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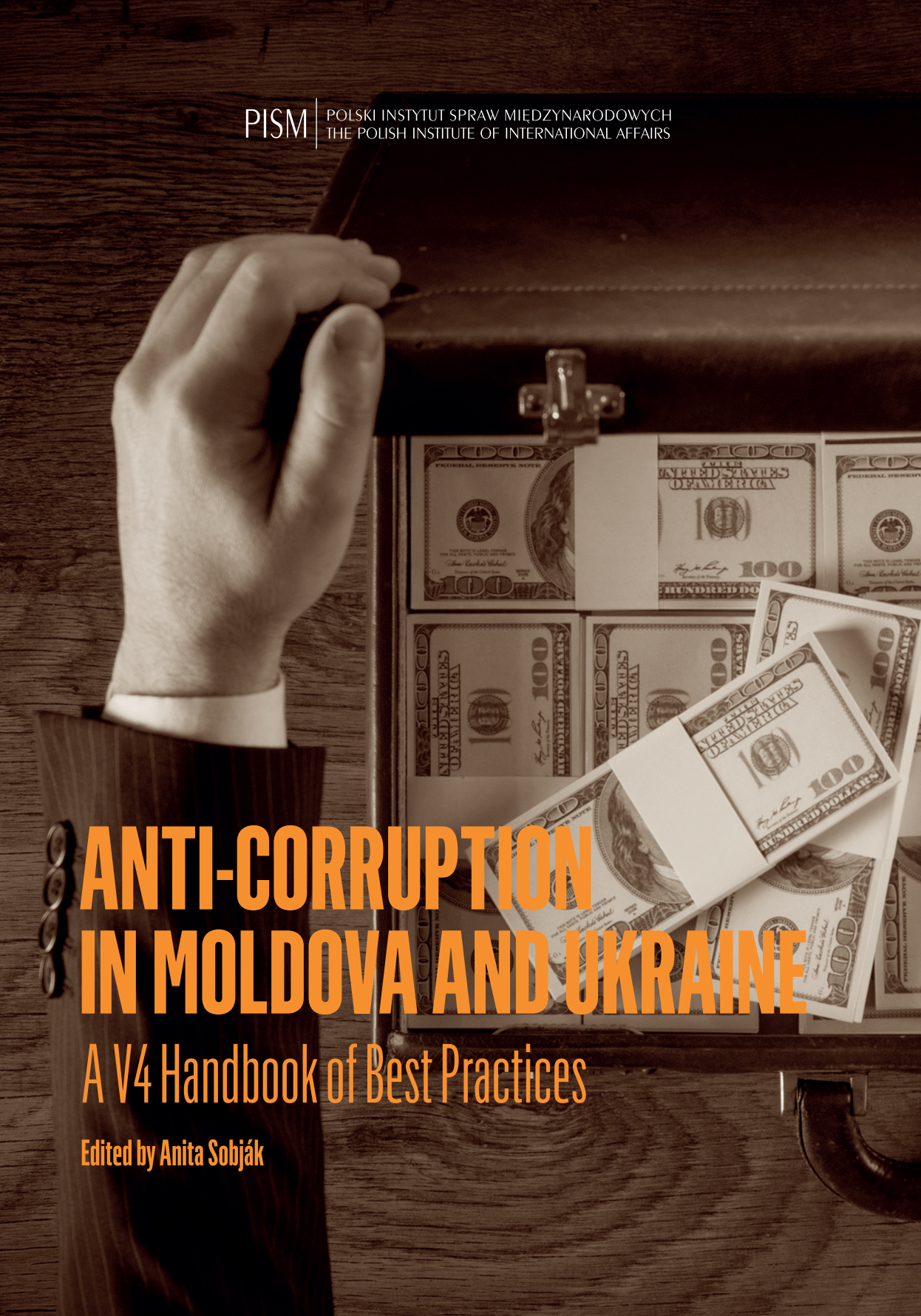

ANTI-CORRUPTION IN MOLDOVA AND UKRAINE

A V4 Handbook of Best Practices

Edited by Anita Sobják

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The Polish Institute of International Affairs

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Warsaw, June 2015

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INTRODUCTION

The year 2014 was crucial for the European Union (EU) and its eastern neighbourhood. As an effect of the Euromaidan protest, Ukraine reached a major milestone in its political development with an explicit turn towards the EU. At the same time, the annexation of Crimea by Russia and the war in Donbas severely destabilised the country's economic and security foundations, with repercussions for the wider region as well. Not unrelated to these events in the region, the EU relations with the Eastern Partnership (EaP) states accelerated to an unprecedented level: Association Agreements (AA) including a Deep and Comprehensive Free Trade Area (DCFTA) were signed with Georgia, Moldova and Ukraine, and the visa regime was liberalised for Moldovans. In light of these developments, the EU realised the need to launch a major revision of its neighbourhood policy—the EaP.

The association agenda of Moldova and Ukraine cover modernisation of a wide array of sectors, and anti-corruption is the one issue with cross-cutting implications for all of them. It is also the problem most-often singled out in the EU's or its Member States' discourse on the Union's future relations with Moldova and Ukraine. Moreover, with or without commitments to the EU, corruption remains the single biggest hurdle to doing business and as such, the economic development of these countries.

The report looks into the problem of corruption in Moldova and Ukraine and formulates practical recommendations for both the two governments and EU

decision-makers. It does so by analysis of the most urgent challenges and by resorting to the experience of the Visegrad Group (V4) states for inspiration. The relevance of the case of the four Central European states lies in the fact that for them, too, it was under EU conditionality that anti-corruption policies were truly kick-started. Though corruption is by far not off the agenda of the Visegrad states themselves, the similar starting point and end goal make the reform processes worth analysis and offer lessons in terms of both successes and mistakes.

To this end, the report contains six country chapters on the EaP states (Moldova and Ukraine) and the Visegrad states (Czech Republic, Hungary, Poland, and Slovakia). The chapters on Moldova and Ukraine outline the major challenges these two countries face in the field of anti-corruption, providing the background of the latest developments. Next is an analysis of the extent to which the EU's expectations of the two partner countries are effectively underpinned by concrete policy tools. In the case of the V4, the chapters map out the evolution of the strategic, legislative and institutional frameworks related to anti-corruption, analyse the role the EU has played in these reforms and identifies concrete best practices of anti-corruption measures.

Each of the country chapters was authored by experts representing think-tanks or civil society organisations (CSO) from the given state. In terms of tools, the research that served as a basis for this report relied on legislative acts, national strategies, reports (by the EU, international organisations and local CSOs), official documents, and other sources. Additionally, interviews were conducted with EU officials, representatives of national public administrations, independent experts and civil society members.

The research had several limits and caveats, including the difficulty in comprehensively assessing the phenomenon of corruption, the accelerated pace of reform actions[1] (particularly in the case of Ukraine), and the confines of drawing parallels between different state systems and identifying potentially transferable solutions. Also, the report does not claim that any of the Visegrad

[1] Work on the content of the report was finalised in the end of April 2015.

countries presents a flawless record on anti-corruption policies, their problems are explicitly highlighted in the respective chapters. Thus, the cases identified as best practices are far from describing optimal solutions, rather they often reflect a mixed picture. By this they showcase both promising attempts worth analysis and such instances of rollback that can serve as a cautionary tale for Moldova and Ukraine, or other states at a comparable stage of transition, for that matter.

*

The report has been drawn up in the framework of the international research project *Destination: Transparency—New EU Member States' Best Practices for Moldova and Ukraine*[2] co-founded by the International Visegrad Fund.[3] The project brought together think-tanks and CSOs from all six of the countries in order to exchange views and experience on good governance and the rule of law, but also to strengthen ties and cooperation between these organisations. The incentive for the report came from the study trips carried out within the scope of the project, as well as from a three-day workshop organised in Warsaw in October 2014 with the participation of officials, experts and practitioners from the V4 states, Moldova, Ukraine and the EU institutions.

[2] For more on the project, see: www.pism.pl/about-us/research/projects/ongoing-projects/PISM-leading-the-Destination-Transparency-New-EU-Member-States-Best-Practices-for-Moldova-and-Ukraine-project.

[3] For more on the Fund, see: http://visegradfund.org.

CHALLENGES IN MOLDOVA AND UKRAINE

Stella Uțica

MOLDOVA

The State of Corruption

Corruption is a phenomenon that has deep implications not only on the internal functioning of Moldova but also its assessment by external partners. In the discourse of EU officials on Moldova's association with the EU, the fight against corruption is the condition most often singled out.

The formation of a pro-European government coalition in 2009 with strong commitments to European association brought a boost in several structural reforms of key significance for the country's modernisation. Indeed, significant progress was made in terms of both legislation and institutional reform related to anti-corruption. Yet, these changes have thus far translated only into very marginal improvements in practice.

Even though in the past few years Moldova has improved its scores in several related areas (for instance, in the Good Governance Index, Human Development Index, Global Competitiveness Index, and Press Freedom Index) its ranking in Transparency International's (TI) Corruption Perceptions Index points at no improvement. In 2014, Moldova ranked 103rd out of 175 countries, and in 2013 it

was 102nd out of 177 countries.[1] However, grimmer is the comparison with 2009, when it was 89th.

When it comes to the public's assessment of the government's efficiency in fighting corruption, dissatisfaction seems to be on the rise. According to the 2013 Global Corruption Barometer, 34% of respondents declared that the level of corruption over the past two years has increased.[2] In the 2014 Barometer of Public Opinion, corruption was fifth on the list of public concern, after poverty, prices, unemployment and criminality.[3] The most corrupt institutions are perceived to be the judiciary system (80%), police (76%), and the political parties and the parliament (75%).[4]

A similar assessment, yet a more nuanced picture is offered by the research conducted by TI Moldova in December 2014, which looked at personal experience with corruption among households and business community representatives. In particular, the study looked at their assessment of the impact generated by the implementation of the National Anti-corruption Strategy in 2014. According to this research, 46.5% of the household representatives and 39.5% of the business community representatives thought that the level of corruption had increased during the previous 12 months.[5] Both categories perceived the judiciary as the most corrupt institution. On a positive note, however, the study also indicates an increase in the level of public intolerance towards corruptive practices.[6] Still, the

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[1] "Corruption Perceptions Index 2009, 2013 and 2014," Transparency International, www.transparency.org/research/cpi/overview.

[2] "Global Corruption Barometer 2013," Transparency International, www.transparency.org/gcb2013/country/?country=moldova.

[3] "Barometer of Public Opinion," Institute for Public Policy, November 2014, p. 16, http://ipp.md/public/files/Barometru/Brosura_BOP_11.2014_prima_parte-r.pdf.

[4] "Global Corruption Barometer 2013," *op. cit.*

[5] "Moldova, Sociological Survey: 'Corupția în Republica Moldova: percepțiile și experiențele proprii ale oamenilor de afaceri și gospodăriilor casnice [Corruption in Moldova: perceptions and personal experiences of business people and households' representatives]'," Transparency International, 17 December 2014, p. 2, www.transparency.md/files/docs/PR_Sondaj%20perceptii%20experiente%202014.pdf.

[6] *Ibidem*, p. 4.

tendency to fight corruption remained low, which speaks of a passive type of intolerance towards corruption rather than an active one.

Overall, the anti-corruption fight has also had positive results in recent years, particularly in terms of improving collaboration between civil society and anti-corruption bodies, a considerable increase in the number of cases opened by anti-corruption bodies (including cases of high-level corruption) and increased number of reports made by public servants stating attempts to corrupt them. Nevertheless, CSOs and society at large remain highly disappointed with the selective approach of anti-corruption agencies, which speaks of a high level of political influence. This has been demonstrated by a number of corruption-related scandals[7] that have shaken not only public faith in the reform-oriented governing parties but also in the EU.

Recent Developments in the Anti-corruption Framework

Although a three-year political stalemate (2009–2012) caused a delay pregnant with consequences in corruption-related reforms, after 2009 the pro-European governments all had strongly declared intentions to reduce corruption.

The general framework for anti-corruption measures in the country is provided for in the National Anti-corruption Strategy for 2011–2015.[8] The strategy gives clear delimitations between the actors responsible for implementing it, as well as for the establishment of performance indicators and deadlines. Still, civil society actors monitoring implementation of the strategy deem the progress to be rather modest. The absence of clear indicators on periods for fulfilment and

[7] The major corruption scandals were the so-called royal hunting with the participation of judges, prosecutors, attorneys and business people during which the accidental killing of one man was covered up; the concession for Chisinau's airport was highly untransparent; the illegal withdrawal of close to $1 billion from three Moldovan banks (Banca de Economii, Unibank and Banca Sociala).

[8] National Anti-corruption Strategy, adopted through the decision of the Parliament of Republic Moldova, no. 154, 21 July 2011, www.cna.md/sites/default/files/snadoc/hp_154_sna_2011-2015_0.pdf.

concrete financial sources for strategy implementation undermine even further its efficiency in practice.[9]

The government programme "European Integration: Liberty, Democracy and Welfare"[10] for 2011–2014 also has a significant anti-corruption component, stressing the necessity for digitalising the mechanisms and procedures used by public authorities. A significant achievement in this context has been the adoption by the Ministry of Internal Affairs of new methods of internal and external communication meant to increase the level of transparency and confidence in the law enforcement forces. Thus, the official webpage of the Ministry[11] contains daily updated information on its activities. A further encouraging sign is that in 2011 alone, as part of the government programme, 295 draft laws have been subjected to anti-corruption expertise.[12]

Yet, it is difficult to assess the implementation of the government programme beyond 2012 because of the inconsistencies concerning the action plans. For instance, in 2014 implementation of the programme was envisioned in parallel by both the Government Action Plan for 2012–2015 and the Government Action Plan for 2014.[13]

In line with the programme, the government also embarked on a Governance e-Transformation Agenda in 2010, aiming at a digital transformation across the public administration. As a result, cutting-edge digital platforms were set up to enable the digitisation of public services and aiming to increase the accountability of public institutions, the transparency of their work and public

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9 "Evaluation Report on Implementation of the National Anti-corruption Strategy for the years 2011–2015 (2011–2013)," in: *Moldova Report*, East Europe Foundation, www.eef.md/media/files/files/nas_evaluation_report__2012_-_2013__997936.pdf.

10 "European Integration: Liberty, Democracy and Welfare, 2011–2014," The Government of Moldova Programme, Chisinau, 2011, www.mfa.gov.md/data/7205/file_487221_0.pdf.

11 The official website of the Ministry of Internal Affairs: www.mai.gov.md.

12 *Ibidem*.

13 A. Iovu, "Evaluation of the Government Activity Program Implementation 'European Integration: Liberty, Democracy and Welfare, 2013–2014'," Institute of Public Policy, 2014, p. 4, www.ipp.md/libview.php?l=ro&idc=171&id=694.

access to information. The infrastructure and services have, however, not yet been extended to the local government level.

