

NEW DIMENSIONS OF CORRUPTION IN EU MEMBER STATES

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Abstract

Objectives: *The furthering and upholding of the core values of pluralist democracy, human rights and the rule of law in Europe. **Prior work:** The criminalisation of corruption in the public and private sectors, liability and compensation for the damage caused by corruption, the conduct of public officials, the financing of political parties and electoral campaigns and include twenty guiding principles for the fight against corruption. **Approach:** It takes a multidisciplinary approach to the fight against corruption and has adopted multi-faceted legal instruments to address it. **Results:** These instruments are designed to strengthen member States' democratic, legal, and institutional capacity to withstand corruption as well as to detect and sanction it effectively when it occurs. **Implication and Value:** The Council of Europe's Guiding Principles, who views corruption as a serious threat, require to be transposed into national practice.*

Keywords: *Council of Europe, fight against corruption, legal instruments, guiding principles, political parties.*

Corruption seriously harms the economy and society as a whole. Many countries around the world suffer from deep-rooted corruption that hampers economic development, undermines democracy, and damages social justice and the rule of law. The Member States of the EU are not immune to this reality. Corruption varies in nature and extent from one country to another, but it affects all Member States. It impinges on good governance, sound management of public money, and competitive markets. In extreme cases, it undermines the trust of citizens in democratic institutions and processes.

This Report provides an analysis of corruption within the EU's Member States and of the steps taken to prevent and fight it. It aims to launch a debate involving the Commission, Member States, the European Parliament and other stakeholders, to assist the anti-corruption work and to identify ways in which the European dimension can help.

EU Member States have in place most of the necessary legal instruments and institutions to prevent and fight against corruption. However, the results they deliver are not satisfactory across the EU. Anti-corruption rules are not always vigorously enforced, systemic problems are not tackled effectively enough, and the relevant institutions do not always have sufficient capacity to enforce the rules. Declared intentions are still too distant from concrete results and the genuine political wish to eradicate corruption often appears to be missing.

To ensure an EU contribution, the Commission adopted the Communication on Fighting Corruption in the EU in June 2011², establishing the EU Anti-Corruption Report to monitor and assess Member States' efforts in this area with a view to stronger political engagement to address corruption effectively. The report is hereby published now for the first time; further reports will be issued every two years.

In line with international legal instruments³, this report defines corruption in a broad sense as any 'abuse of power for private gain. It therefore covers specific acts of corruption and those measures that Member States take specifically to prevent or punish corrupt acts as defined by the

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² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0308:FIN:EN:PDF> .

³ Notably the United Nations Convention against Corruption, as well as Council of Europe anti-corruption legal instruments, including the *Resolution (97) 24 on the twenty Guiding Principles for the fight against corruption and the recommendations No. R (2000) 10 on codes of conduct for public officials and No. R (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns*.

law, and also mentions a range of areas and measures which impact on the risk of corruption occurring and on the capacity to control it.

The report focuses on selected key issues of particular relevance to each Member State. It describes good practices as well as weaknesses, and identifies steps which will allow Member States to address corruption more effectively. The Commission recognises that some of these issues are only for national competence. It is, however, in the Union's common interest to ensure that all Member States have efficient anti-corruption policies and that the EU supports the Member States in pursuing this work. The report therefore seeks to promote high anticorruption standards across the EU. By highlighting problems - as well as good practices - found inside the EU, the report also lends credibility to the EU's efforts to promote anticorruption standards elsewhere.

Corruption is a complex phenomenon with economic, social, political and cultural dimensions, which cannot be easily eliminated. An effective policy response cannot be reduced to a standard set of measures; there is no 'one size fits all' solution. The report therefore examines corruption within the national context of each Member State, and suggests how the most relevant issues for each Member State can be addressed in the national context.

The **financial crisis** has put additional pressure on Europeans and their governments. In the face of the current economic challenges both in Europe and elsewhere, stronger guarantees of integrity and transparency of public expenditure are required. Citizens expect the EU to play an important role in helping Member States to protect the licit economy against organised crime, financial and tax fraud, money laundering and corruption, not least in times of economic crisis and budgetary austerity. Corruption alone is estimated to cost the EU economy EUR 120 billion per year, just a little less than the annual budget of the European Union⁴.

