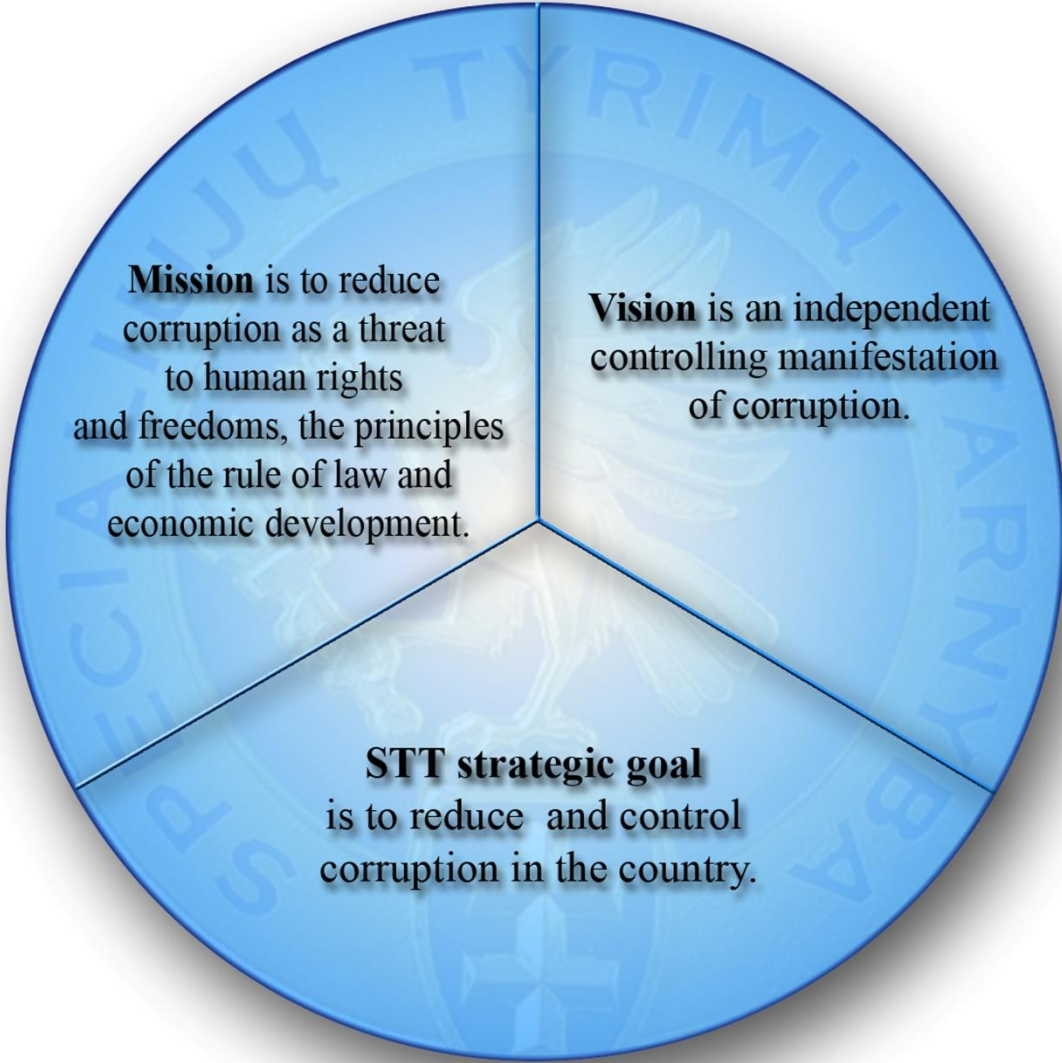
## *STT establishment*

*1997 – STT was established under the Ministry of the Interior.*

*2000 – STT became an independent institution. The STT is accountable both to the Seimas and the President.*

*2002 – Seimas adopted the Prevention of Corruption Law.*

*2002 – STT established the Corruption Prevention Department.*



**Mission** is to reduce corruption as a threat to human rights and freedoms, the principles of the rule of law and economic development.