In 2011, the government embarked on reform of the judiciary. The official document addressing the corruption phenomena in the judiciary system is the Strategy for the Reformation of Justice Sector Reform,[14] particularly Chapter IV, Pillar 4, aiming at developing a culture of zero tolerance to corruption in the justice sector. In this context, a comprehensive anti-corruption draft law package was then adopted on 23 December 2013. It included a law on the amendment and supplement of the Criminal Code[15] (which provided for the special measure of extended confiscation), regulation of the "illicit enrichment" offence, mandatory polygraph tests for candidates for judgeships and prosecutor positions, and stricter penalties for corruption offences.

Another relevant element of the package is Law No. 325 on professional integrity testing.[16] The tests are conducted by the National Anti-corruption Centre (NAC) and the Security and Information Service. Early results of the new law have already become visible, with 62 denunciations of active corruption in 2014, compared to only four in the previous year.[17] However, the major weakness of this law is that it excluded judges from the notion of "public entities" (subject to it are now only the employees of the courts). This led to attempts to undermine the entire law.[18] NAC

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14 See: www.justice.gov.md/public/files/file/reforma_sectorul_justitiei/srsj_pa_srsj/SRSJen.pdf.

15 Law no. 326 from 25 December 2013 regarding the amendment and supplement of certain legislative acts (published in *Monitorul Oficial* with No. 47-48-92 on 25 February 2014), http://lex.justice.md/md/351753.

16 Law No. 325 from 23 December 2013 regarding professional integrity testing (published in *Monitorul Oficial* with No. 35-41/73 on 14 February 2014), http://lex.justice.md/md/351535.

17 "Fighting against Corruption and Reform of the Judiciary—Key Challenges to the Success of the European Integration," *Synthesis and Foreign Policy Debates*, No. 7 (101), September 2014, http://2014.europa.md/images/dox4download/rm-ue_bilateral/2014/2014-07_Newsletter_APE_FES_EN.pdf.

18 The Communist Party requested the Constitutional Court's opinion on the legality of the provisions addressing judicial courts. The latter turned to the Venice Commission, which issued a response containing recommendations on improvement of the law. Yet the Romanian translation of this notice published on the Court's website contained an additional remark not present in the original text that undermines the legal character of all the provisions of the law on professional

has elaborated a new draft law to remedy this shortcoming,[19] yet it has not been adopted thus far.

Generally, the Council of Europe (CoE) rated the December 2013 anti-corruption legislative package positively. It particularly appreciated the stricter penalties for corruption offences. In the case of illicit enrichment, CoE emphasised that Moldova is the first country to introduce this offence besides Ukraine, and once it puts it into practice it could become a model for other states. Moreover, "extended confiscation" has been seen in line with "the draft regulations as recently proposed by the EU and in line with the CoE standards."[20]

A further achievement in the judiciary was the introduction of a computer-based allocation system and audio and video recording of court trials and hearings, introduced to ensure fair trials. A single court website was also established to increase the transparency of the judiciary. The groundwork for a more transparent and merit-based promotion system for judges was also introduced. Most judges have been assessed under the new system, which, however, has some methodological imperfections. In addition, a law on judges' disciplinary responsibility was adopted, providing for a clear separation between ethical and disciplinary responsibility, revising transparency procedures and introducing new sanctions. The work of the Supreme Council of Magistrates—the only body that can accept the resignation request of a judge or apply a disciplinary sanction—has intensified, showing progress in terms of the decisions adopted (in 2014, 1,057 decisions were adopted, compared to 865 in 2013) and the number of appointed judges (35 candidates were appointed

integrity testing. TI Moldova called attention to the incident in a public appeal. For more, see: www.transparency.md/files/docs/Apel%20public%20Legea%20testarii%20integritatii.pdf.

[19] Draft Law on modification and supplement of certain legislative acts, 28 August 2014, http://cna.md/sites/default/files/proiecte_decizii%20/pr.legerepetat18defin.pt_.consultare.pdf.

[20] Council of Europe Secretariat General, Directorate General Human Rights and Rule of Law, "Opinion of Information Society and Action against Crime Directorate prepared on the basis of the expertise by Tilman HOPPE on Article III of Draft Law 'On Amendment of Certain Laws' and Draft Law 'On Professional Integrity Testing' of Moldova," Strasbourg, 8 January 2013, p. 32, www.coe.md/images/stories/Articles/Expertises_and_reports/2013.01_eccu-bo-2_2012-moldova-th.pdf.

in 2014, compared with three appointed candidates in 2013).[21] Besides these changes, more rigorous control over corruption could be observed in the justice system as evidenced by the 16 disciplinary sanctions applied to judges[22] and the first two cases of corrupt judges sentenced to jail in 2014.[23]

The weakest point of the reform of the judiciary remains, however, public prosecution, where no significant progress has been made.[24] In 2014, parliament adopted a concept of prosecution reform and a draft prosecution service law was elaborated and sent to the Venice Commission for review. The draft concept on prosecution reform foresees the demilitarisation of this institution, the consolidation of the Prosecutor's Office's competences on criminal prosecution, new procedures for the selection and nomination of a General Prosecutor and clear regulation of cases when the prosecution is entitled to perform investigative acts.[25]

Among the major achievements at the institutional level in the field of preventing and combating corruption was the establishment and strengthening of several anti-corruption bodies meant to ensure the implementation of the legal provisions. These bodies are: the president of Moldova, the parliament, the government, the Prosecutor's Office, the Information and Security Service, the Court of Accounts and other institutional establishments at the level

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21 Supreme Council of Magistrates, "The Annual Report for 2014 regarding the activity of the Supreme Council of Magistrates and how do the courts function and how they are organized in Republic of Moldova," p. 20. Chisinau, 2015, www.csm.md/files/Raport_anual/RAPORT_CSM2015.pdf.

22 *Ibidem*, p. 44.

23 For more details on the convicted judges, see: www.jurnal.md/ro/social/2015/3/13/reforma-justitiei-in-rm-doi-judecatori-condamnati-in-2014-si-tertipuri-in-modul-de-distribuire-a-dosarelor or www.zdg.md/editia-print/investigatii/de-ce-a-fost-condamnat-judecatorul-popa.

24 "Implementation of the European Neighbourhood Policy in Moldova. Progress in 2014 and recommendations for action (joint working document)," European Commission, Brussels, 25 March 2015, p. 7, http://eeas.europa.eu/delegations/moldova/documents/press_corner/repulic-of-moldova-enp-report-2015_ro.pdf.

25 "Concept on the reform of prosecution," Ministry of Justice (Moldova), Chisinau, November 2013, p. 11, www.justice.gov.md/public/files/concept.ref.procuratur.fin.06.11.2013.v.g._redactari_PG_11.11.2013_12.11.2013_final.pdf.

of local and central public administrations.[26] Despite the apparent positive aspect of intensifying the efforts in the fight against corruption, the increased number of anti-corruption agencies and, moreover, the unclear separation of their competences, increase institutional overlap and reduce their efficiency in practice.

A major role in the prevention and combating of corruption is attributed to NAC. In 2012, the Centre for Combating Economic Crimes and Corruption —established in 2002—was transformed into NAC. Unlike its predecessor, the competences of NAC include preventing and fighting corruption, money laundering and terrorism funding, and conducting anti-corruption expertise on draft laws, supervising and assisting public institutions in conducting internal corruption risk assessments, and elaborating integrity plans. NAC also holds the Secretariat of the Working Group for Monitoring the Implementation of the National Anticorruption Strategy. In a bid to increase its independence, in May 2014, the government took back supervision of NAC, which had initially been placed under parliamentary control. Yet, investigations by NAC still targeted mainly low and medium-level officials, while high-level corruption practices remained intact until recently. Among the other problems posed by NAC's activity, TI Moldova has repeatedly drawn public attention to the institutional dependence of this body and the political influence exercised upon its activities and decisions.[27]

The other important institutional pillar of the anti-corruption system is National Integrity Commission (NIC), set up in December 2012 and inspired by similar bodies in Romania and Lithuania. The competences of NIC include supervision and ensuring the mechanism for the implementation of three policies aiming to prevent corruption in public service: declaration and control of incomes and assets, conflict of interests, and incompatibilities. In 2014, NIC launched

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26 "National Integrity System Assessment Moldova 2014," Transparency International–Moldova, p. 161, www.transparency.org/whatwedo/publication/moldova_national_integrity_system_assessment_2014.

27 *Ibidem*.

354 investigations, 234 more than in 2013, in the first year of its activity. Of the 122 cases in which there was an adoption of a finding of violations committed by the subjects of the investigations , NIC sent 57 cases to the General Prosecutor and 56 to NAC.[28]

Nevertheless, in the absence of an adequate legal framework, the competences of NIC remain blurry and the roles of the commission members unspecified. NIC credibility and efficiency is also undermined by such factors as member appointments based on political criteria, the lack of penal independence, limited access to the databases of other state bodies and absence of international treaties that would allow efficient control of assets of public servants abroad.[29] However, it must be emphasised that certain legal measures have been undertaken to remedy the major inconsistencies. In order to enable it to perform its duties and make it a politically independent body, an inter-ministerial working group elaborated a series of draft laws aimed at the reform of NIC. These would give it extended competences, for example, the right to apply sanctions, pass cases on to legal courts, classifying as invalid contracts signed in situations of a conflict of interest, and others.[30] More precisely, the draft law envisages combining the declaration of income and assets with the declaration of personal interests and regulating the modalities and conditions for submitting them.[31] The declarations due to the new electronic system, created with the support of the World Bank, could be submitted online (Moldova being one of the first countries implementing such a system).[32] Still, one of the main criticisms brought against

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28 "Number of investigations tripled within the second year of activity," National Integrity Commission, http://cni.md/?p=1607.

29 *Ibidem*.

30 "The lack of transparency during the appointment process of the members of National Integrity Commission," *Ziarul de Garda*, www.zdg.md/stiri/lipsa-de-transparenta-in-numirea-membrilor-in-comisia-nationala-de-integritat.

31 "Draft Law regarding the declaration of wealth and personal interests," the full text is available at: http://justice.gov.md/public/files/transparenta_in_procesul_decizional/consultatii_publice/Legea_privind_declararea_averii_si_intereselor_personale2.pdf.

32 Official announcement on the possibility of online submissions of declarations to be seen at: http://cni.md/?p=88.

the law by the Centre of Analysis and Prevention of Corruption concerns the lack of financial planning and justification for the introduced modifications.[33]

Civic Participation in Fighting Corruption

A mechanism for the institutionalised participation of CSOs in policymaking has been in place in Moldova since 2005, when parliament adopted a concept outlining cooperation between the legislative process and civil society.[34] The adopted framework was functional, but was not continued after the protests and government change in 2009. A next important step to ensuring openness was the law on transparency in the decision-making process passed by parliament in 2008,[35] which outlines the subjects of the law, the consultation procedures, modalities as well as exceptions from the law.

In 2010, at the initiative of the government, the National Council for Participation (NCP) was established with a nominal composition of about 30 civil society members. Membership is voluntary, with a two-year mandate.[36] NCP is functioning as a consultative body, with no legal status, and it is meant to ensure the direct involvement of civil society and the private sector in the process of public policy development, monitoring, evaluation and modification.

In 2012, a strategy for civil society development for the period 2012–2015 and a supporting action plan were also adopted. The strategy establishes as a general objective the improvement of existing instruments and the establishment of

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33 See: www.jurnal.md/ro/politic/2015/4/7/centrul-de-prevenire-a-coruptiei-proiectul-de-lege-privind-declararea-averii-prezinta-semne-de-coruptibilitate.

34 Decision No. 373 from 29 December 2005 on the adoption of the concept regarding cooperation between the Parliament and civil society (published in *Monitorul Oficial*, No. 5–8 on 13 January 2006), http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=314906.

35 Law No. 239 from 13 November 2008 regarding transparency in the decision-making process (published in *Monitorul Oficial*, No. 798 on 5 December 2008), http://lex.justice.md/md/329849.

36 Decision No. 11 from 19 January 2010 regarding the creation of the National Council for Participation (published in *Monitorul Oficial*, No. 8–10 on 22 January 2010), http://lex.justice.md/md/333477.

new ones for enhancing transparency in the executive and legislative branches at all levels through the consolidated involvement of civil society.

The adopted mechanisms ensure civic participation in consultations by the government, civic oversight of the decision-making process and assistance with expertise. The NCP also stimulates a critical overview of government performance, draws public attention and encourages debate on the main violations or inaction.[37] The representatives of NCP are also members of 33 other advisory groups created by state institutions, many of them focused on anti-corruption aspects in various fields. NCP and the Anti-corruption Alliance together have publicly expressed their concern and demand for a strong government commitment towards justice sector reform and the prevention and counteraction of corruption.[38] Yet, while NCP is a concrete mechanism for monitoring the activity of the government and for offering expertise on its decisions, it provides no guarantee for the implementation of its policy advice. Moreover, the permanence and sustainability of this Council as an advocacy unit could also be questioned because a decision regarding its future activity has not been approved by the government.

In addition, CSOs have initiated alternative mechanisms outside state institutions for monitoring corruption within various bodies, for evaluating the progress of activity, and for raising public awareness about the causes and consequences of corruption. The activity of the Anti-corruption Alliance[39] is of great importance in this sense. Individual efforts have also been made by CSOs to offer expertise on legislative acts,[40] to monitor the implementation of strategies,

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37 The activity of the National Council for Participation and their concrete outputs may be seen at: www.cnp.md.

38 "Public Appeal of the Anticorruption Alliance and National Council for Participation 'Promoting integrity in the public sector as a national priority for combating corruption—compromising the integrity test?'," http://alianta.md/news/view/-36714.

39 The Alliance on Anti-corruption was established in 2006 by 10 CSOs aiming at consolidating the common efforts of preventing and combating corruption. For more on the activity of the Anti-corruption Alliance, see: www.alianta.md.

40 See more at: www.transparency.md/en/ and www.capc.md/ro.

action plans and the obligations undertaken by the government towards the provisions of the AA in the anti-corruption area.

Moreover, an investigative type of journalism has been developed, bringing the attention of society at large and that of the anti-corruption bodies to cases of corruption at various levels. Such organisations as the Association of Independent Press, Independent Journalism Centre, Journalistic Investigation Centre, and Civic Portal "Clean Moldova" are notifying the NAC and NIC on concrete cases of corruption or conflict of interests.[41]

Key Challenges

While Moldova has done largely salutary work in terms of building a legal and institutional anti-corruption framework, and thus it is a step ahead of the majority of the EaP countries (some of the laws are exemplary in the region, such as the one on illicit enrichment, or on the ombudsman), still, implementation is often staggering. Another problem is the lack of a comprehensive vision of anti-corruption-related reforms, which leads to duplication of efforts, for instance, the lack of synchronisation of the National Anti-corruption Strategy and the Justice Sector Reform Strategy. Much of the inconsistency exists in the competences of the anti-corruption institutions, too, as the work of the NAC and the Anti-corruption Prosecutor's Office (which functions under the General Prosecutor's Office). Such institutional fragmentation generates competition, rather than cooperation.

