

Contribution of Transparency International EU Office in Brussels to the European Commission's DG Home Affairs Public Consultation:

Consultation on a future reporting and monitoring mechanism on EU member states progress on fighting corruption

THE EU SHOULD BECOME MORE ACTIVE AND VOCAL IN ADDRESSING THE ISSUE OF CORRUPTION IN EU MEMBER STATES AND BEYOND

Transparency International (TI), the global civil society organisation leading the fight against corruption, has welcomed the adoption of the EU Stockholm Programme in December 2009 and the suggested anti-corruption measures of the new anti-corruption package. TI strongly recommends that the Directorate-General for Home Affairs should propose for the EU to take on a stronger role in the fight against corruption in the 27 EU member states.

Transparency International is convinced that the prevention of and fight against corruption should be a priority for the EU because:

- **Corruption undermines the rule of law and good governance**, it leads to the **misallocation and misuse of EU funds** and it acts as a **serious distortion of fair competition** within the internal European market. As stated goal of the European Union is to provide for a competitive European marketplace, the EU has an obligation to make corruption a primary concern in all policies.
- **Corruption is an obstacle in the effective exercise of Union citizenship and Fundamental rights**. Corruption is widening the gap between the applicable legal rules in EU member states and the practical reality citizens are faced with in their daily life, in particular in cross-border situations. Poorer citizens in particular feel the brunt of corruption and are often denied the rights which they are entitled to, particularly those related to basic public services delivery. The prevention of and fight against corruption should be a priority for the EU because corruption deprives EU citizens of stable and functioning systems that are based on fundamental rights, the rule of law and good governance. Anti-corruption measures will give confidence to EU citizens that their individual rights under EU rules will be upheld.
- ✓ **Corruption comes at a high cost for EU citizens.**
 - Last year, 13.5% of Greek households paid a bribe, 1,355 EUR on average, according to a Transparency International Greece survey published in April 2010. Petty corruption in Greece was estimated at 790 Mio. EUR in 2009. Ordinary citizens report handing out cash-filled envelopes to get driver's licenses, doctor's appointments, building permits, or to reduce their tax bills, according to Transparency International Greece.
 - Total public procurement in the EU – i.e. the purchases of goods, services and public works by governments and public utilities - is estimated at about 16% of the Union's GDP (EC figure). Corruption is estimated to comprise between 10% and 25% of contract value (TI Handbook on Public Procurement).
- ✓ **Citizens expect the EU to lend its political weight to the fight against corruption.** EU citizens are seriously concerned by corruption. A significant majority is of the opinion that the EU institutions and member states are ill-equipped to prevent corruption. Accordingly, there is an

increasing demand to strengthen the role of the EU. The EU should raise public attention to the issue of corruption and catalyse change to restore trust, integrity and accountability vis-à-vis the Union as anti-corruption actor, its member states and the public at large.

- **TI's Global Corruption Barometer 2009** - the survey exploring the view of the general public on corruption in 69 countries (18 of which are EU member states) indicates that within the surveyed EU member states more than half of the respondents (54 per cent) report private sector bribery to be a common phenomenon. [Read more.](#)
 - **2008 European Commission's public consultation** on the question "*Freedom, Security and Justice: What will be the future?*" shows that the fight against corruption is a top priority. A total of 88% of the respondents affirmed that the EU should do more about corruption. [Read more.](#)
 - **Eurobarometer survey 2009** (European Commission) on the attitudes of Europeans towards corruption reveals that European public opinion has shifted to an even more negative perception compared to the last Eurobarometer survey of 2008, with a higher level of respondents (78%) answering that corruption is a major problem in their country. [Download here.](#)
 - **Eurobarometer survey 2008** (European Commission) on the attitudes of Europeans towards corruption (released on 30 October 2008), demonstrates that, overall, corruption in EU member states is seen as widespread issue, with 3 out of 4 citizens regarding corruption as a major problem in their country. [Download here.](#)
- ✓ **European Parliament delivered a major support** for the European Commission plan to forcefully implement the Stockholm Programme's priorities on fighting corruption. In May 2010, a cross-party "Written declaration on the Union's efforts to fight corruption" adopted by a majority of Members of the European Parliament. With this, the European Parliament took a vocal stance against corruption and had an official position on the issue. The initiative has been authored by MEP Simon Busuttil (EPP, Malta), MEP Luigi de Magistris (ALDE, Italy), MEP Ana Gomes (PSE, Portugal), MEP Monica Luisa Macovei (EPP, Romania) and MEP Bart Staes (Greens/EFA, Belgium).

<p>Question 1: Do you agree that the EU should establish a reporting mechanism on the fight against corruption in the EU 27?</p>

Transparency International agrees that the EU should establish a reporting mechanism on the fight against corruption in the 27 EU member states leading to the publication of an annual report.