**Vision** is an independent controlling manifestation of corruption.

**STT strategic goal** is to reduce and control corruption in the country.



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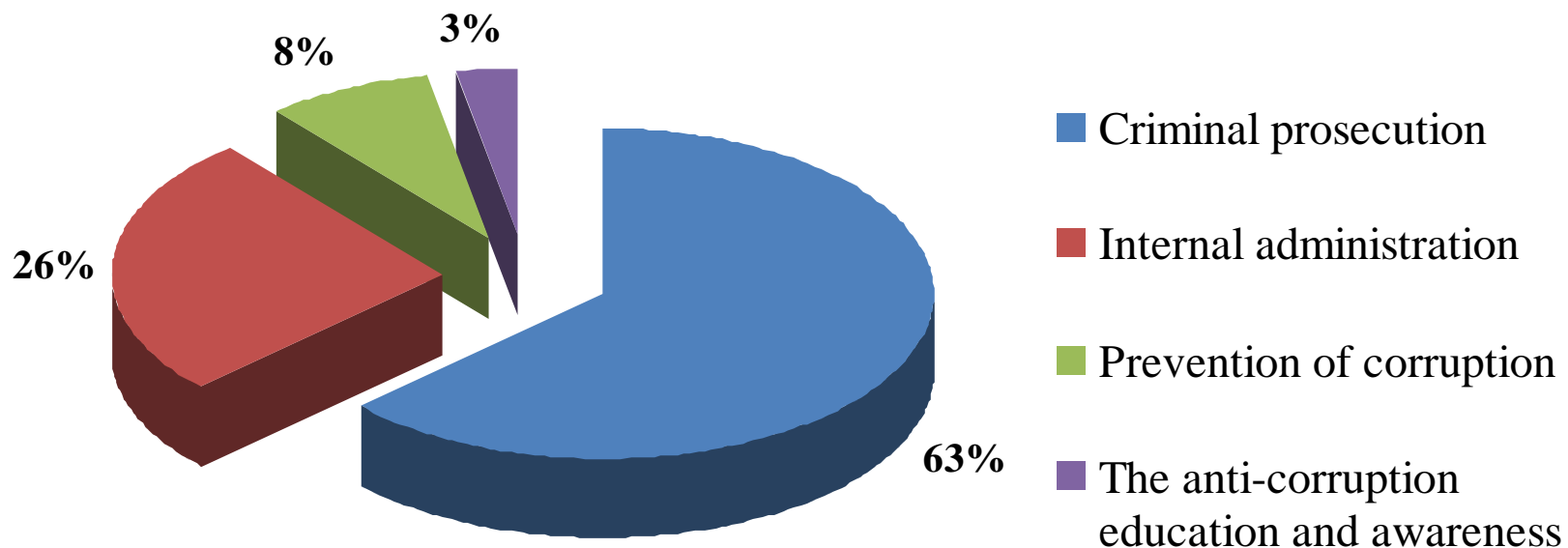
## ***TOTAL BUDGET OF STT***

<b>2013</b>	<b>LTL 19,017,000</b>	<b>EUR 5,512,174</b>
<b>2012</b>	<b>LTL 17,989,000</b>	<b>EUR 5,214,203</b>
<b>2011</b>	<b>LTL 18,745,000</b>	<b>EUR 5,433,333</b>



## *STT HUMAN RESOURCES*

*(2013 office has 238 employees )*







## *STT activity lines*

Law enforcement

Corruption prevention

Anti-corruption education and  
awareness raising of the public.