These shortcomings are to a great extent explicable by limited and unstable political will for reforms. As long as the costs of corruption practices do not exceed their benefits, there is little prospect for change in this respect. The accountability of the political class and state institutions continues to be hampered by such factors as influence-trading and political control over

[41] The cases notified by "Clean Moldova" are available at: www.moldovacurata.md.

mass media (the independence of media being severely undermined by non-transparent ownership).

The absence of internal democracy within political parties and the lack of transparency in their financing expose decision-making to control by interest groups. Though a long-awaited draft law on party financing was adopted in late March,[42] its content has been significantly diluted, for instance, by increasing manifold the initially proposed caps on private donations. Proper implementation of the law should bear some results in terms of transparency, but the overall process reminds more of a *pro forma* reform representing the interests of certain interest groups rather than that of society.

In the central and local public administration, corruption continues to be encouraged mainly by the low degree of institutional transparency due to the absence of clear procedures for monitoring and sanctioning the activities of public servants. Other factors are insufficient or poorly functional digital instruments (no websites, or outdated websites) that would provide citizens with updated information on the decisions and activities of the public administrations. Although international financial assistance for public administration is quite generous, external control over its use is insufficient.

The justice system also remains severely affected by corruption, and is perceived by the public as enjoying wide-scale impunity. Significant doubts remain, for instance, concerning political influence over the Superior Council of Magistracy. Essential also is the implementation of reform of the prosecution. Overall, the difficulty of reforming the judiciary lies in the fact that while parliament is responsible to the electorate and the government to the EU, no real lever can be exercised on the judicial system to push for change. Only NAC can do so, but the surviving interest networks stop it from doing so. As such, even if consequently reform of the judiciary is formally implemented, systemic changes will only come with finding ways to eliminate corrupt judges.

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[42] "The Members of the Parliament adopted the draft law on financing the political parties," Ministry of Justice of the Republic of Moldova, 19 March 2015, http://justice.gov.md/libview.php?l=ro&idc=4&id=2507.

Public tolerance of corruption still remains high. Part of the problem is the low incomes, which make Moldovans look for alternative resources. Another factor at blame is the low quality of public services, which invites people to offer unofficial additional payment for improved quality. Even if there is awareness and willingness on the part of the public, citizens have still either no practical knowledge on how to actively oppose corruption, or they are discouraged to do so in the lack of a legal framework that would protect the whistleblowers. If they actually report corrupt practices, there is high risk to be sanctioned or ignored.

Generally, the major challenge towards a stronger commitment of state institutions in the fight against corruption is state capture. Thus, the good performance of anti-corruption bodies is undermined and limited, not only by the systematic exercise of political influence but also by law enforcement institutions captured by a small group of oligarchs, some of them suspected of having a connection with organised crime groups.

Igor Shevliakov

UKRAINE

The State of Corruption

Corruption in Ukraine is widely recognised as a systemic problem and one of the major impediments to the country's development due to the failure to implement deep reforms since it gained independence. It is pervasive and permeates all areas of life and economic activity, presenting a significant obstacle to doing business and investment, and a threat to national security. Starting from 2010, when former President Viktor Yanukovych came to power, corruption became vertically structured and the situation in terms of addressing it changed to worse. The president himself, key members of the government, judges and senior officials used their posts for personal enrichment and built a political regime that could hardly be considered democratic. Although within the EU–Ukraine association talks the former government adopted some anti-corruption legal instruments, most of them were not put into practice. Moreover, cases of corruption uncovered by civil society activists and media mostly went unsanctioned. Meanwhile, anti-corruption legislation was used to intimidate and imprison political opponents, and blackmail unaligned political actors.

Along with the government's refusal to sign the EU–Ukraine AA in November 2013, it was public frustration with wide-scale corruption and the increasingly authoritarian regime that unleashed the country-wide Euromaidan protests.[1] In the course of 2014, the worsening state of the Ukrainian economy, the annexation of Crimea by Russia and undeclared war in the east between the Ukrainian army and armed separatists forced the new post-Euromaidan government to seek support from the Western democracies and major international financial institutions. The foreign donors made their support contingent on the implementation of a number of reforms in the country, including comprehensive reforms of the governance institutions and anti-corruption measures.

For many years, Ukraine's government failed to implement effective reforms aimed to curb corruption in the country. This is reflected in permanently low scores for Ukraine in the key international corruption-related indexes, such as TI's Corruption Perceptions Index, the Global Integrity Index, and the World Bank's and World Economic Forum's indicators. For instance, with a score of 26 (2.6 under the previous methodology; 1—the most corrupt, 10—the least), Ukraine ranked 142nd out of 175 countries in the 2014 TI Corruption Perceptions Index.[2] This is only a slight improvement compared to the 2.3 score in 2011, the second year of Yanukovych's presidency. In December 2014, polls showed that the public considered corruption to be the fourth main issue (34%) to be addressed, behind stabilising security (79%), increasing salaries (48%), and ensuring economic growth (43%).[3]

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[1] The three-month-long Euromaidan protests (later also called the Revolution of Dignity), which have been gradually eroding the regime's legitimacy, ended with the killing of over a hundred protesters and President Yanukovych subsequently fleeing the country. Amid the power vacuum in the capital, the country's parliament—the only legitimate institution remaining—appointed the acting president and new government.

[2] "Corruption Perceptions Index 2014: Results," Transparency International, www.transparency.org/cpi2014/results.

[3] Survey by Ilko Kucheriv Democratic Initiatives Foundation, source: www.dif.org.ua/ua/publications/press-relizy/gromadska-roku.htm.

Recent Developments in the Anti-corruption Framework

Attempts to establish a legal framework for countering corruption in Ukraine have a long and difficult history. Since adoption of the Law on the Fight against Corruption in 1995, anti-corruption legislation in Ukraine remained without significant changes till the late 2000s. The first anti-corruption package of laws was adopted only in 2009. Yet, its entry into force was postponed twice and, finally, all three laws were revoked on 21 December 2010.[4] Then the Law on Principles for Preventing and Counteracting Corruption, adopted in April 2011, replaced its predecessor from 1995 and established basic notions and principles for corruption prevention and counteraction in public and private areas. In the following year, a number of other significant laws were passed, i.e., on access to public information, rules of conduct for public officials, a law on administrative services and a new Criminal Procedure Code.

By 2013, broad political consensus was reached around necessary legislative amendments, which allowed Ukraine to achieve further progress in aligning its anti-corruption legislation with international standards and recommendations, including those of the Organisation for Economic Cooperation and Development (OECD) Anti-Corruption Network for Eastern Europe and Central Asia monitoring.[5] Ukraine's commitments in relations with the EU served as a major incentive and boost to relevant legislative reforms.[6] At the same time, these amendments did not provide for a comprehensive vision of reform, but rather just gradual adjustments to receive the EU endorsement. Also, the adopted laws improved regulation, but often remained unenforced.

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[4] This was due to political changes, as the new president and government installed in 2010 did not support the laws initiated by their predecessors.

[5] All monitoring reports with recommendations are available at: www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm.

[6] In particular, the Action Plan on Visa Liberalisation offered to Ukraine by the EU in December 2010, the third progress report on the Action Plan's implementation in November 2013, and the EU–Ukraine Association Agenda.

The most recent legal reforms were implemented between March and October 2014 and in February 2015. A comprehensive legislative package passed by parliament in October 2014[7] provides for establishing new anti-corruption institutions and introducing new procedures, such as integrity testing, lifestyle monitoring, online submission and publication of asset declarations. The package included not only anti-corruption laws but also laws on public procurement, public access to information (such as property registers), disclosure of beneficiaries of businesses, and on money laundering. These new laws are considered one of the most important reforms since Euromaidan.

Although progress was thus made in aligning Ukrainian anti-corruption legislation with applicable international standards, in fact the reform process was messy, with laws hastily drafted and a lack of proper public discussion. A large number of laws were passed on the same day and without proper prior coordination, thus some of their provisions are mutually exclusive or contradictory. A number of amendments were introduced on the eve of the vote, which significantly affected the quality of the laws. The result is considerable legal uncertainty, as well as opportunities for corruption. After re-consideration of several draft laws, a consolidated version was adopted on 12 February 2015.[8] But there is a need for further corrections of the adopted laws.

The major breakthrough of the October 2014 anti-corruption legislative package was the two laws allowing for the establishment of the National Agency for Prevention of Corruption (NAPC) and the National Anti-corruption Bureau (NAB). The actual creation of both institutions was due by the end of April 2015,

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[7] The Law on Prevention of Corruption: http://zakon1.rada.gov.ua/laws/show/1700-18; the Law on the National Anti-corruption Bureau of Ukraine: http://zakon1.rada.gov.ua/laws/show/1698-18; the Law on Principles of the State Anti-corruption Policy in Ukraine (Anti-corruption Strategy) for 2014–2017: http://zakon1.rada.gov.ua/laws/show/1699-18; the Law on Amendments to Certain Legal Acts of Ukraine regarding Identification of Final Beneficiaries of Legal Entities and Politically Exposed Persons: http://zakon1.rada.gov.ua/laws/show/1701-18.

[8] The Law on Amendments to Certain Legal Acts of Ukraine to Ensure Functioning of the National Anti-corruption Bureau of Ukraine and the National Agency on Prevention of Corruption: http://zakon1.rada.gov.ua/laws/show/198-19 (in Ukrainian).

but has been delayed: only the top management for NAB has been appointed, while the selection for the NAPC has just begun.

NAB is a specialised investigative agency focusing on corruption committed by high-level public officials and corruption involving significant amounts of bribes. The bureau also has exclusive investigative jurisdiction for foreign bribery regardless of the amount of the bribe or the officials involved. NAB is supposed to be fully autonomous from other law enforcement agencies, i.e., it has its own detectives, investigators, and technical means for covert measures and units for personal protection. Its independence is meant to be ensured by the following mechanisms: management is elected by a commission composed of delegates nominated by the president, parliament and the government, and its finances come from a separate expense line in the state budget.

The role of NAPC will be coordination of policy development and implementation of anti-corruption measures, assessing the situation with corruption and preparing annual reports. NAPC will be a collegiate body composed of five members. The law provides guarantees for the independence of the agency, such as procedures for selection, appointment and dismissal of its members, funding mechanisms and remuneration levels, and procedures for protection of members and their families. In addition to policy coordination, the agency will also be responsible for the control of asset declarations, protection of whistleblowers, methodological support for the anti-corruption work of other state and local governance bodies, and raising public awareness.

The creation of the legal basis for the operation of NAPC and NAB complies with international recommendations. Concerns remain, however, regarding the independence and actual resources that will be provided to both bodies.

In 2014, work started on judicial reform and on law enforcement, too. A draft justice sector reform strategy was developed, and a new law on public prosecution was adopted, which largely took account of the Venice Commission's recommendations. In July 2014, a decision was taken on the launch of the EU Advisory Mission for Civilian Security Reform (EUAM Ukraine) to assist the country in reforming its civilian security sector, including the rule

of law and the police. The key problem, however, remains the lack of actual change in the court system.

In April 2014, parliament adopted two laws on lustration (Law on Restoring Trust in the Judiciary and Law on Cleansing of Authorities). The first has not actually worked since the judicial system has blocked or indefinitely delayed its application, and has even contested the law in the Constitutional Court. In general the lustration law's implementation is very inconsistent. The lustration laws also raised criticism as being selective and lacking proper oversight (the body formally in charge is the Department of Lustration in the Ministry of Justice).

The Coalition Agreement endorsed in the new parliament in November 2014[9] contains a list of further legislative reforms, which can serve as a roadmap for anti-corruption reform. Major details are set out in the new Anti-Corruption Strategy for 2014–2017. As in the past, the new strategy is not based on an in-depth study and analysis of the corruption situation in the country, apart from references to perception studies confirming that corruption is widespread.[10] Also, no evaluation of the implementation of the previous strategy was conducted as a basis for the new one. Nevertheless, the main directions identified in the strategy may be sufficient in the present time of rapid changes in Ukraine.

While international donors express their willingness to support anti-corruption activities in Ukraine (e.g., the United Nations Development Programme indicated its support for implementation of the strategy),[11] for that they need the government to set clear priorities. For instance, the lack of a budget estimate and direct budget allocations for the strategy can undermine its implementation in practice.

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[9] Available at: http://zakon2.rada.gov.ua/rada/show/n0001001-15 (in Ukrainian).

[10] For more details, see Art. 1, "General Provisions," of the Anti-corruption Strategy.

[11] For more details on donor engagement, see: www.ua.undp.org/content/ukraine/en/home/presscenter/articles/2014/12/02/reforming-the-corruption-prevention-system-in-ukraine.html.

Civic Participation in Fighting Corruption

Public participation prior to 2014 was largely formal and ineffective. State bodies launched public consultations on draft decisions (including through online channels), but they rarely received active feedback from civil society. The reason for this included a lack of trust from CSOs, which did not believe that their suggestions would be taken seriously. Besides, there have been numerous cases of government interference with civil society activities and prosecution of their leaders and activists.

CSOs have been very active in monitoring the government's activities in the area of anti-corruption, covering implementation of international commitments and recommendations, national plans and particular legal mechanisms. Numerous reports demonstrate very limited progress in declared reforms and poor results of particular prevention tools, while the government has mostly disregarded them.

The Euromaidan protests have radically changed relations between the government and civil society, first, because in the face of increased public expectations and donor pressure the authorities have become significantly more receptive and accountable towards CSOs, and second, because many representatives of civil society have joined the government structures.[12] This phenomenon, however, can also produce a reverse effect in the mid-term: weakening of CSOs' impact because of a lack of manpower.

After Euromaidan the main anti-corruption policy documents were developed either by CSOs themselves, or with their direct participation. The most active was the civic coalition called "Reanimation Package of Reforms,"[13] which developed its own agenda of priority reform measures, including on anti-corruption, and actively promoted it via media, among international financial institutions and

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12 More than 10 activists with civil society and media backgrounds were elected to parliament and actively promote reforms there.

13 The coalition was announced on 5 March 2014. Currently it consists of 22 thematic working groups that include over 300 civil society experts, activists and journalists from 50 CSOs in relevant areas. For more details, see: http://platforma-reform.org/?p._id=351.

before MPs. However, CSOs still face difficulties in cooperating with the new government, especially at the local level. Also, whistleblower activity is still very low due to the generally negative attitude to reporting on others, mistrust of law enforcement and courts, and poor protection mechanisms.