Europe 2020 is the **EU's growth strategy** over the present decade to foster a smart, sustainable and inclusive economy, thus helping the EU and its Member States to deliver high levels of employment, productivity and social cohesion. Research suggests that the success of the Europe 2020 strategy also depends on institutional factors such as good governance, rule of law, and control of corruption⁵. Fighting corruption contributes to the EU's competitiveness in the global economy. In that context, anti-corruption measures have been highlighted with respect to a number of Member States as part of the European Semester - a yearly cycle of economic policy coordination involving a detailed analysis of Member States' programs for economic and structural reform as well as country-specific recommendations. More generally, improving the efficiency of public administration, especially if combined with greater transparency, can help mitigate corruption-related risks. The Commission Communication for a European Industrial Renaissance of January 2014 therefore places emphasis on quality public administration as an important aspect of the EU's growth strategy⁶.

The points for further attention set out in each country chapter reflect the Commission's attempt to identify measures likely to give **added value** in addressing key outstanding issues in regard to preventing and fighting corruption. They are tailored to the context and needs of each country. They are concrete and targeted, without going into excessive detail, and aimed at tangible changes on the ground. The report, where relevant, draws on and supports recommendations already formulated by other corruption reporting mechanism (notably Council of Europe's Group of States against Corruption - GRECO - and OECD), some of which have not yet been followed by Member States.

⁴ The total economic costs of corruption cannot easily be calculated. The cited figure is based on estimates by specialised institutions and bodies, such as the International Chamber of Commerce, Transparency International, UN Global Compact, World Economic Forum, Clean Business is Good Business, 2009, which suggest that corruption amounts to 5% of GDP at world level. See also the Commission Communication on Fighting Corruption in the EU of 6 June 2011: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0308:FIN:EN:PDF>.

⁵ Excellence in Public Administration for competitiveness in EU Member States (2011-2012): <http://ec.europa.eu/enterprise/policies/industrial-competitiveness/monitoring-member-states/improving-public-administration/>

⁶ COM(2014)14.

As follow-up to the report, the Commission wishes to engage in a constructive, forward looking debate on the best ways to address corruption, notably on the points that it has identified for further attention. The Commission hopes to see a wide debate about anticorruption measures with active participation of the Member States, the European Parliament, national parliaments, the private sector and civil society, and looks forward to itself actively participating in discussions both at EU level and in Member States.

Additionally, the Commission intends to put in place a **mutual experience-sharing program** for Member States, local NGOs and other stakeholders to identify best practices and overcome shortcomings in anti-corruption policies, raise awareness or provide training. These efforts should be linked to the issues for attention contained in the report, and facilitate the follow-up action. The mutual experience-sharing program will be launched after the adoption of the report, building on feedback received and discussion with stakeholders on the specific needs that it could address.

The Commission intends to carefully analyze the feedback in relation to this first report, reflect on possible gaps and errors, and draw lessons for the second report. The methodology will be reviewed, and additional consideration will be given to the possibility of developing new corruption indicators.

Two Eurobarometer surveys were carried out in preparation for the EU Anti-corruption Report in early 2013: the 1) Special Eurobarometer^{7 8 9} and a 2) a business-focused 'Flash survey'. For most countries, the ranking of the CPI index published by Transparency International tends to correspond to answers given by the Eurobarometer respondents.

Taking together the Special Eurobarometer data, firstly on general perceptions of the prevalence of corruption and secondly on actually being expected to pay a bribe (personal experience in bribery), it is clear that Member States can be characterized in different ways.

Answers confirm a positive perception and low experience of bribery in the case of **Denmark, Finland, Luxembourg and Sweden**. Respondents in these countries rarely indicated that they had been expected to pay a bribe (less than 1 % of cases) and the number of people who think that corruption is widespread (20 %, 29 %, 42 % and 44 % respectively) is significantly below the EU average. In the case of the **UK**, only 5 persons out of 1115 were expected to pay a bribe (less than 1 %), showing the best result in all Europe; nevertheless, the perception data show that 64 % of UK respondents think corruption is widespread in the country (the EU average is 74 %).