The **objectives** of an EU anti-corruption reporting mechanism should first and foremost be:

- **Restore trust of EU citizens in the EU as actor to tackle corruption:** To address the prevailing distrust by the European public and to live up to citizens' expectations; (see below)
- **Speak out more courageously against corruption:** To enable the EU to speak out more courageously against corruption to confirm its high-level political commitment against it; at the moment, the EU has hardly been vocal and has no instrument that publicly stresses the issue and, thus, draws attention to the problem of corruption in EU member states. The reporting mechanism would not only facilitate the work of the European Commissioner in charge of EU Home Affairs, Cecilia Malmström, but also raise the necessary public attention to catalyse changes in the fight against corruption in the EU.

- **Use the political weight of the EU to fight corruption:** To allow the EU to use its political weight to push for Union-wide anti-corruption reforms and to re-enforce existing anti-corruption monitoring and assessments (similar to what has been achieved in the area of anti-corruption in accession countries in the cause of the latest EU enlargement process). Rather than as yet another review mechanism, the EU should take on a more strategic and high-profile role that has the potential to reinforce reporting on anti-corruption measures in the EU-27.
- **Sanction and the debarring of those who corrupt EU funds:** To evaluate member states' anti-corruption efforts and to identify on the basis of the evaluation's results appropriate and concrete best practice measures, including sanctions (in cooperation with and based on OLAF investigations) against the misappropriation of EU funds at EU-level and in the member states, which should ultimately lead to the reduction of corruption in the European Union;
- **Early-warning tool / anticipation of crisis:** The EU should outline trends and address possible systemic weaknesses at an early stage. Developments such as those currently happening in Greece or Ireland are acknowledged to have a corruption dimension (as was the case, *inter alia*, for the crises in Bulgaria and Romania) that severely affect the entire Union. If the EU were to highlight corruption risks at an early stage, it would have great potential to be alert of such crises. Accordingly, a stronger role of the EU in the fight against corruption could help the EU to mitigate the potential risks to the Union produced by the deep-rooted, systemic problems that can evolve into a crisis. The early warning function of the regular anti-corruption reporting by the EU adds a new feature to the repertoire of existing anti-corruption tools, which has the potential to scale down the negative effect and, at the same time, prevent other EU member states from backsliding or stagnating on anti-corruption measures.
- **Mutual learning and exchange of best practice:** Since EU member states have developed different approaches with regards to the implementation of anti-corruption tools, they do not engage in the same way in the fight against corruption. Some of the anti-corruption policies work better than others but member states hardly know about each other's successes and failures. Hence, the reporting mechanism should also contain measures to strengthen mutual learning and exchange of best practice.

In practical terms, the EU anti-corruption reporting mechanism should be managed by the European Commission Directorate-General Home Affairs. The output of the reporting mechanism could include a brief 1 to 2 page country analysis and a limited number of recommendations for each of the 27 EU Member States. The recommendations for all 27 EU member states should be no longer than 70 pages in total, including an accessibly written executive summary of 10 pages for the media. The sources should be listed in an annex.

The anti-corruption reporting should be based on contributions from:

- **Inter-governmental organisations** could contribute key findings of their comprehensive evaluation, compliance reports and peer reviews relevant for the 27 EU member states and based on international and regional anti-corruption instruments and conventions.
- **Civil society (non-governmental)** could offer independent anti-corruption and integrity assessments, research and expertise for the EU-27.
- **27 EU member states (national governments and other stakeholders)** could provide ad-hoc relevant anti-corruption-related information as one of several inputs.
- When evaluating the reported information from EU member states, the EU could be supported by a **network of independent anti-corruption experts** (non-governmental) from different EU member states. To ensure the integrity of the expert representatives, a code of conduct could be

developed with expert selection undertaken publicly and transparently (see, for example: [Commission Decision of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings](#) (2007/675/EC); [Composition](#) (PDF File 74 KB); [Background of the Members of the Experts Group](#); [Call for Proposals](#)).

It is essential to note that there are **synergies and complementarities with other anti-corruption mechanisms**. The EU anti-corruption reporting mechanism should neither duplicate any of the pre-existing anti-corruption mechanisms operated by inter-governmental organisations such as GRECO, the OECD and UNODC, nor any of the tools used by various interested civil society organisations. On the contrary, a stronger role of the EU through the reporting mechanism would be designed to integrate and re-enforce the key anti-corruption results and recommendations of GRECO, the OECD and UNODC to highlight member states' anti-corruption areas of concern. As such, the EU would become an actor aiming at highlighting the most important findings identified by different sources on a country-by-country basis.

Question 2: Would you support other measures to be proposed at EU level?