Yet, the actual implementation of the adopted anti-corruption measures is not at all sure, and civil society itself has no clear view of how to strengthen its own watchdog role and create an effective system of public monitoring. One serious division line among CSOs in this respect is the need for the formalisation of their participation in decision-making. While their input after Euromaidan has significantly increased, there is no guarantee for a lasting political will to engage them.

Key Challenges

Strong paternalist ties between the citizens and the political class, together with the low level of interpersonal trust within Ukrainian society weaken the socio-political foundations of integrity. In the current circumstances to this add factors such as the shrinking economy, the adopted austerity measures, lack of respect for the rule of law and the *de facto* absence of an independent judiciary. As such, both high-level and low-level corruption remain widespread, the latter particularly among the police and in the healthcare, education and court systems (particularly local courts).

Fertile soil for corrupt practices remains in the public sector, where there is a markedly continued low level of integrity. The laws on public service fail to provide for a clear delineation between political and professional civil servants, undermining their performance and independence from political influence. Additionally, insufficient funding caused by the ongoing economic crisis has a negative impact on internal governance and overall functioning in public institutions. The dire finances also restrict the possibility for training public sector employees on integrity issues and educating the public on its role in fighting corruption. Finally, most of the public sector institutions (except for the

Ministry of Justice) do not actively cooperate with CSOs and other stakeholders in preventing or addressing corruption.

Another problem is the continuing financial dependence of political parties on oligarchic groups. The existing legal framework neither provides for public funding of political parties, nor does it regulate the amount of donations. Furthermore, the parties' transparency and accountability are ensured neither in law, nor in practice. Highly centralised decision-making within the parties is reflected in violations of the principle of personal voting in the parliament (one MP-one card voting), lobbying of business interests, and cases of conflict of interest in the activities of some MPs.

Yet, the largest challenges remain the unreformed judiciary and law enforcement agencies, which continue to have very weak guarantees of independence. Political influence on them diminishes not only their credibility but also their performance in prosecution of corruption (in particular, that of high-ranking officials) and oversight of the executive. Top managers of law enforcement agencies and judges are also never held accountable for inaction or even illegal actions. Prosecutors either avoid investigating cases involving high-level officials, or do not collect proper evidence, which allows the accused to deny the charges in court.

Until recently, sanctions on convicted corrupt officials were also lenient. The courts often released them on bail, applied sanctions below the minimum punishment or released them after a short period of imprisonment. According to the experts with "Reanimation Package of Reforms," less than 5% of corruption cases detected by law enforcement agencies ended up with real punishment (imprisonment). Seizure and confiscation of assets is also very ineffective.[14] Some progress in this respect was observed starting from March 2015 when three judges in Kyiv were dismissed and prosecuted for illegal rulings against

[14] According to experts of the Reanimation Package of Reforms by the end of April 2015 the amount of the assets confiscated in corruption cases was UAH 5,014.05 millions (just over €200,000).

Euromaidan, and a few high-ranking officials and prosecutors were publicly arrested for corruption charges.

Since the change of government, the Office of the Prosecutor General has failed to pass any major corruption cases to the court on corruption offences committed by previous or current officials. According to data published by the office, only two criminal cases on corruption activities were initiated against top-level officials in 2013 and two more in 2014,[15] already after the change of government. The number of criminal cases against mid-level officials has actually decreased. Some officials have found political cover behind an MP mandate in the parliamentary election,[16] whereas many of the local officials at the regional level have found refuge from criminal prosecution by cutting political deals with the ruling parties in exchange for relative political stability in their positions.

Ukrainian courts are as big a part of the problem as the Prosecutor's Office. The hierarchical system in the judiciary, controlled by top-level officials and members of the oligarchic groups, often dictates certain judges will rule on the outcome of case hearings. In this system, acts of defiance are an exception rather than a rule.[17]

The continued lack of law enforcement actions regarding corruption may lead to two serious problems. First, the funds and property gained through corrupt means by the previous administration (and frozen by foreign countries or retained in Ukraine) cannot be legally held or confiscated, and will simply be released. Second, the failure to apply zero tolerance towards corruption by the new administration from the very beginning will undermine the implementation

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15 The reports on performance of investigative units of the Office of Prosecutor General are available, in Ukrainian, at: www.gp.gov.ua/ua/stat.html.

16 For example, the perpetrators of two of the most publicised corruption activities during the Yanukovych Presidency—Yuriy Boyko and Sergiy Kluyev—are now MPs and can only be prosecuted after the explicit consent of the Rada.

17 For example, Sergiy Bondarenko, a judge with the regional appeals court in Cherkassy, admitted in March 2015 that his head of court exerted direct pressure on him to rule in favour of the local enterprise Azot, owned by billionaire Dmytro Firtash. When Bondarenko failed to do so, his superiors started to persecute him. For more, see: http://humanrights.org.ua/material/na_cherkashhini_suddja_zajaviv_pro_tisk_z_boku_kerivnictva (in Ukrainian).

of anti-corruption policy. It will also lead to public disenchantment with the new administration.

A lot of hope is put into the NAB, as its model is based on best international practice. It has significant powers to perform its tasks and it will be supported by specialised anti-corruption prosecutors. However, no institution by itself can start the prosecution of corruption, as long as there is no sufficient political will.

Finally, the defence against Russian aggression in the east has brought about a new field for corruption of particular concern to the country's security. Cases of abuse, starting from procurement and distribution of weapons and supplies to trafficking of people, goods and arms, are uncovered almost daily. As both the state budget and foreign assistance in the sector is growing, the scale of corruption and misuse of public funds in the defence field requires particular effort, but the government's success in addressing it has been minor, just as with all other "traditional" areas.

Elżbieta Kaca

EU SUPPORT OF ANTI-CORRUPTION POLICIES

The EU's backing of anti-corruption policies in Moldova and Ukraine is generally delivered under the umbrella of support for good governance and the rule of law, and it is channelled primarily through the framework of the EaP. Launched in 2009, the EaP targets Armenia, Azerbaijan, Belarus, Moldova, Georgia and Ukraine, and it aims to bring these partners closer to the EU. It does so by strengthening economic integration and enhancing the democratic transition through the conclusion of AAs together with a DCFTA as well as the visa liberalisation process and sector cooperation. Relations with these six partner countries are shaped at both the bilateral and multilateral levels, and thus EU support is fragmented into numerous instruments. An outline of the policy framework of EU support for Moldova and Ukraine in the area of good governance and rule of law is included in EU programming documents on bilateral relations. At the strategic level, democracy and good governance form the main priority, and accordingly around 25–40% of bilateral aid was planned to be spent on this goal in the former EU budget period (financial perspective) 2007–2013.

The EU is the largest donor in relation to Ukraine and Moldova. According to OECD Development Assistance Committee statistics, in 2013 the European

Commission (EC) granted around one-third of all aid directed to Moldova (32%) and almost half in the case of Ukraine (46%).[1] In terms of good governance projects, classified by official development assistance into the social infrastructure category, the EU contributed 35% of all aid on this priority in Moldova and 25% in Ukraine.

Bilateral Dimension of Cooperation with Moldova and Ukraine

The EU support in bilateral relations with Ukraine and Moldova is mainly channelled through budget support, amounting to around 60% of the national financial allocation. This form of financial assistance might support a wide range of government reforms on anything from water sanitation to justice and is placed directly into the state budget of the given country. The payments of subsequent tranches depend on fulfilment of criteria included in the financial agreements signed between the EU and the national governments. Budget support is accompanied by EU technical assistance, either in the form of institution-building programmes tailored to help align the country to EU standards or consultancy services tendered to external contractors. There are three main types of technical assistance delivered to the EaP states—twinning programmes, TAIEX, and SIGMA mechanisms—and they all consist of consultancy services by EU experts (usually from Member States), but have different durations. In special cases when a given country is in the process of carrying out a complex set of reforms, an advisory mission consisting of high-level EU experts might be created at the request of the government, as in the case of Moldova and Armenia.

Even though both Moldova and Ukraine have signed an AA and are on course for closer integration with the EU, anti-corruption priorities are reflected to a very weak extent in budget support operations. Between 2007 and 2013, only one reform on justice was prioritised in Moldova (€60 million), while in Ukraine no reform in a related area was awarded funding. Rather, the EU supported

[1] See OECD statistics: www.compareyourcountry.org/aid-statistics?cr=1000&cr1=oecd&lg=en&p.=1.

reforms of a more technical and less political character, that is, in sectoral policies, i.e., in transport, energy, environment, and rural development. The EC has the competences to engage in such sectors and has a long track record of pursuing cooperation in these areas, and therefore it is easier for the EU side to pick up such priorities. In the case of good governance and anti-corruption, it has to search for advice from other international organisations, such as CoE. These topics are a priority reflected to a greater extent by smaller twinning and consultancy projects tendered by EU delegations. In Ukraine's case, almost 40% of all ongoing projects are related to good governance, democracy and human rights (i.e., increasing civil society control of government and enhancing transparency), while in Moldova, one-third of projects contribute to such goals (focus on human rights, justice, media freedom).[2] Moreover, in Moldova, an EU High Level Advisory Mission was operationalised in 2010 with advisors to such bodies as the Prime Minister's Office, State Chancellery, and the ministries of Economy, Finance, Justice and Interior.[3]

In the next three years (2015–2017), the EC plans to launch budget support programmes for public administration reform (besides agriculture and rural development, also police reform and border management) in Moldova and for judicial reform in Ukraine.[4] However, in the latter's case, the priorities remain to be confirmed with the Ukrainian government; the process has been delayed due to the ongoing war in Donbas and the work of the new government on the reform package. The newly created Support Group for Ukraine, consisting of high-level EU officials, is supposed to help the process of reform and aid prioritisation.[5] Parallel to that, in order to help the Ukrainian transformation after Euromaidan,

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[2] Own calculation based on lists of projects at the EU delegation website: http://eeas.europa.eu/delegations/ukraine/projects/list_of_projects/projects_en.htm and http://eeas.europa.eu/delegations/moldova/projects/list_of_projects/projects_en.htm.

[3] For more information on the mission, see: www.euhlpam.org/about.

[4] "European Commission's support to the Republic of Moldova'" Brussels, 25 June 2014, http://europa.eu/rapid/press-release_MEMO-14-355_en.htm.

[5] "Support Group for Ukraine," EC press release, 9 April 2015, Brussels, http://europa.eu/rapid/press-release_IP-14-413_en.htm.

the EU decided to release a special budget support operation under the so-called State Building Contract (up to €355 million), as well as additional support for civil society (€10 million). The tranche payment will depend on results achieved in the fight against corruption, public procurement, access to information, public finances management, civil service reform, constitutional reform and electoral legislation.[6]

Regardless of the area of reform that it supports, the advantage of any budget support operation in terms of contributing to anti-corruption policies is the obligation of the partner country to have a sound public finances management system in order to receive EU funding. This is a very important condition because once the transfer of EU money to the state budget has occurred budget support funds are used in accordance with the partner country's own public financing management systems, and responsibility for the spending of these transferred resources rests with the partner government. The EC only checks whether the country has fulfilled the public financing management conditions, but does not pursue an audit of national accounts. Therefore, for any budget support programme, both Ukraine and Moldova have had to align to EU standards on transparency of the full national budget cycle, such as revenue administration, budget preparation, budget execution with cash management, procurement systems, internal controls and internal audits, accounting and reporting, and external audits and scrutiny.[7] In the case of a deterioration in public finances management, the EU might block financial aid, as was the case in Ukraine under President Viktor Yanukovych. Because of the deterioration in the country's public procurement law, budget support operations were frozen for more than two years until relevant amendments were adopted.

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[6] "EU pays €250 million in assistance to Ukraine under state building contract," 13 June 2014, http://enpi-info.eu/eastportal/news/latest/37636/eu-pays-%e2%82%ac250-million-in-assistance-to-ukraine-under-state-building-contract.

[7] The conditions are detailed in "Budget support guideline: Programming, design and management of budget support," European Commission, September 2012, pp. 19–31.

For both countries, budget support is a suitable tool to guide the reforms needed to follow the association agenda. The first years of experience with this instrument show that it helps with legal approximation to EU standards in various sectors and is a more efficient tool than purely advisory instruments when guiding certain sector reforms.[8] Yet, this instrument fails to address the implementation side of reform—meaning the government measures and actions aimed at the introduction of relevant policy instruments, procedures, and institutional interactions in order to achieve the planned reform. Apart from often lacking political will, the incompletion of these reforms is also a result of improperly designed conditions by the EU (they are too broad, too ambitious or too numerous); the limited capacities of national administrations; costs in light of a lack of proper national or EU funds; the limited capacities of national administrations assisted by untimely launched technical assistance; and last but not least, lack of proper monitoring mechanisms by civil society and the administration itself.

Multilateral Dimension of Cooperation with Moldova and Ukraine

When it comes to multilateral cooperation, the EU supports the EaP states via practice-sharing activities through regular meetings between EaP and EU member state officials on the four platforms of the partnership.[9] From an anti-corruption standpoint, the most relevant is the work of Platform 1 on democracy, good governance and stability. This body meets twice a year and discusses issues such as the prevention of and fight against corruption, transparent management of public goods, and public administration reform (separate panels on those topics were established). Apart from those areas, the goals of the platform for

[8] For more on the strengths and weaknesses of the EU's budget support, see: E. Kaca (ed.), *Learning from Past Experiences: Ways to Improve EU Aid for Reforms in the Eastern Partnership*, PISM Report, April 2014, Warsaw.

[9] The four multilateral platforms of the EaP focus on the following areas: democracy, good governance and stability (Platform 1), economic integration and convergence with EU policies (Platform 2), energy security (Platform 3) and contacts between people (Platform 4).

2014–2017 include training and networking of local authorities and promoting local government reform and decentralisation.[10]

The most visible benefit of the platform work is its socialisation effect.[11] The EU can more directly communicate its policy, and EaP officials can exchange tips on how to adjust EU conditions to their countries' realities. The format also enables discussion of good governance issues at a technical level with non-democratic countries such as Belarus and Azerbaijan. In addition, it gathers medium-range officials from Armenia and Azerbaijan, in conflict over the Nagorno-Karabakh region, to sit at one table. Last but not least, the possibility to invite representatives of parliaments, civil society, international organisations, the private sector, as well as economic and social partners makes the platform work inclusive. One problem, however, is the low interest of EU officials from older Member States in attending meetings, which would be beneficial in terms of sharing the practices of the most established EU democracies.