## *Corruption prevention measures*

- 1. Corruption risk analysis;*
- 2. Anti-corruption programmes;*
- 3. **Anti-corruption assessment of legal acts or their drafts;***
- 4. Provision of the information about a person seeking or holding office at a state or municipal agency;*
- 5. Provision of the information to the registers of public servants and legal entities;*
- 6. Education and awareness raising of the public;*
- 7. Public disclosure of detected instances of corruption;*
- 8. Other measures of corruption prevention provided for by law.*



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## *2. The legal framework of anti-corruption assessment of legislation*





## 2.1. What is *the purpose* of anti-corruption assessment?

- *assessment* of the existing or proposed mechanism of legal regulation;
- *identification* of shortcomings and preconditions of corruption risk and/or factors;
- *ensure* that when a draft is adopted, the possible consequences of its implementation is taken into account.



## 2.2. Legislation, providing for the **obligation to implement anti-corruption assessment**

- **Prevention of Corruption Law of the Republic of Lithuania**

Article 8 states, that legislation developer **carries out** the anti-corruption assessment of the draft, **if draft of a legal act tends to regulate public relations**, such as: a transfer of state or municipal property ownership or management rights to individuals; European Union Structural Funds assistance; investigation of violations, conditions of liability for violations; land use, planning areas and construction; pharmaceuticals and medicine, etc.

In fact there are 17 specific areas and the last (No 18) is: in other cases, **if the legislation developer of the legislation is of the opinion that** the regulation may affect the extent of corruption.



## *2.2. Legislation, providing for the **obligation to implement anti-corruption assessment***

- *The Statute of Seimas of the Republic of Lithuania*

*Its provision states, that an explanatory note shall accompany the draft law specifying **the effect of the enacted law on crime and corruption**. (Article 135, paragraph 3, point 6 )*



## 2.2. *Legislation, providing for the **obligation to implement anti-corruption assessment***

- *Legislative Framework Law*

*Article 15, paragraph 2 provides, that performing assessment of anticipated regulatory impact, **have to be pointed out a potential positive and negative effects** of the regulatory sphere, individuals or groups who are expected to be subject to legal regulation.*

*In view of the draft legislation nature and extent, new regulation **must be assessed** on the economy, public finances and the social environment, public administration, the legal system, crime situation, **the extent of corruption**, the environment, the administrative burden, the development of regions and other areas."*





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## *2.3. Who can initiate anti-corruption assessment of legal acts or their drafts?*







## ***2.3. Who can initiate anti-corruption assessment of legal acts or their drafts?***

*In compliance with the Republic of Lithuania Law on Prevention of Corruption, Article 8, The Special Investigation Service shall carry out the anti-corruption assessment of **legal acts or their drafts on its own initiative or on the proposal by:***

- the President of the Republic,***
- the Chairman of the Seimas,***
- the Prime Minister,***
- a parliamentary committee,***
- a commission,***
- a parliamentary group.***



## 2.3. *Who can initiate anti-corruption assessment of legal acts or their drafts?*

*In compliance with the Republic of Lithuania Law on Prevention of Corruption, Article 8, **legislation developer** has obligation to carry out the anti-corruption assessment of the **draft legislation**, if it tends to regulate certain public relations, **by himself**.*



*Legislation developer **can't be** draft legislation assessor for his draft law. Draft legislation assessor should have a legal education.*



## *2.4. Legislation, indicating **how to do** anti-corruption assessment*

*Anti-corruption assessment of legislative acts or drafts are made on procedures which were set on two different documents:*

- ***Rules of anti-corruption assessment of draft legislation** (approved by Government);*

*These rules are compulsory for all state and municipal authorities.*

- ***Procedure of anti-corruption assessment of legal acts or their drafts** (approved by STT).*

*That document is compulsory for STT.*



## 2.4. Legislation, indicating *how to do* anti-corruption assessment

*Do not forget, that the success of anti-corruption assessment is based on the competence, legal awareness and early disinterest of an assessor.*

*Therefore, a legislative act or its draft should be viewed as a mechanism of legal regulation intended to protect the public interest and providing benefits to the state, thus it is necessary to try not to destroy the ideas of legal regulation enshrined in it.*