The proposed EU reporting evaluation mechanism should merely be seen as first step to fight and prevent corruption both within the EU and in its external action. At this stage, there is no common EU policy against corruption! There is no coherent set of policies for member states in the EU and external measures for third countries.

TI strongly demands an urgently needed **comprehensive EU-wide Anti-Corruption Strategy, which cuts across all relevant EU policy areas**. This is justified since corruption is recognised as serious crime in the Lisbon Treaty (Art 83 TFEU). Apart from the effort to develop an anti-corruption package for EU member states (for both, the public as well as the private sector), the EU should continue to mainstream anti-corruption into for example its private sector policies (including the financial service reform), the climate change policy and its external action, since corruption is viewed as a major obstacle to achieving the EU development goals. In this context, corruption is a symptom of poor governance and of a lack of transparent, accountable management and control systems, especially the management of national resources (see 2006 Communication on "Governance in the European consensus on Development).

Moreover, the proven shortcomings in the transformation of international and regional anti-corruption legal instruments into domestic law should also be addressed by the EU. The bare minimum for EU anti-corruption action is, at least, a regular review of the implementation and, even more importantly, the enforcement of the **existing EU anti-corruption instruments** at member state level (e.g. Convention 1997, Council Framework Decision 2003 and the UNCAC which was not ratified by all EU member states).

There is no need to re-invent the wheel and to lose precious time in the fight against corruption with the proposal to revert back to the debate on the definition of corruption. The EU is already State Party to the **UNCAC since its ratification in November 2008 and is, thus, obliged to self-evaluate its anti-corruption policy, action and measures** (UNCAC review mechanism). The UNCAC provides a concrete set of measures, which can be considered as entry points for the EU to prevent, criminalise and ultimately punish corruption and also raise awareness about the issue.

To apply a holistic approach across the various policy areas and to implement a comprehensive EU anti-corruption strategy, the **European Commission inter-service group on anti-corruption should be strengthened**, following to which the results will consequently become of higher political importance. One of the mandates of the group could be to analyse and facilitate the mainstreaming of

anti-corruption, transparency and integrity into the relevant EU policy areas, programmes and legislation.

Civil society involvement is key in the implementation of anti-corruption action by government. Without a watchdog that monitors which promises are kept, only limited progress can be expected. Providing more financial means for awareness raising campaigns, the development of better anti-corruption tools to gather data on corruption across and outside the EU or other anti-corruption projects would be desirable.

Question 3: Existing monitoring mechanisms are largely based on official sources. Do you think they should be complemented with contributions from civil society, academics and independent experts?

It is essential for the quality of the EU reporting mechanism to be complemented with contributions from civil society, academics and independent experts. To ensure a balanced and representative reporting mechanism, the EU should be informed by different sources of information (not only governmental), including civil society.

Civil society organisations hold an important position in monitoring and assessing government anti-corruption activities, policy implementation (at all levels) and possible abuses of power, with a view to *sustaining* a culture of transparency and public participation within the European Union.

Civil society organisations in EU member states have acquired vast expertise in many public areas related to the fight against corruption. If such a reporting mechanism was to be established, civil society would lend its general support to assess the implementation of the EU anti-corruption recommendations and work as professional anti-corruption watch-dogs in their respective countries.

Question 4: Which areas whether in public or private sector you consider as particularly vulnerable to corruption (e.g. politics, law enforcement, judiciary, health, education, public procurement including spending of EU funds, business relations)

Since March 2009, TI has recommended developing an assessment in three areas (i.e. public sector, private sector and judiciary) that are particularly vulnerable to corruption. Corruption risks and/ or lack of enforcement of existing anti-corruption laws and mechanisms in those areas are outlined below as a problem statement that is followed by relevant questions. As the following list might be considered comprehensive, the European Commission could – of course - retain flexibility as to the areas evaluated.

Public Sector

1) Conflict of interest (in particular revolving door between government / administration and private sector)

To what extent are there provisions in place to ensure the integrity of public sector employees? To what extent is the integrity of civil servants ensured in practice? Is there an effective income and asset disclosure regime for public office holders? Does regulation prohibit or restrain private employment for former civil servants? How rigorously is such regulation enforced?

2) Abuse of public funds, in particular EU funds

To what extent is there an effective legal framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both

suppliers and public officials, and independent review and complaint mechanisms? Are there assessments of the effectiveness of implementation?

3) Abuse of political party financing

Does the political finance oversight body effectively regulate candidate and political party finance? Does the election monitoring body effectively oversee and administer free and fair elections and ensure the integrity of the electoral process? To what extent do the financial resources available to political parties allow for effective political competition?

4) Lack of whistle-blower protection in public (and also private sector)

Do effective measures exist to protect witnesses, whistleblowers (in public and private sector) and victims of corruption from potential retaliation or intimidation?