The disadvantage of platform work lies in the difficulty of mobilising the EaP countries to undertake concrete initiatives in policy areas, such as judicial and public administration reform and anti-corruption policies. The reason for this is twofold. First, the countries differ greatly in terms of their democratic reform aspirations. Association countries such as Moldova, Ukraine and Georgia are eager to cooperate on such topics, whereas Belarus, Armenia and Azerbaijan show zero interest. Therefore, the most popular topic of Platform 1 is the politically neutral and technical issue of border management. A second difficulty is the challenge to find topics that could have added-value when discussed at the multilateral level rather than simply duplicating actions at the bilateral level. Illustrative of this challenge is the implementation of the biggest multilateral program—Comprehensive Institution Building (CIB)—aimed at strengthening

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10 "Eastern Partnership Platform 1: 'Democracy, Good governance and Stability,' Core objectives and Work Programme 2014–2017," http://eeas.europa.eu/eastern/platforms/docs/work_programme_2014_2017_platform1_en.pdf.

11 R. Murray, "V4, the Eastern Partnership and the Multilateral Dimension: The Road So Far," Research Centre of the Slovak Foreign Policy Association, October 2013, Prague.

the capacities of core institutions and with a budget of €173 million allocated for the period 2011–2013. The CIB Framework Documents setting out key institutions and their challenges were signed by the EU with all five partner countries (except Belarus, which is not participating) by spring 2011, and work on Institutional Reform Plans is ongoing. However, the results have thus far been modest, and the EC will probably not continue the CIB.[12] The process was lengthy due to weak political will and deficits in EaP public administration systems, and thus, at the end of the day only a few projects were finalised in 2013.[13]

The other disadvantage of this form of cooperation is related to the limited funding the EU can provide. The budget for EaP multilateral cooperation for 2014–2017 is modest (€313.5–383 million) but is intended to cover four platform and six flagship initiatives.[14] Platform 1 alone involves as many as twelve objectives. Therefore, many of the projects focus on advisory and monitoring activities but do not involve following on with the implementation of concrete recommendations. To this end, more complex projects are set by CoE in each EaP country. Between the years 2011 and 2013, CoE implemented a project aimed at monitoring and advisory efforts in public administration and electoral standards, judicial reform, and fighting cybercrime and corruption, and was budgeted €4.8 million in total.[15] As a follow-up, CoE was commissioned to implement projects in the period 2014–2017 involving cooperation on human rights, democracy and the rule of law, and was budgeted €33.8 million in total.[16] Smaller projects are in the hands of EU Member States. Prominent examples of this are the Public Administration Academy, which delivers workshops for EaP

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12 Interview with EEAS official, July 2014.

13 "EU cooperation for a successful Eastern Partnership: supporting reforms, promoting change," Brussels http://ec.europa.eu/europeaid/sites/devco/files/eap-flyer-results.pdf.

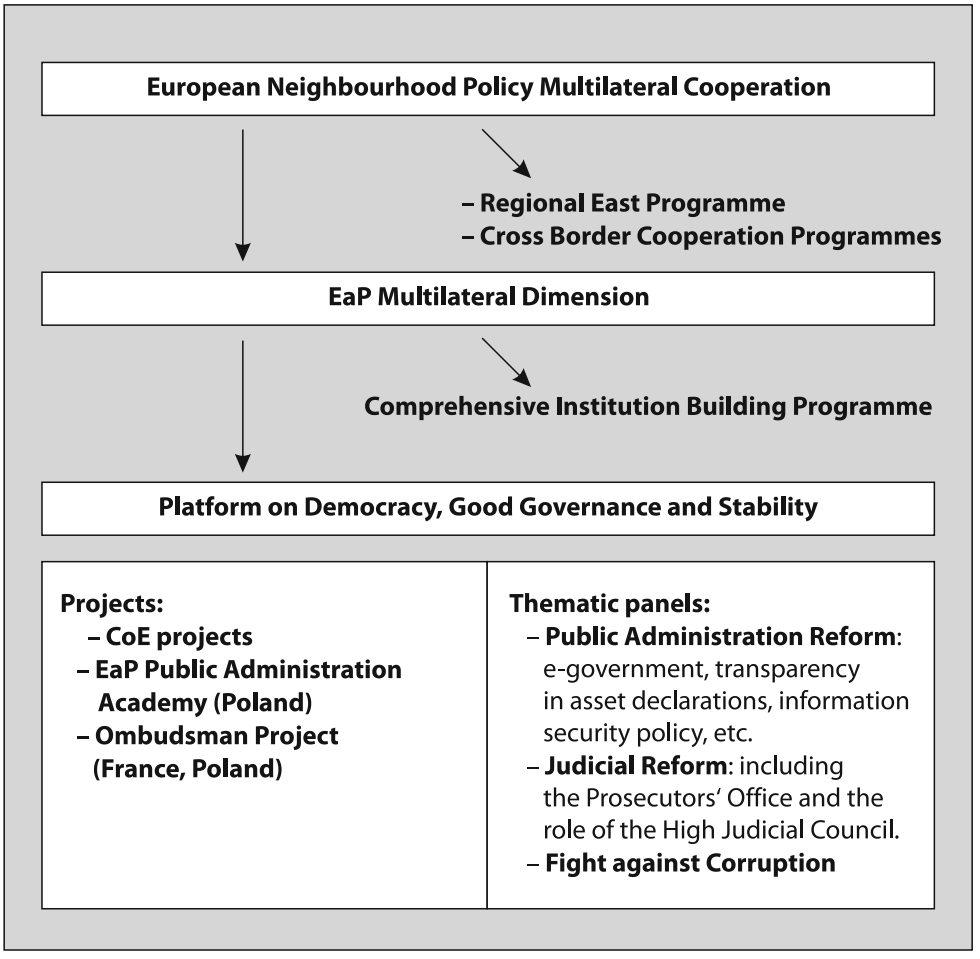
14 "Programming of the European Neighbourhood Instrument (ENI)—2014–2020 Regional East Strategy Paper (2014–2020) and Multiannual Indicative Programme (2014–2017)," European Commission, Brussels, 2015.

15 Eastern Partnership CoE Facility, www.coe.int/t/dgap/eap-facility.

16 "The Council of Europe and the European Union to boost cooperation in Eastern Europe," http://ec.europa.eu/enlargement/news_corner/news/2014/12/20141218_2_en.htm.

civil servants on EU related topics (an initiative led by Poland),[17] or a project on sharing best practices for ombudsmen (an initiative led by Poland and France).[18]

Table 1. Good governance support instruments (EaP, multilateral)



[17] The Eastern Partnership Academy of Public Administration was officially opened in October 2011. For more information, see: "The Eastern Partnership Academy of Public Administration: strengthening public administration sectors in EaP states," Polish Aid information leaflet, Warsaw, 2012.

[18] The programme aims at reinforcing the capacity of ombudsmen institutions, public administration and civil society in EaP countries via the organisation of a series of workshops and training on human and civil rights protection as well as study visits with ombudsman institution staff. For more information, see: www.rpo.gov.pl/pl/content/partnerstwo-wschodnie-pw-2009-2013.

The EU's Support of Civil Society in Moldova and Ukraine

The EU perceives support for civil society as an important factor contributing to good governance. This was made a priority, namely during the European Neighbourhood Policy (ENP) revision in the aftermath of the Arab Spring. In particular, in a follow-up communication in 2012, the EC decided to focus on three priorities: contribution to a conducive environment for CSOs in partner countries; the participation of CSOs in the domestic policies of partner countries, in the EU programming cycle, and in international processes; and increased local CSO capacity.[19] In each partner country, the EC was supposed to establish a roadmap to engage civil society (not yet adopted in Ukraine and Moldova). The newly created Civil Society Facility instrument was to secure funding on projects contributing to these goals.

Bearing in mind these developments, for Moldova and Ukraine the EU is attempting first of all to enhance the policy dialogue with CSOs through various channels. The major multilateral platform is the EaP Civil Society Forum, launched and funded by the EC,[20] which serves as the civil society counterpart to inter-governmental and inter-parliamentary dialogue in the multilateral framework of the EaP. Through annual General Assembly meetings, thematic (Working Groups) and country dimensions (National Platforms), the Civil Society Forum offers an opportunity for CSOs from the EaP and the EU to interact, exchange views and put forward their ideas to decision-makers. Yet, while the Forum itself serves as a socialisation instrument, its impact on policy content is weak.[21]

When it comes to increasing civil society engagement on a bilateral level, EU delegations organise consultations with CSOs on aid priorities, but these

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19 "The roots of democracy and sustainable development: Europe's engagement with Civil Society in external relations." Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Brussels, 12 September 2012.

20 Additional funding is also provided by some of the Member States, such as the Czech Republic, and most importantly, by Swedish International Development Cooperation (SIDA).

21 N. Shapovalova, E. Tafuro, "Strengthening civil society platforms in Eastern Partnership and Russia," *FRIDE Blog*, 16 October 2013, www.fride.org.

discussions are mostly limited to overall strategic goals, with the CSOs lacking a say in the establishment of concrete conditions, but often on which the feasibility of the government's commitments depend. Separate consultations on budget support programme implementation are also held on an ad hoc basis (i.e., environment in Ukraine). In the coming years, the association agendas mention that the following policy areas must include CSOs (besides strengthening monitoring capacities over the implementation of AA agreements): in Moldova, implementation of the National Anti-corruption Strategy and cooperation on HIV/AIDS; and in Ukraine, environment, consumer protection, public health, education and youth, and regional development.

Overall, the EC's priorities to support civil society are only to some extent reflected by the available aid tools. Indeed, only the Civil Society Facility (under the European Neighbourhood and Partnership Instrument, or ENPI) helps to increase monitoring and the capacity of CSOs. However, numerous reforms require the cooperation of various stakeholders, i.e., government officials, parliamentarians, businesses and CSOs combined—and this instrument does not facilitate such a comprehensive approach. At the same time, the priorities of other EU instruments targeted at civil society are too widely dispersed. For instance, Moldovan and Ukrainian CSOs might be granted projects from globally available instruments, such as the European Instrument for Democracy and Human Rights (EIDHR), which grants assistance for free media, election monitoring, human rights, and Non-State Actors and Local Authorities (NSA&LA), aimed at developing the institutional capacity of non-state actors. Additionally, since May 2013, the European Endowment for Democracy also operates as a joint effort between the EU institutions and EU national governments, but it targets smaller innovative projects in sensible democracy promotion areas (support for bloggers, media, etc.).

In terms of the volume of funding for CSOs in the years 2011–2013, the EC planned allocations of €3.6 million for Ukraine and €3.2 million for Moldova under EIDHR, and earmarked €2.85 million for Ukraine and €0.9 million for Moldova under NSA&LA. In the same period, the EU completed projects with the

involvement of CSOs in the scope of ENPI in amounts of €11.1 million for Ukraine and €3.1 million for Moldova. In this case, it is difficult to calculate how much funding went directly to Ukrainian and Moldovan CSOs, as numerous projects in which they were involved were coordinated by international organisations and consultancies leading the consortia. Even though the EU has made progress in improving its re-granting schemes,[22] the challenge still remains to reach small and medium-size CSOs while maintaining equal regional redistribution.

Table 2. EU aid for CSOs in 2011–2013 (in € millions)

Instrument	Moldova	Ukraine
ENPI	3.1	11.1
EIDHR	3.2	3.6
Non-State Actors	0.9	2.85
Total	**6.2**	**17.55**

Source: Author's calculation, based on EC data.

Conclusions

In the last financial perspective, the greatest challenge was to see EU strategic priorities reflected by delivered aid. Even though good governance was the chief priority, few budget support operations were held, and only fragmented support for civil society and anti-corruption policies was given. The respective budget support and civil society funds have been planned, but the anti-corruption activities are still underfinanced.

[22] Regranting (formally known as block grants or also sub-granting) is a financing mechanism that can support CSOs in which the donor provides funding to a generally well-established or umbrella organisation, which in turn facilitates funding (in the form of sub-grants) for a number of smaller or grassroots organisations.

The effectiveness of EU tools to support anti-corruption policies is questionable. At the bilateral level, budget support operations—the major EU bilateral aid modality—help legislative approximation with the EU but fail to facilitate the implementation stage of the reforms. In relation to the EaP multilateral format, serving as a socialisation platform for EU and EaP officials, good governance is a field where it is hard to find a common denominator between democratic-oriented countries and non-democratic ones. In addition, the EU fails to effectively help public administration reform. Last but not least, support for civil society, an important contributor to state transparency, is developing. The weakness is, however, the fragmentation of the instruments, which are focused on various priorities, and a lack of a comprehensive approach in supporting reforms with the involvement of various stakeholders.

THE V4 EXPERIENCE

THE EU'S ROLE IN ANTI-CORRUPTION POLICIES[1]

In the 1990s, the major challenge in terms of corruption was to counter the damaging inheritance of the previous communist regimes, which created fertile soil for clientelism and nepotism. Thus, in the first decade of the transition period only a few attempts at eliminating corrupt practices were taken up, mostly ineffectively. Moreover, they were usually a result of the implementation of standards promoted by international institutions such as the General Agreement on Tariffs and Trade or the World Bank.

With EU accession of the V4 states approaching in 2004, the pressure to comply with EU requirements set the standards to be met and contributed to the adoption of some important pieces of legislation. In order to fulfil the Copenhagen Criteria for EU accession, the candidate states needed to ensure effective rule of law, democracy, stable institutions and transparency and implementation of *acquis communautaire* in related fields.[2] Continued monitoring by the EC and its repeated warnings in the yearly country reports that the fight against corruption needs to be strengthened certainly contributed to the development

[1] Written based on contributions from all the V4 authors of the report.

[2] The specific elements of anti-corruption policies are included in various chapters of the *acquis communautaires*, e.g. "5) Public Procurement" or "32) Financial control."

of the legislation. At the same time, in an assessment conducted by the EC, although some criteria were applied, it was inconsistent across the candidate states.[3] Moreover, the progress reports were mostly focused on ratification of international conventions and fulfilment of formal requirements of independent bodies such as the Group of States against Corruption (GRECO),[4] but they fell short of considering organisational and procedural aspects of existing anti-corruption measures and their effectiveness.

Nevertheless, EC monitoring pushed the incumbent governments to adopt regulations that met international requirements and initiated anti-corruption strategies in order to improve each country's chances for rapid accession. The external conditionality, for example, helped to improve legislation on public procurement (to facilitate European funds distribution and adaptation of companies to the EU's single market), on civil service and access to public information.

In the post-accession period, Brussels has significantly fewer instruments to boost anti-corruption policy in the Member States, as corruption is treated under justice and home affairs, a sector of shared competence between the EU and Member States. However, a peer-pressure system gradually developed, with its major tool the EU Anti-corruption Report published for the first time in 2014. To be published every two years, the report presents major problems in respective member countries in their fight against corruption, and also suggestions for improving their approach. Interestingly, the conclusions of the first report were based on National Integrity Assessment results (the project carried out in 2010–2012 with the assistance of TI methodology), which shows that the EC has still limited control over this evaluation process. As for the impact of the report—

[3] "Monitoring the EU accession process: Corruption and Anti-Corruption Policy," OSI/EU Accession Monitoring Program, 2002, pp. 52–56, www.opensocietyfoundations.org/sites/default/files/1euaccesscorruptionfullreport_20020601_0.pdf.