In countries like **Germany, the Netherlands, Belgium, Estonia and France**, while more than half of the respondents think corruption is a widespread phenomenon, the actual number of people having had to pay a bribe is low (around 2 %). These countries also appear among the good performers on the Transparency International Index. **Austria shares similar features with this group** with the exception of a somewhat high number of respondents (5 %) who reported to have been expected to pay a bribe.

In some countries a relatively high number of people indicated that they had personal experience with bribery, but with a clear concentration on a limited number of sectors, including

⁷ A survey conducted among the general population in all Member States every two years, based on face-to-face interviews with a sample of 1000 or 500 respondents (depending on the size of the population). A total of 27 786 persons (representative sample) participated in this survey in late February and early March of 2013. The survey dealt inter alia with corruption perception generally, personal experience with corruption as well as attitudes towards favours and gifts. While the Eurobarometer surveys are run every second year since 2007, the Commission decided in 2013 to tailor questions to the needs of this report. Therefore, any comparison with previous years should be undertaken with caution. Full report is available at http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm#397.

⁸ A phone-based survey, so-called Flash Eurobarometer the energy, healthcare, construction, manufacturing, telecommunications and financial sectors (all company sizes) were requested to provide their opinion. Full report is available at http://ec.europa.eu/public_opinion/archives/flash_arch_374_361_en.htm#374

Corruption Perception Index (CPI) is published every year by Transparency International: <http://cpi.transparency.org/cpi2013/>, covered six sectors in EU28, and was launched for the first time in 2013, carried out between 18 February and 8 March. Businesses from the energy, healthcare, construction, manufacturing, telecommunications and financial sectors (all company sizes) were requested to provide their opinion. Full report is available at http://ec.europa.eu/public_opinion/archives/flash_arch_374_361_en.htm#374

⁹ Corruption Perception Index (CPI) is published every year by Transparency International: <http://cpi.transparency.org/cpi2013/>.

Hungary (13 %), Slovakia (14 %) and Poland (15 %). In these countries, one sector, namely healthcare, provides the bulk of instances of bribery. There is evidence that structural problems in healthcare provide incentives to pay a bribe for medical staff. Indeed, in all the countries mentioned, the detailed answer show that healthcare is referred to by the highest number of individuals, while all other institutions or sectors (e.g. police, customs, politicians, public prosecutors' services etc.) were named by less than 1 % of respondents. Corruption in a broader sense is perceived as widespread in these countries (82 % in Poland, 89 % in Hungary and 90 % in Slovakia).

In certain countries, including **Portugal, Slovenia, Spain and Italy**, bribery seems rare but corruption in a broader sense is a serious concern: a relatively low number of respondents claimed that they were asked or expected to pay a bribe in the last 12 months. While personal experience of bribery is apparently rare (1-3 %), the perception is so heavily influenced by recent political scandals and the financial and economic crisis that this is reflected in the respondents' negative impression about the corruption situation overall (90, 91, 95 and 97 % respectively).

As for countries lagging behind in the scores concerning both perceptions and actual experience of corruption, these include **Croatia, the Czech Republic, Lithuania, Bulgaria, Romania and Greece**. In these countries, between 6 % and 29 % of respondents indicated that they were asked or expected to pay a bribe in the past 12 months, while 84 % up to 99 % think that corruption is widespread in their country. Croatia and the Czech Republic appear to make a somewhat more positive impression with slightly better scores than the rest of the countries from the same group.

Countries not mentioned above (i.e. Latvia, Malta, Ireland, Cyprus) do not show results that diverge considerably from the EU average on any of these aspects.

At European level, three quarters of respondents (76 %) think that corruption is widespread in their own country. The countries where respondents are most likely to think corruption is widespread are Greece (99 %), Italy (97 %), Lithuania, Spain and the Czech Republic (95 % in each). A quarter of Europeans (26 %), compared with 29 % showed by the 2011 Eurobarometer, consider that they are personally affected by corruption in their daily lives. People are most likely to say they are personally affected by corruption in Spain and Greece (63 % in each), Cyprus and Romania (57 % in each) and Croatia (55 %); and least likely to do so in Denmark (3 %), France and Germany (6 % in each). Around one in twelve Europeans (8 %) say they have experienced or witnessed a case of corruption in the past 12 months. Respondents are most likely to say they have experienced or witnessed corruption in Lithuania (25 %), Slovakia (21 %) and Poland (16 %) and least likely to do so in Finland and Denmark (3 % in each), Malta and the UK (4 % in each).