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*...However...*

*We can't believe that assessment will eliminate all the factors of corruption. Often it is difficult to determine all the conditions and opportunities for corruption risk and even after enacting a relatively anti-corruption legislation, the **human factor** remains...*



## 2.4. Legislation, indicating *how to do anti-corruption assessment - institutional experience*

*In accordance with the Rules of anti-corruption assessment of draft legislation (approved by Government)*

*•draft legislation assessor completes the note, where answers to certain question, such as:*

*-does the draft legislation consists of exclusive or unfair conditions for individuals concerned by the implementation of the legislation?*

*-are there any obvious gaps that will allow ambiguous interpretation?*

*-does the draft legislation set out an exhaustive list of motivated cases when can be made the decision-making exemptions?*

*-etc.*

*and marks if reasoning of changes (or all new regulation) is sufficient.*





## 2.4. Legislation, indicating *how to do anti-corruption assessment - institutional experience*

- then *legislation developer* provides additional changes, if they are needed.
- *if there are disagreements between legislation developer and draft legislation assessor the final decision (to change more or leave as is) is taken by the head of state or municipal institution.*





## 2.4. Legislation, indicating *how to do anti-corruption assessment* – *STT experience*

*In accordance with the **Procedure of anti-corruption assessment of legal acts or their drafts** (approved by STT) this process consists of a two-stage **analysis**:*

- 1) **analysis of the preconditions** of a legal act or its draft (who initiated it, why, what prompted its development);*
- 2) another stage involves **the analysis of the structure of the legal act and its content** (area of regulation, rights and duties of entities, provision of new rights to individual entities, the level of their discretion, assessment or planning of adequate control, responsibility, examining whether or not the planned legal regulation creates additional preconditions of corruption as well as unfair, improper, non-transparent or non-objective conduct, etc.).*



## 2.4. Legislation, indicating *how to do anti-corruption assessment* – *STT experience*

*The assessment is carried out by drawing up proposals and observations, by focusing on deficiencies or ambiguities that may lead to the causes of corruption noticed while performing the assessment of the legislative acts or its draft.*

*We also may propose to refuse alternatives, simplify the procedures, provide for procedures, provide for control mechanisms, refuse discretion of a servant (acting on one's behalf), provide for personal liability (not that of an institution, working group, commission, council), etc.*



## ***2.5. What is the legal power of anti-corruption assessment of legislation?***

*Conclusions carried out by STT on anti-corruption assessment are presented:*

- to a state or local authority, which drafted, adopted or initiated a draft law, or*
- to a developer of a draft law,*

*and they decide whether or not the relevant piece of legislation should be improved. But they still have the obligation to inform STT, how they improved (or why not) their draft.*



## **2.5. What is the legal power of anti-corruption assessment of legislation?**

*In other words – **our conclusions has a recommendatory nature**, that is, they are not compulsory.*

*Nevertheless almost 70-80% legislation developers try to take into account our proposals and observations.*

*In STT practise on carrying out anti-corruption assessment of legislation were cases when President of the Republic of Lithuania has used its **veto** right (for example, cases when political parties did not want to apply to themselves the Law on Public Procurement.)*



## *Results of anti-corruption assessment*

*Annually STT make about 200 anti-corruption assessment of legislative acts or projects.*

### *Anti-corruption assessments done:*

*\* by STT itself: 83 in 2011, 76 (2012), 83 (2013) and already 96 in this year.*

*\* on the proposal of the President of the Republic, the Chairman of the Seimas, the Prime Minister, a parliamentary committee, a commission or a parliamentary group: 120 in 2011, 144 (2012), 97 (2013) and already 98 in this year.*

*The number of legislation assessed each year varies, as it depends on the number of legal acts submitted for anti-corruption assessment, their relevance and complexity.*



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### *3. Examples of anti-corruption assessment of legislation*