[4] All reports are available for download here: http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm.

although it is too soon to evaluate it—neither media, nor the governments demonstrated much interest in it.

Another EU tool for leverage in the post-accession period is monitoring the use of EU funds carried out by the European Anti-Fraud Office (OLAF). The Office follows and investigates reports about alleged fraud, corruption and misuse of EU funds in the areas of the *acquis* (public procurement, financial control, etc.). While the office can investigate such cases in its own capacity, it has to rely on national court rulings to decide if the OLAF judicial recommendation (after misuse has been established) is followed by an indictment or dismissed.

To sum up, the perspective of EU membership has arguably been the single most important stimulus for anti-corruption legislation and reforms. Nevertheless, the reforms undertaken in that period have been criticised for their facade-like nature and concentration on formal regulations instead of effectiveness as anti-corruption mechanisms. Although after accession the EU has significantly less leverage on Member States' anti-corruption policies, the EU Anti-corruption Report is a positive first step to re-engage the EU on the national level. Also, the allocation of EU funds (and especially withholding their disbursement) continues to be the EU's major "stick and carrot" tool, it could be even more efficient if the EU was stricter in controlling the use of funds and issuing penalties for their misuse.

Helena Joachimsthalerová, Vera Řiháčková

CZECH REPUBLIC

The Development of Anti-corruption Mechanisms

The first decade after the fall of communism was marked by a lack of appropriate regulations, especially in relation to privatisation, and by the partial accountability of public institutions. Furthermore, Czech politics were shaken by a corruption scandal involving one of the major government parties in 1997 over fraudulent party funding. As a result, the government collapsed[1] and the succeeding ruling coalition declared its intent to adopt a set of very ambitious measures that were later incorporated into the first government programme on the fight against the corruption.[2]

A major success of the 1999 anti-corruption strategy was the adoption of the Act on Free Access to Information, which for the first time introduced detailed rules about transparency of public administration into the Czech legal

[1] The fall of government in 1997 came after accusations that the Civic Democratic Party had held secret bank accounts in Switzerland and used them to illegally finance the party.

[2] "The government programme for the fight against corruption." Ministry of the Interior of the Czech Republic, 17 February 1999, www.mvcr.cz/clanek/boj-proti-korupci-strategie-vlady-v-boji-proti-korupci.aspx.

framework.[3] Equally important were the new regulatory framework under the banking law and the adoption of the Witnesses Protection Act.[4] Since 1998, the transparency of public administration has been strengthened by the process of digitalisation (eGovernment), although many important components of it have still not been fully implemented and several eGovernment projects seem to be overpriced. The deterrent effect of the Criminal Code provisions was bolstered by increasing the sanctions for a corruption-related criminal offence, and by introducing special units within the Czech police forces: Unit for Combating Corruption and Financial Criminality, Unit for Combating Organised Crime, and specialised departments within the High Prosecutor's Office.[5]

Although since 1999 every new elected government has declared its dedication to anti-corruption, much still needs to be done. The key missing anti-corruption measures include regulation of lobbying, adoption of advanced legislation on protection of whistleblowers, and public prosecution reform. Other evergreens are the creation of an independent body to oversee the integrity of elections and the lack of clear rules ensuring the transparency of election processes and party financing. Moreover, the existing legal framework regulating conflict of interests is highly ineffective, with many evident loopholes.[6] The latest regulation of anonymous ownership structures contains several dubious elements, too, especially the introduction of "trust" companies into Czech civil law. Also, shell companies (companies where the real owner can be hidden) have so far not been effectively restricted from participation

[3] Act No. 106/1999 Coll. on Free Access to Information went into effect 1 January 2000.

[4] Transparency International–Czech Republic (various authors), "Studie národni integrity, 2011," p. 35, www.transparency.cz/doc/TIC_Studie_narodni_integrity_www.pdf.

[5] With the adoption of the new Criminal Code in 2009, the sanctions for bribery with regard to terms of imprisonment for criminal offences of public officials were enhanced from 2–8 years to the current 5–12 years.

[6] For example, the legislation needs to regulate "revolving door" practice and adjust the requirement to declare assets to not only cover an increase in a person's assets but also to trace its initial status.

in public procurement.[7] Finally, it will be rather interesting to observe whether the Act on Civil Service, which comes into effect as of 1 July 2015, will deliver on the promise to de-politicise the state administration and increase its effectiveness.

BEST PRACTICES

Transparency in Public Procurement: The Central Registry of Contracts

Although in 2012 significant changes were made in the 2006 Public Procurement Act, the current legislation does not allow for quick and user-friendly access to public procurement contracts concluded by public bodies. As such, in 2014 a new proposal for establishing a Central Registry of Contracts was put forth with significant support from civil society—particularly the Reconstruction of the State (Rekonstrukce státu) initiative[8]—but also from some members of parliament.[9] According to proponents of the registry, the new act should:

a) require all public administration bodies at all levels, as well as state-owned companies, to publish all relevant contracts;

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[7] Act No. 134/2013 Coll. on Certain Measures to Increase the Transparency of Joint Stock Companies.

[8] The initiative comprises important CSOs, watchdog organisations and private consultancies, for example Oživení, a major anti-corruption watchdog, Transparency International–Czech Republic, and Franc Bold. The Reconstruction of the State is pushing for nine various regulations in areas of transparent financing of political parties, declarations of assets on taking up office, contracts on the internet, abolition of anonymous shares (stock held by undeclared buyers), appointments to boards of state companies, independent public administration, no political interference in criminal investigations, a transparent legislative process, and extension of the powers of the Supreme Audit Office. For more, see: www.rekonstrukcestatu.cz/en.

[9] Support for the proposal came predominantly from the right-wing party TOP09 and its partner movement STAN (Mayors and Independents). Interestingly, another right-wing party, Civic Democratic Party (ODS), is one of the main opponents of the proposal, confirming political ideology has little to do with the issue.

b) require all types of contracts to be made public (except for a few specific exceptions[10]);

c) require all contracts to be published via a centralised electronic channel as part of the Central Registry website;

d) codify that unless the contracts are published within 30 days of signature, they are not valid.

The major counter-arguments voiced in the debate are:

a) high administrative cost to meet the mandatory publishing of contracts in a prescribed electronically readable form;

b) potential market risk for state-owned companies due to forced leak of potential trade secrets;

c) general objections to the legal formulation (confusing, not enough specific parts) in the draft law; possibility to acquire the same information by using regulations laid down by the Public Procurement Act.

Ahead of the parliamentary elections in autumn 2013, the Reconstruction of the State initiative conducted an intensive campaign, drawing up a list of candidates across the political landscape backing its proposals. Although a significant number of candidates signed up, in 2014 their support for it—including the Central Registry of Contracts—has much waned.[11] In fact, some of the politicians who submitted a proposal to the legislative procedure later on withdrew their support for the law.[12] Hence, the proposal did not do well in parliamentary committees and hearings on the proposed legislation were in most cases suspended. One of the main proponents among the MPs, Jan Farský (of the TOP 09 party), considers the shifts in the camp of supporters and the

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[10] Contracts signed with natural persons are explicitly the only ones exempted from the obligation.

[11] On average, 80% of the candidates of all political parties that entered the Chamber of Deputies (composed of 200 representatives) pledged support for the Reconstruction of the State initiative. Some 1.5% of them broke all the legislative promises they made with the Intitiative, and on average some 57% of deputies voted at some point against the proposal.

[12] Quite interestingly, the MP for the ANO movement, Ivan Pilný, who was one of the submitters of the proposal, stood up against it later, labelling it as not well prepared.

long procedure for hearings in the committees to be intentional obstructions. Thus, the struggle for the regulation continues, with the draft law currently in parliament (presented in March 2015). It should have been voted on in a May plenary meeting, however, the social democrats, the senior government party, prevented the draft law from joining the voting list. If the proposal is not voted on in June, it will very likely not come into effect during the current election period.

Lessons learnt: Despite the lack of success and political obstructions, the Czech experience demonstrates that the role of civil society in pushing for reforms in the area of public procurement is crucial. Without a strong lobby of mixed stakeholders (CSOs, cross-partisan political actors), it is hard to establish any public debate and, more importantly, to make the politicians consider these issues relevant.

Autonomous, Accountable and Effective Public Prosecution

The appropriate position of the public prosecution within the three branches of power has been repeatedly subject to passionate discussions in the Czech Republic. Yet, in the last few years the matter has provoked unprecedented interest, catalysing both public and political debate.

With the adaptation of the new Act on Public Prosecution in 1993, for the first time in modern Czech history[13] the public prosecution service was incorporated into the executive branch of power.[14] Unlike courts and judges, the independence of the prosecution service and the prosecutors in general is not anchored in the constitution. Furthermore, the Act on Public Prosecution only emphasises the impartiality of the prosecution service and individual prosecutors in the execution of their powers. The Supreme Public Prosecutor is appointed by the government

[13] This is contrary to the very strong position of the "Prokuratura" during the communist era.

[14] The new political conditions were perceived as viable to guarantee the functioning of the state prosecution would not be distorted; see: Transparency International–Czech Republic, "Almanach Česká justice—otázka správy a nezávislosti," 2010, p. 140.

at the suggestion of the minister of justice and can be removed from office in the same way, without any reason. Similarly, the minister, in collaboration with the Supreme Public Prosecutor, has the authority to remove officials at lower levels of the prosecution service. These basic appointment principles, together with the crucial role of the Ministry of Justice in public prosecution budgetary issues, later proved to be key elements that give politicians the upper hand in dealing with the public prosecution service.

In the first decade of the 2000s, a handful of people in top positions of the public prosecution service were able to block investigations into major corruption cases (involving top politicians) in the name of political stability.[15] Important changes came only in 2011 with the appointment of Pavel Zeman as Supreme Public Prosecutor.[16] A positive trend in uncovering and investigating cases of corruption, particularly of its organised and more serious forms, has been apparent since then. Hand in hand with the gradual restoration of the deeply distorted trust in the Public Prosecutor's Office, the necessity of elaborating a legal framework that would newly regulate fundamental issues with the activity and organisation of the public prosecution has been articulated.[17]

However, legislative proposals that address the issue of unjustified intervention in the Public Prosecutor's Office and shield the public prosecution from direct political influence and pressure have many opponents. The political scandal of summer 2013—the so-called Nagygate—marked an important shift

[15] For example, the corruption affairs of the former vice-prime minister, Jiři Čunek, who faced charges of bribery, former Prime Minister Stanislav Gross, or the former minister of environment, Pavel Drobil.

[16] Pavel Zeman joined the prosecution after a career in Eurojust, and his significant advantage was that he had not been involved in Czech politics.

[17] The key elements of the draft proposal of the new Act on Public Prosecution (which was proposed by the Supreme Public Prosecutor's Office) were: (1) increased independence of the Supreme Public Prosecutor, who should be appointed for a fixed term of 10 years and could be removed from office only in a situation directly stipulated by law, (2) the creation of a specialised body within the public prosecution responsible for the investigation of corruption, (3) detailed regulation of instructions given within the hierarchical structure of public prosecution.

in the political climate.[18] The political will to adopt the necessary reforms has eroded.[19] Although the new Act on Public Prosecution is still in the legislative work plan, the key elements aimed at strengthening the independence of public prosecution service have one by one been crossed out from the draft proposal.

Lessons learnt: The stability and professionalism of the public prosecution service is crucial for control of corruption. The above case illustrates how effectively a cartel of only a few people in top public prosecution positions can block the investigation of cases involving high-scale corruption. Even though the staffing of key posts in the public prosecution service is important for securing its independence, the positive move to individual appointments on the basis of merit must be guaranteed by advanced legal regulations that put systemic and personnel pre-conditions in place.

The Anti-corruption Aspects of the Civil Service Act

Professional and independent civil service (or public administration[20]) is a key to minimising the risks of corruption and cronyism. With the added-value of continuity, civil service can have a more important impact on policies in the long-term, than incumbent political coalitions and governments. Yet, with the pre-1989 legacy of a highly centralised state administration,[21] there was a long and cumbersome way to a modern and functional civil service.

From a personnel point of view, Czech civil service was regulated by the general Labour Law applicable to all employees from both the public and private spheres. This situation was clearly unconstitutional because the Czech

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[18] In the so-called Nagygate affair, the Czech prime minister's chief of staff, Jana Nagyová, was arrested and charged with corruption and abuse of power.

[19] The arrest was part of the broader investigation of the clientele networks of influential lobbyists and politicians, and led to the collapse of the Czech government.

[20] Civil service usually refers to the central administration, whereas public administration also includes local levels of administration (and local government).

[21] The decentralisation process in the Czech Republic was achieved in 2000 when local governance regions were established.

constitution presumed adoption of a civil service law regulating specifically the working conditions and other aspects of the state administration.[22] Civil service reform, however, was only a rhetorical priority of the political parties. In practice, the latter took advantage of the weak, largely politicised and politically susceptible or manageable body of civil servants. Public funds were serving as a source of illegal but largely tolerated financing of political parties and implemented[23] by docile officials under political supervision. The EC took note of this corruption-favourable environment in the Czech Republic and consequently recommended on several occasions[24] that it fix this problem, ideally by legal reform of the civil service.

As civil service reform was also a clear pre-condition for EU accession, the Czech government (the Social-Democrats under Vladimír Špidla) adopted a civil service act in 2002.[25] However, the law was never implemented, with its entry into force postponed five times—the last time until 2015. The political representation was not very creative in finding excuses for this situation, which has prolonged their effective grip on the civil service.[26] In the meantime, the Czech Republic became an EU member in May 2004 and, with the lack of EU pressure, the civil service act was no longer a priority item on the political agenda.

Thus, the Czech variant of a "spoils system"[27] persisted for many years after EU accession. As a result, the Czech Republic was the only EU Member State with no applicable civil service law. This also explains why during the 2007–2013 Multiannual Financial Framework the Czech Republic scored among

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22 Art. 79 of the Czech constitution.

23 Mainly through public procurements, via provisions.

24 See the Progress Reports of the European Commission on the Czech accession process from 1999, 2000, and 2001.

25 Civil Service Act No 218/2002 Col.

26 The most recurrent arguments were budgetary constraints for the new salary and benefit system and the fact that politicians are preparing a better law to replace it because the one from 2002 was adopted too hastily.

27 The system or practice in which public administration is at the disposal of the victorious political party for its own purposes.

the worst EU Member States in terms of absorbing EU funds, accountability in management and effective control mechanisms. The shortcomings were highlighted on several occasions by the EC and other stakeholders.[28]

Finally, following multiple warnings from the EC about a complete freeze on the flow of EU funds during the 2014–2020 period, the revised, re-opened law was ultimately adopted and will come into force in July 2015. Yet, the final version excluded some "high autonomy" aspects of the civil service functions. Overall, this was a major step towards de-politicisation and professionalisation of the Czech public administration, even though it is still only a half measure, emptied as it is of some key aspects inseparable from independent civil service.