Private Sector

1) Weak reporting of EU-listed companies

What incentives / regulations do member states use to persuade companies to disclose anti-corruption-relevant information and to promote integrity in the private sector? Do member states require EU-listed companies (including extractive industry) based in their country to report in detail on revenues made and payments made at the national level in every country of operation inside and outside of the EU (in short, do they require country-by-country reporting for all listed companies?)? Do member states have investigative tools or specialised staff to analyse corporate anti-corruption measures? Have member states published guidelines (such as the Global Compact or Transparency International Business Principles for Countering Bribery) on corporate anti-corruption measures?

2) Acts of (foreign) bribery

Does effective national legislation exist to provide meaningful sanctions in case of private-private and private-public sector bribery? Does legislation cover both personal and corporate liability? Are heads of business criminally liable? Is regulation enforced? If member states have illicit enrichment legislation, what actions are they taking in relevant cases?

3) Lack of corruption-related debarment

Does the EU member state have in place a debarment system for companies that engage or have engaged in corrupt practices? Are those companies debarred from public tenders, and if so, for how long? Is this system articulated to the EU Central Exclusion Database and is the information available to other member states (cross-debarment)? Is it publicly available?

4) Corporate links with offshore centres

Does the member state require publication of the place of registration for all substantial subsidiaries of listed corporations? Does the member state forbid corporate relationships with non-cooperative offshore centres? Do member states provide sufficient cooperation with each other in the recovery of taxes and illegally acquired assets?

Judiciary

1) Insufficient cross-border police and judicial cooperation

Do domestic judicial authorities cooperate in full and offer mutual legal assistance to requesting foreign judicial authorities? Do domestic judicial authorities offer *sufficient* cooperation both to requesting states and to various regional authorities engaged in criminal investigation and prosecution across borders (Europol, Eurojust, OLAF etc)? Is there sufficient

national legislation for international cooperation to enable any potential European Public Prosecution Office (and the aforementioned regional authorities) to prosecute cross-border corruption-related cases?

2) Weak access to justice: insufficient initiation of investigations by police and public prosecution services

Does access to information legislation exist to allow for the disclosure for documents related to corruption-related investigations, both in the pre-trial phase and the trial phase before a domestic court? How many of such investigations result in charges and enter the trial phase before a domestic court?

3) Inefficiency of court proceedings

How many corruption-related cases are brought before domestic courts and found admissible? How many of those cases result in acquittals?

4) Impunity

How many corruption-related court proceedings lead to successful prosecutions, i.e. convictions? How many cases result in a court verdict and/or in settlements? How many of those cases lead to a verdict, impose a fine and/or imprisonment as sanction? Are member states supported to seize and confiscate profits from criminal activities in order to ensure that crime does not pay?

Question 5: What incentives could be applied to offer the best chance for member states to implement recommendations contained in an EU reporting mechanism? (Examples: An anti-corruption fund for implementing certain measures (e.g. setting up or strengthening anti-corruption institutions, complaint mechanisms, providing training or conducting awareness raising campaigns)

A range of incentives can be proposed:

- Demonstrating political will and concrete action against corruption: the EU and national governments should **speak out more courageously** against corruption to confirm the high-level political commitment against corruption.
- The EU should use positive incentives by "**naming and faming**" well performing member states and highlight good examples and best practices. At the same time, the EU should not shy away from naming issues and systemic weaknesses in other member states.
- It is recommended that a mechanism for EU member states (and those countries which receive EU budget support) is developed, with which **sanctions** could be imposed on those member states and/or companies that misappropriated EU funds (similar to, for instance, the freezing of EU funds for Bulgaria). A debarment system for member states or companies which are found guilty of cases of corruption or fraud involving EU funds should be established.
- An anti-corruption fund for implementing anti-corruption measures should be established. Through the fund **awareness-raising and education campaigns** against corruption should be supported at the EU level and in all EU member states.

About Transparency International at the EU level

The Transparency International Liaison Office to the European Union (TI EU Office) is part of the global Transparency International (TI) movement, the leading civil society organisation in the fight against corruption around the world. It is the mission of the TI EU Office in Brussels to prevent and

address corruption and promote integrity, transparency and accountability in the EU institutions and EU internal and external policies, programmes and legislation. It is its objective to create lasting, structural change at the EU level so that government, politics, business, civil society and the daily lives of people are characterized by integrity, justice and security. The TI EU Office works in close cooperation with the TI Secretariat in Berlin and TI national chapters in over 90 countries, and particularly with those located in 23 EU member states. The objective of the TI EU Office is to fulfil the European dimension of the global TI movement – to provide Brussels-based advocacy at the EU level that aims to create a European Union in which the daily lives of people are free of corruption.

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