## Example No. 1

### *Law on Public Procurement of the Republic of Lithuania*

**Situation:** *Seimas by the draft legislation proposes to supplement the current Law on Public Procurement. There is a possibility to terminate the contract in the draft legislation if the contract supplier failed to supply of goods or services or the quality of work and have been made a decision on the supply of goods, services or construction quality violations. Therefore there is a formulation that the public procurement contract – “**can be terminated**”.*





## Example No. 1

### *Law on Public Procurement of the Republic of Lithuania*

**Remarks:** *the formulation “can be terminated” in the draft legislation is ambiguous and flawed because it is not clear in what circumstances and to whom will be given the right to decide to terminate the contract.*

*Also using the term “quality control authorities’ decision” in the draft legislation - is unclear - not clear to what extent and quality control of the authority to decide that the supplier has made the supply of goods or services or the quality of work carried out by the breach.*

*STT proposes to adjust the formulation to avoid ambiguity.*



## Example No. 2

### *Law on deep earth of the Republic of Lithuania*

**Situation:** *Seimas's Anti-Corruption Commission asked STT to evaluate the supplement draft of the Law on deep earth. STT analyzed the draft and found that in the project emphasized **that in all cases is prepared plan for using the deep earth, the content of the plan is determined by the Government.***



## Example No. 2

### *Law on deep earth of the Republic of Lithuania*

**Remarks:** *performed the anti-corruption assessment revealed that in the draft is **not set** deep earth procedures of plans use and coordination, **not set** legislation, which is drawing up plans, also **isn't clear** this plans relationship with the areas planning legislation.*

*It follows that the procedures of deep earth plan preparation will be not transparent.*

*STT offered to improve this procedure.*



## Example No. 3

### *Law on Official Ethics Commission of the Republic of Lithuania*

**Situation:** *This draft proposed to create preconditions for the Ethics Commission to work more efficiently and effectively – for candidate to commission's member to set 5 years of service.*



## Example No. 3

### *Law on Official Ethics Commission of the Republic of Lithuania*

**Remarks:** *there wasn't specified the ratio of required work experience with the duties of Commission's member.*

*The draft also provided for the member of Commission that he shall not have the right to publish opinions or comments, to bring in the deliberation room, and to make results public on the voting outcome.*

*STT proposed to determine what type of experience needed to take the Commissioner's office. STT also believes that to ban express their opinions – it means to reduce transparency and publicity.*



## Example No. 4

*Road Traffic Safety Law of the Republic of Lithuania provides what is the additional driver training - "in accordance with the training, organized and carried out only in centers of practical training for:*

- *novice drivers,*
- *C1, C1E C, CE, D1, D1E, D, DE categories of drivers of motor vehicles,*
- *motor vehicle drivers, **constantly breaking** road traffic rules and punished for that administratively, including special disqualification from driving. “*





*STT pointed out that nowhere is revealed the meaning of "motor vehicle drivers **constantly breakeing** road traffic rules", therefore provision remains unclear.*

*For example, over **what period** and **what number of offenses** of road traffic rules should I do, to become motor vehicle driver, who **constantly breaks** road traffic rules...*







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## *A short summary (1):*

- *Legislation developer has **the obligation** (not the right) to carry out anti-corruption assessment of the draft, if draft of a legal act tends to regulate certain public relations.*
- *Initiators of anti-corruption assessment of legal acts or their drafts can be STT by itself, the President of the Republic, the Chairman of the Seimas, the Prime Minister, a parliamentary committee, a commission, a parliamentary group.*
- *Initiators of anti-corruption assessment of drafts – legislation developer.*



## *A short summary (2):*

- *Conclusions carried out by STT on anti-corruption assessment **has a recommendatory nature**, in other words, the conclusion recipient decides whether or not the relevant piece of legislation should be improved.*
- *There is **no responsibility** for state or municipal institution for not carrying out anti-corruption assessment of their draft legislation;*
- *There is **no responsibility** for not taking into account our conclusions on anti-corruption assessment. But sometimes remains to expect that the right of veto will be used.*



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