Lessons learnt: Civil service reform is a major aspect of modernising the country and preparing it for EU accession, both from a formal point of view (pre-conditions set by the EU) and that of real impact (effective implementation of EU policies and use of funds in the pre- and post-accession periods). At the same time, it is neither popular with the general public, nor with political actors, who naturally attempt to maintain their grip over the civil service. This is why the reform can only be achieved through constant pressure by CSOs, international actors and donors. Yet, the Czech experience also shows the long-term risks of applying only half measures.

Immunity of Members of Parliament

The exclusion of members of parliament from criminal prosecution, an important element of parliamentary immunity, has been many times throughout the modern history of the Czech Republic subject to discussion. The immunity of deputies or senators had been repeatedly criticised by some European institutions as not aligned with the principle of equality under the law, especially because Czech deputies and senators enjoy a much longer period of immunity

[28] Including Czech CSOs and civil society initiatives such as the Reconstruction of the State, Democracy Inventory (Inventura demokracie) and the Czech branch of Transparency International.

(and thus are excluded from prosecution, even for criminal offences) than their European counterparts.[29]

The Czech constitution guarantees protection for members of the legislative body in order to safeguard the independence of the Chamber of Deputies and Senate. Regarding the first component of the immunity, ensuring freedom of speech and voting, the constitutional provisions are in line with the constitutional standards of other European countries. According to the Czech constitution, deputies or senators may never be penalised for their voting in the Chamber of Deputies, in the Senate or in their bodies, nor can they be criminally prosecuted for statements made there. Minor offences committed by a deputy or a senator shall be subject only to the disciplinary jurisdiction of the chamber of which the offender is a member.[30]

Criticism of this immunity was directed against the provision of the fourth paragraph of Art. 27 of the Czech constitution, according to which deputies or senators may not be criminally prosecuted without the consent of the chamber of which they are members. If the respective chamber does not grant consent, criminal prosecution is made impossible forever. Such lifelong immunity was a European rarity and the subject of repeated attempts to change the constitution. Although in practice in most cases law enforcement authorities were granted consent for criminal prosecution, this extraordinary protection, which has been part of Czech constitutional law from the beginning of independent Czech statehood in 1918, had been questioned many times since 1995. Finally, on the 18th attempt, a constitutional amendment limiting the timespan of the immunity

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29 Criticism, such as that by GRECO: "Evaluation Report on the Czech Republic, First evaluation round," GRECO, Strasbourg, 2002, www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)11_CzechRepublic_EN.pdf.

30 Czech Constitution, Art. 27. However, the interpretation of the legal phrase "his or her statements made inside the Chambers of Parliament" is also a very controversial issue in light of the criminal prosecution of three ex-deputies who, for giving up of their mandate (which enabled the passage of important tax legislation) were offered important positions in the controlling bodies of state-owned enterprises. According to the Supreme Court, their decision not to give consent to the so-called "tax package" can be interpreted as a "statement made inside the Chamber" and is covered by immunity, meaning prosecution is excluded.

successfully passed through the legislative process. In effect from 1 July 2013, the ban on criminal prosecution of senators and deputies is no guaranteed forever but only for the duration of their mandate. Voices criticising this change can be, however, still heard.

Lessons learnt: The main purpose of the immunity is to ensure the protection of MPs against abusive judicial prosecution and guarantee freedom of thought and action. This goal must always be respected when discussing the appropriate scope of the immunity. At the same time, in countries with a well-functioning system of checks and balances, lifelong immunity in case of criminal prosecution can hardly be justified. Still, the country-specific context and organisation of the political system must always be considered.

Zsuzsanna Végh

HUNGARY

The Development of Anti-corruption Mechanisms

While certain elements of legislation have dealt with various aspects of fighting corruption since the 1990s, the issue evoked more attention and was addressed more systematically in the 2000s. In 1999, a government resolution decided to introduce a set of overarching legislation, but the reform process started only in 2001, came in several waves, which then often were not fully followed through. To support and facilitate the legal and institutional reform process, advisory committees were set up from time to time, but they proved to be short-lived.[1]

[1] In 2003, the Socialist government established an Anti-corruption Advisory Committee, and a State Secretariat of Public Finance to oversee public procurement and investigate corruption cases of the previous government. Both were disbanded in 2004. In 2007, an Anti-corruption Coordination Body was established, this time including civil actors, and it developed strategic documents on EU development funds, party financing, public procurement, and the administrative authorisation process by 2008. The government was not eager to adopt the recommendations, and prominent civil society actors such as TI resigned from the Body, hence the initiative died. Finally, in 2010, similar to its predecessor in 2003, the Orbán government appointed a special commissioner for accountability and anti-corruption to uncover the corrupt practices of the previous governments.

In 2001, the first comprehensive reform package was composed to meet EU requirements with the goal to revise existing legislation and tighten loopholes and punishments. Among other developments, the earlier law on conflict of interest from 1996 was extended to a wider circle of public officials.[2] In 2002, the so-called Glass Pocket Act introduced a mandatory disclosure mechanism on public spending in order to make public administration more transparent, but even years later Freedom House (FH) reports found that its implementation lagged: the published data was considered often incomplete and not up-to-date.[3] Importantly, however, this law established the concept of data of public interest, on which was built the law on the freedom of information, enacted in 2003, followed by a law on freedom of electronic information in 2005. A long overdue debate about a law on lobbying started in 2005 and brought forth a legal framework in 2006. A second big reform wave was initiated in 2009 by the Bajnai government that for the first time would have established an anti-corruption agency in 2010, but the package fell through and Hungary remains without a single anti-corruption body even today.

The second Orbán government came into power in 2010 with a different agenda, one which emphasised prevention and strengthening integrity over the role of repression in fighting corruption. The government's programme was adopted in 2012,[4] and the Ministry of Justice and Public Administration ran a two-year project to develop tools to support prevention (e.g., training materials).[5] The

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[2] The law stipulates that government officials cannot participate on boards of directors and supervisory committees of companies in which state ownership exceeds 10%. Elected officials, members of the cabinet, representatives of state bodies, senior civil servants and judges need to report their assets. There are no sanctions though if the report turns out to be faulty.

[3] "Nations in Transit 2007. Hungary," Freedom House, https://freedomhouse.org/report/nations-transit/2007/hungary#.VLVFUHurNlw.

[4] "1104/2012. (IV. 6.) Korm. határozat a korrupció elleni kormányzati intézkedésekről és a Közigazgatás Korrupció-megelőzési Programjának elfogadásáról," 6 April 2012, http://korrupciomegelozes.kormany.hu/download/d/fc/50000/antikorrupcios_int%C3%A9zkedesek_eloterjesztes.pdf.

[5] For more information about the anti-corruption activity of the Hungarian government, see: http://corruptionprevention.gov.hu/index.

approach of the new programme in itself can be perceived as a step forward,[6] however, the strategy has significant shortcomings. For example, it does not cover the private sector directly. Corruption has also been present in public procurement, in many instances resulting from strong connections between private business and politics.[7] More recently, however, FH in its 2014 report, drew attention to the continued process of state capture, well-illustrated by cases such as the redistribution of agricultural lands and tobacco concessions.[8] The report states that "the legislature used their power to improve the positions

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6 István János Tóth, co-chair of the Corruption Research Centre of Corvinus University in Budapest, just like Klotz and Sántha (*op. cit.*), highlighted that after a while and above a certain level punishment does not have a dissuasive effect. Therefore putting more emphasis on prevention itself can be justified. See: M.I. Szabó, "Korrupcióban külön kategória a Magyar törvényhozás," *HVG.hu*, 12 April 2012, http://hvg.hu/gazdasag/20120410_korrupcio_Toth_Istvan_Janos_interju.

7 For a brief overview about the main forms and characteristics of corruption in Hungary, see: http://transparency.hu/ABOUT_CORRUPTION.

8 1) Redistribution of lands: The Orbán government came into power in 2010 with the promise of strengthening the position of smallholders by helping them rent local lands. Tenders for state-owned lands, in line with a new rural development strategy formulated by Undersecretary of State József Ángyán, were supposed to be set up in a way that favoured farmers who owned less than 300 hectares. This figure was later raised to 1,200 hectares, favouring instead bigger landowners. Understanding that his concept was sidelined, Ángyán resigned in January 2012, bringing allegations about a rent-seeking network of oligarchs who worked against his concept in order to capture state-owned lands for themselves. Since his resignation, Ángyán has authored several reports uncovering irregularities connected with public tenders for state-owned land in various parts of Hungary. The Ángyán reports and various investigative articles published, e.g., by Átlátszó, showed that a business elite close to the government is indeed often more successful in these tenders than local farmers. The Ángyán reports are available (in Hungarian) at: http://kielegyenafold.hu/angyan_jelentesek.php. For a comprehensive database on the issue (in Hungarian), see: http://k-monitor.hu/adatbazis/cimkek/visszaeles-a-foldpalyazatoknal. 2) Redistribution of tobacco concessions: A law adopted in September 2012 introduced a national monopoly on the retail sale of tobacco products in Hungary effective from July 2013. The application process, conducted for 7,000 20-year concessions throughout the country, was criticised for lacking transparency and for resulting in the redistribution of the retail market. The evaluating committees often favoured businessmen and their relatives close to the government, as opposed to retailers with decades of experience and their own shops. TI, in cooperation with other organisations, requested that the documentation on the applications and their evaluations be made public. After the Ministry of National Development denied access even despite a court decision, the Democratic Coalition (DK) sued it in June 2014. Finally DK was granted access, but only in August 2014. Reviews of the documentation by the party and journalists showed signs of favouritism and the prevalence of subjective factors in the evaluations. For a comprehensive database on the issue (in Hungarian), see: http://k-monitor.hu/adatbazis/cimkek/trafikmutyi.

of friends and clients in the economy and to corrupt public procurement."[9] The new integrity-based approach coming from inside the system obviously cannot treat the problems of state capture.

While concrete results of the new strategy remain to be seen, for now corruption remains an endemic issue in Hungary. Its most common forms are petty administrative corruption in bureaucratic processes or in public services. According to TI and FH reports, "gratitude payments" in healthcare and bribery to speed up administrative processes are particularly persistent. Although party financing—a long-standing area of high corruption risk—was finally reformed before the parliamentary elections in 2014, TI Hungary argued that the new regulation did not decrease but rather increased the risk of corruption.[10] This is sadly not the only setback that occurred in the legislation arena in recent years. The law on lobbying was repealed in 2011, leaving no legal framework to regulate this activity, and public access to information was restricted by a June 2013 modification of the law on freedom of information.

BEST PRACTICES

Integrity Project at the State Audit Office (SAO)

The 2011 National Integrity Study by TI Hungary found that the SAO is one of the strongest pillars of the national integrity system, although the then recent appointment of a member of parliament from the governing Fidesz party as head of the SAO raised concerns about the future independence of the office. According to the TI Hungary review, the SAO possessed well-trained staff, and

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[9] "Nations in Transit 2014. Hungary," Freedom House, https://www.freedomhouse.org/report/nations-transit/2014/hungary#.VLRqGyvF-Ec.

[10] "Kamupártok közpénzek milliárdjait nyúlhatják le," Transparency International Magyarország, 29 October 2013, www.transparency.hu/Kamupartok_kozpenzek_milliardjait_nyulhatjak_le?bind_info=index&bind_id=0.

their strong expertise and know-how on public finances was of particular importance in fighting corruption in Hungary.[11] It was so even though the office could only audit and evaluate the spending of public money, but not investigate cases, as that task lies with other agencies.

The SAO benefitted from EU funds to expand its knowledge on anti-corruption measures. Then, making the impression of conscious institution-building processes, the office also used EU resources to translate this newly acquired knowledge into practice. In 2005–2008, the SAO implemented a "Twinning Light" project with the Netherlands Court of Audit[12] which laid the foundations for the current prevention and integrity-based approach. Based on this twinning experience, the project "Mapping Corruption Risks" sought to adapt the Dutch integrity-management model to Hungarian realities and the SAO effectively developed its own methods to assess corruption risk in public administration, to develop better audit practices, and to induce change in the administrative culture.[13] The project's aim was to gain a thorough understanding of corruption risks in all institutions of Hungarian public administration and to examine what mechanisms these individual institutions had put in place to prevent corruption. The SAO claims that this method provides factual information as opposed to the subjective indices that were previously used to measure the perception of corruption in Hungary.[14]

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11 D. Jancsics *et al*. (eds.), "Corruption Risks in the Visegrad Countries: Visegrad Integrity System Study," Transparency International–Hungary, Transparency International–Slovakia, Transparency International–Czech Republic, Institute of Public Affairs (Hungary), 2012, p. 39, www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf.

12 The Twinning Light Project "Encouraging further development of anti-corruption measures and implementation of anti-corruption government strategy" was implemented in 2007–2008 with a budget of €120,000. For more information, see: www.asz.hu:8080/ASZ/www.nsf/twinning_light_en.html.

13 The project "Mapping Corruption Risks—Strengthening Integrity-Based Administration," was implemented between December 2009 and October 2011 with a budget of approximately €954,000 (HUF 286,540,000). For more information, see: www.asz.hu:8080/ASZ/www.nsf/corruption_risks.html.

14 "Nyilvánosak az ÁSZ 2014. évi Integritás felmérésének eredményei," State Audit Office, 3 December 2014, http://integritas.asz.hu/index.php?page=hirek&id=165.

The annual SAO reports[15] go hand in hand with the promotion of an integrity-based approach in public administration and with training for public officials. The training put more emphasis on avoiding corruption by strengthening the integrity of employees and the internal control mechanisms of the institution instead of increasing punishments. Here again, the Hungarian method builds on the Dutch one, in which practice showed that penal sanctions alone were not enough to break down corruption.[16] In this framework, the SAO offered a long-term partnership for participating public institutions that joined the "Circle of Supporters of Integrity." In its review, SAO found that in the public institutions that joined this group, the risk of corruption slightly decreased and, in parallel, internal control mechanisms were strengthened. After announcing these initial results in December 2014,[17] the SAO signalled its willingness to share its experiences with the method with its Ukrainian counterpart in the near future.[18]

Lessons learnt: The case shows the potential benefits of an elaborate and long-term programme that builds on the experience of more advanced partners coupled with resources provided by the EU. Introducing and creating roots for an integrity-based mechanism in fighting corruption is undoubtedly a long process and the Hungarian system is still far from mature. Still, this example highlights that a continued commitment from the side of the implementing body is pre-eminent for lasting success.