Around three quarters of Europeans (73 %) say that bribery and the use of connections is often the easiest way of obtaining certain public services in their country. This belief is most widespread in Greece (93 %), Cyprus (92 %), Slovakia and Croatia (89 % in each). Similarly to 2011, around two in three Europeans (67 %) think the financing of political parties is not sufficiently transparent and supervised. Most likely to hold that view are respondents from Spain (87 %), Greece (86 %), and the Czech Republic (81%), while those least likely to hold this view are respondents from Denmark (47 %), the UK (54 %), Sweden (55 %) and Finland (56 %). Just under a quarter of Europeans (23 %) agree that their Government's efforts are effective in tackling corruption; around a quarter (26 %) think that there are enough successful prosecutions in their country to deter people from corrupt practices.

For the business-focused Flash survey the country results show striking variations: a difference of 89 percentage points between the highest (Greece: 99 %) and lowest (Denmark: 10 %) levels of perceived corruption. (The same result is reflected in the 'Special Eurobarometer' presented above: 20 % vs 99 %.) Indeed, all but one of the respondents from Greece tend to believe that corruption is widespread in Greece.

At European level, more than 4 out of 10 companies consider corruption to be a problem for doing business, and this is true for patronage and nepotism too. When asked specifically whether corruption *is a problem for doing business*, 50 % of the construction sector and 33 % of the telecoms/IT companies felt it was a problem to a serious extent. **The smaller the company, the**

more often corruption and nepotism appears as a problem for doing business. Corruption is most likely to be considered a problem when doing business by companies in the Czech Republic (71 %), Portugal (68 %), Greece and Slovakia (both 66 %).

The individual country analyses revealed a wide variety of corruption-related problems, as well as a variety of corruption control mechanisms, some of which have proved effective and others have failed to produce results. Nevertheless, some common features can be noted either across the EU or within clusters of Member States. The country analyses show that public procurement is particularly prone to corruption in the Member States, owing to deficient control mechanisms and risk management. An assessment of corruption risks, including both good and negative practices in public procurement appears in Member States Reports¹⁰.

A fundamental challenge regarding anti-corruption policies is the lack of a harmonized definition of ‘public official’ at EU level which would include elected officials. The Commission has put forward a proposal in 2012 for a directive on criminal law protection from fraud and related offences to the EU financial interests¹¹ which contains a definition of public official including persons holding a legislative office. The negotiations in the Council¹² and in the European Parliament¹³ on the proposed Directive show a lack of support for the proposed definition aiming at a criminalization of corruption committed by the elected officials. However, in the Commission’s view, in order to come to a common approach in the EU, there is a need for a clear harmonization of criminal liability of elected officials for corruption offences.

One of the broader background issues which experience shows to have an impact on corruption is the financing of political parties. Recent large-scale corruption cases involving illegal party funding affected politicians in some Member States. Vote-buying and other forms of undue influence of the electorate were also noted in a number of Member States.

GRECO evaluations on party funding have had a visible impact on the reform of the legal and, to some extent, institutional framework in this area. With some exceptions, most Member States have recently amended their legislation on party funding and increased transparency standards, including on donations. In two Member States there is no restriction on anonymous donations. The publication of accounts of political parties is not mandatory in one of these Member States. However, the main political parties concluded a voluntary agreement to ensure financial transparency. Moreover, amendments to the party financing legislation aiming at compliance with GRECO recommendations are forthcoming. The other Member State in question has not announced plans to further amend its legislation following GRECO recommendations. Another Member State has recently revised its party funding legislation but loopholes remain as regards caps for donations, regime of sponsorships from state-owned companies, supervisory mechanisms and sanctioning powers.

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¹⁰ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm

¹¹ COM(2012) 363.

¹² See general approach of 3 June 2013, Council Doc. 10232/13.

¹³ See opinion of the Committee of Legal Affairs, A7-0000/2013

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