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[15] For the results of the 2013 and 2014 SAO reviews in English, see: http://integritas.asz.hu/Results. For the results in Hungarian, see: http://integritas.asz.hu/arop_1_2_4.

[16] P. Klotz, Gy. Sántha, *TÖRZSANYAG az Integritásmenedzsment című tantárgyhoz*, National University of Public Administration, Budapest, 2012, p. 56.

[17] Find the comprehensive report (in Hungarian) at: http://integritas.asz.hu/uploads/files/integritas-tanulmany-2014.pdf.

[18] "Hol a korrupció mostanában?," *HVG.hu*, 11 December 2014, http://hvg.hu/itthon/20141211_Hol_a_korrupcio_mostanaban.

The Freedom of Information Act, the Role of Watchdogs, and Investigative Journalism

Considering the shortcomings of both the legal framework and the practice of fighting corruption in Hungary, the role of non-state actors, such as media, investigative journalists, CSOs and activists, is increasingly crucial in uncovering corruption and fighting for these cases to be investigated and prosecuted.[19] To achieve an impact, CSOs and investigative journalists can currently rely on the law on the freedom of information, which obliges public institutions to publish data of public interest. In fact, in recent years all major corruption cases were brought to light by watchdogs and investigative journalists who pressured the authorities to investigate—in certain cases successfully.[20]

TI has been active in Hungary since 1996 in various forms, focusing mostly on monitoring and evaluating the state of corruption in the country. Its 2007 and 2011 National Integrity Reports provide a thorough insight into how much various institutions are (potentially) affected by the risk of corruption, and the TI Corruption Perceptions Index gives a good overview of long-term trends. Another CSO active in the field is K-Monitor, which was founded in 2007 to promote the transparent use of public funds, shape public thinking and fight disinterest in the issue of corruption. Over the years, the organisation has created a massive database of articles published in Hungarian online media related to specific corruption cases or to the issue of corruption in general, dating back to as early as 1997. The tagging and categorisation of the articles facilitate searches in the database, which can thus function as a useful resource.[21]

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[19] In fact, according to the 2013 Global Corruption Barometer, 48% of Hungarians think that the government's fight against corruption is either very ineffective or ineffective, 37% say it makes no difference, and only 15% believe that governmental measures are actually effective or very effective. On the contrary, 71% believe that ordinary people can have an impact on the fight against corruption. Source: "Global Corruption Barometer 2013. Hungary," Transparency International, www.transparency.org/gcb2013/country/?country=hungary.

[20] D. Jancsics, "A trafikmutyi igazol: a rendszer képtelen az önkorrekcióra," *HVG.hu*, 17 May 2013, http://hvg.hu/gazdasag/20130517_A_trafikmutyi_mutatja_hogy_a_rendszer_kep.

[21] The K-Monitor database is available at: http://k-monitor.hu/kereses.

Investigative journalism is on the rise since the launch of Átlátszó ('Transparent') in 2011, an organisation that seeks to promote transparency and freedom of information in Hungary with the help of online platforms.[22] Apart from running its own stories and investigations, Átlátszó set up a website to help people submit their own information requests by channelling them to the relevant authorities.[23] As of January 2015, more than 3,700 information requests have been submitted through the site. Átlátszó quickly became well-known and by now has the most followers on Facebook of the three organisations mentioned here, despite being the newest. This indicates a growing awareness among the population and interest in uncovering corruption cases.

After the scandal surrounding tobacco concessions in 2013, many organisations—among them, Átlátszó—demanded the documents on which the decisions were based be made public. Shortly thereafter, the parliament in June 2013 adopted a modification to the Freedom of Information Act, and introduced the concept of "abusive" or "improper" information requests. According to the vague modification of the law, public institutions are not obliged to publish the requested documentation in full detail (down to individual invoices) if they find the request to be "abusive." Hence, with reference to this modification, institutions can now limit access to public information.[24]

Lessons learnt: While the modification of the Freedom of Information Act is a clear step backwards on the level of legislation, and as such is worrisome, it also signifies the power of transparency and access to information. These developments highlighted the important role of non-governmental actors in pushing for transparency and the notion that if these principles were enforced, they could indeed pose a threat to corrupt elites, even in situations of state capture. Yet, the activities of NGOs of course cannot replace the state and its political will in fighting corruption on a large scale.

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[22] The website of Átlátszó is available at: http://atlatszo.hu.

[23] For the website in question, see: www.kimittud.atlatszo.hu.

[24] "Másodjára aláírta—kihirdették a 'Lex Átlátszót'," *Átlátszó.hu*, 21 June 2013, http://atlatszo.hu/2013/06/21/masodjara-alairta-kihirdettek-a-lex-atlatszot.

Whistleblower Protection and Its Limitations

The concept of whistleblowing (in Hungarian: *közérdekű bejelentés*)[25] received relatively little attention in Hungary until recently. While the first waves of anti-corruption legislation addressed a wide range of issues, whistleblower protection was not on the table until 2009. It was then brought in front of parliament as part of a comprehensive anti-corruption package under Prime Minister Gordon Bajnai's government. The package was to address whistleblower protection in two stages: first, creating a legal framework for it, and then setting up an institution that handles reports and enforces guarantees of protection set forth in the legislation. The Act on the Protection of Fair Procedures entered into force in April 2010, but the accompanying institution, the Public Interest Protection Office, was never set up.[26] The Act therefore stood without proper mechanisms to enforce it, and the incoming Orbán government had no intentions to continue in the footsteps of the Bajnai government. Instead, in the spirit of the integrity-based approach to fighting corruption in public administration, the Orbán government put forward a new legal act on the protection of whistleblowers in 2013.

The draft law was heavily criticised by a number of watchdogs. K-Monitor and the Hungarian Civil Liberties Union voiced concerns about the potential ineffectiveness of the German-like model[27] the government sought to implant in Hungary. They argue that in the local context the necessary mechanisms and a general organisational culture based on integrity is just being introduced in

[25] "Whistleblowing" we understand to mean the disclosure of restricted information about malpractice or the wrongdoings of an organisation usually released by an employee in order to serve the public interest beyond that of the organisation.

[26] For a detailed background and evaluation of the existing legislation on whistleblower protection in 2010, see: www.whistleblowing-cee.org/countries/hungary/research.

[27] In German public administrative bodies of the federal level certain employees are nominated to be contact points to whom their colleagues can turn to if they encounter corrupt or unethical practices within the organisation. The contact then has to report these complaints to the leadership in order for them to start an investigation into the matter. The complaints therefore are largely dealt with within the organisation.

public administration, therefore it cannot be relied on with confidence yet.[28] Other shortcomings were pointed out by TI Hungary, which argued that the proposed legislation was not an improvement as the law simply reiterated that it is the task of certain existing authorities to investigate instances of complaints and announcements. TI Hungary called for more innovative solutions that could fight the high level of latency in corruption cases. Additionally, and maybe most importantly, these organisations did not see how the new legislation would guarantee an adequate level of protection for a whistleblower.[29] The law was finally approved in October 2013[30] without having taken into consideration the criticism and the recommendations put forth by the civil society groups. The mechanisms were not modified and the protection for whistleblowers remains very narrow and vaguely elaborated in the text. It mentioned only some financial support, but failed to define its minimum, and did not address such issues as a whistleblower's physical or personal safety or the protection of their families.[31]

While the adoption of the new law in October 2013 suggests that the government is aware of the necessity of addressing the matter, its final content and the fact that the government ignored civil society opinions suggest that it was rather a *pro forma* gesture and the political will to find an effective solution is still lacking. The commitment of the authorities to protect a whistleblower was further called into question throughout the Horváth case in 2013–2014,[32] which

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28 "A K-Monitor és a TASZ álláspontja a közérdekű bejelentésekről szóló törvény tervezetéhez," *K-Monitor*, 16 May 2013, http://k-monitor.hu/hirek/magyar-hirek/a-k-monitor-es-a-tasz-allaspontja-a-kozerdeku-bejelentesekrol-szolo-torveny-tervezetehez.

29 "About the draft legislation on whistleblowing," *Transparency International Hungary*, 15 May 2013, http://transparency.hu/About_the_draft_legislation_on_whistleblowing?bind_info=page&bind_id=165.

30 *2013. évi CLXV. törvény a panaszokról és a közérdekű bejelentésekről*, 14 October 2013, www.complex.hu/kzldat/t1300165.htm/t1300165.htm.

31 "The new law does not provide adequate protection for whistleblowers," *Transparency International Hungary*, 16 October 2013, http://transparency.hu/The_new_law_does_not_provide_adequate_protection_for_whistleblowers?bind_info=page&bind_id=165.

32 The Horváth case: The commitment of the authorities to protect whistleblowers and thus support the fight against corruption was quickly put to the test by Hungary's biggest whistleblowing scandal to date, which broke out in November 2013. A former employee of the National Tax and

showed how sensitive this issue can be, especially when whistleblowing hits official bodies themselves.

Lessons learnt: Establishing legal guarantees for the protection of a whistleblower is of key importance, particularly when state officials still have a high propensity for corruption. At the same time, legislation alone is not enough: an official enforcement mechanism should be set up. As long as integrity standards in state institutions are weak, they can hardly be relied on to deal with whistleblowing internally. Therefore, in such cases, independent institutions might be able to provide stronger guarantees of protection for whistleblowers.

Customs Administration (NAV), András Horváth, announced that he had evidence to prove that NAV was reluctant to address VAT fraud on the part of multiple big businesses, which in turn resulted in an estimated loss of approximately €3.3–5.7 billion (HUF 1,000-1,700 billion) to the state coffers. NAV was quick to denounce the allegations, claimed to have conducted—in just a weekend—an internal investigation that found everything was in order. While the investigation started into Horváth's allegations in December, NAV also sued Horváth on privacy and secrecy charges. A police investigation quickly started against Horváth and the documentation he referred to as his evidence was confiscated. Although the newly adopted law on whistleblower protection was to enter into force on 1 January 2014, referring back to the Act on the Protection of Fair Procedures, several watchdogs argued that Horváth should be treated as a whistleblower and should be granted protection against such intimidation and investigations until his allegations are proved to be false. Despite these calls, investigations against Horváth and the NAV continued in parallel throughout 2014.

Marcin Waszak

POLAND

The Development of Anti-corruption Mechanisms

In the 1990s, only a few attempts at eliminating corrupt practices were taken up, mostly ineffectively.[1] Moreover, they were usually a result of the implementation of standards promoted by international institutions such as the General Agreement on Tariffs and Trade or the World Bank. This was the case, for instance, with the adoption in 1994 of the first law regulating public procurement procedures and establishment of the national public procurement regulator—the Public Procurement Office.[2] Civil service, that is, politically independent personnel, was introduced to government administration in 1993.[3] Regulations were also created containing a list of public positions defined as incompatible with positions in commercial companies and including a prohibition on holding their

[1] A. Kojder, "Strategie przeciwdziałania korupcji – doświadczenia polskie," in: A. Kojder, A. Sadowski (eds.), *Klimaty korupcji*, Wydawnictwo Naukowe Semper, Warszawa, 2001.

[2] G. Makowski, "Diagnosis of governing regime in Poland," Hertie School of Governance, Berlin, 2014, p. 10, http://anticorrp.eu/wp-content/uploads/2014/03/Poland-Background-Report_final.pdf.

[3] The law on civil service has been evaluated and changed a few times. For more information on the anti-corruption mechanisms in the newest act on civil service from 2008, see: J. Itrich-Drabarek, „Przeciwdziałanie korupcji w projekcie nowej regulacji służby cywilnej," 2008.

shares or stock.[4] The same act obligates high-ranking public officials to make asset declarations and to report all their income and donations worth at least 50% of the minimum salary in Poland in the open Register of Benefits. Finally, the new criminal code from 1997 redefined types of crimes of corruption and the scope of responsibility for instances of bribery, although many experts considered these changes to be ineffective.[5]

The Polish government started to demonstrate genuine determination towards anti-corruption policy in response to an EU membership perspective, as reflected in the Programme for Fighting Corruption, implemented in two stages (2002–2004 and 2005–2009).[6] Before accession to the EU, as many as 71 legal acts aimed at an improvement in the integrity of public institutions were adopted.[7] The most important element of the second phase of the programme was to draw up law enforcement strategies, including regulation of a new body—the Central Anti-Corruption Bureau (CAB). After 2005, the fight against corruption became one of the most important issues for right-wing parties that had stood in the opposition before then. A rising number of largely media-inflated corruption cases (the most significant was Rywin's affair[8]) corresponded to a hike in public intolerance of corruption between 2001 and 2006.[9]

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[4] Act of June 21, 1992 on Limitations in Economic Activity of Persons Holding Official Functions, which was replaced in 1997 by a new act with the same title, the so-called "Anti-corruption Act."

[5] G. Makowski, "Diffusion of Corruption in Poland," in: D. Taenzler, A. Giannakopoulos (eds.), *The Social Construction of Corruption in Europe*, Ashgate, Farnham, 2012, p. 14.

[6] These efforts are continued in the current government's Programme of Fighting Corruption for 2014–2019.

[7] S. Żmijewska-Kwiręg, "Państwo polskie wobec korupcji," in: M. Tymiński, P. Koryś (eds.), *Oblicza korupcji. Zjawisko, skutki i metody przeciwdziałania*, Civitas, Warszawa, 2008, p. 132.

[8] The so-called Rywingate scandal broke out at the end of 2002 after the disclosure of a conversation between Lew Rywin, a famous film producer, and Adam Michnik, editor-in-chief of the daily newspaper *Gazeta Wyborcza*, who had suggested a bribe in exchange for changes in media regulatory law that would have been profitable for the newspaper's parent media group, Agora. As a result, the first special Parliamentary Investigative Committee after 1989 started an examination of officials potentially involved in the affair, which was then broadly reported in the media and had a great impact on public opinion. Objections addressed to the most important left-wing politicians, including then Prime Minister Leszek Miller, caused the collapse of the ruling coalition and the rise of right-wing parties to power in the 2005 parliamentary elections that followed.

[9] G. Makowski, "Diagnosis of governing regime…," *op. cit.*, p. 6.

By now, Poland appears to have overcome the systemic corruption of the transition period, marked by political clientelism in the early 1990s, and forms of corruption in public branches where the state failed to provide equal access and high standards of public service such as healthcare, the judiciary, local administration and police.[10] An assessment conducted by Global Integrity in 2010 confirmed the improved condition of anti-corruption law in the country but noted it contrasted with actual practice and had limited possibilities for effective execution.[11] Corruption in Poland remains in healthcare, public procurement and state supervision of public companies.[12] Worrisome, too, is the rising threat of large-scale corruption related to state investment in infrastructure, implementation of IT systems in public administration, energy infrastructure, the defence sector and in environmental protection efforts.[13] Finally, much work remains in stamping out irregularities on the local level where political parties' interests maintain supremacy over professional, citizen-oriented administration,[14] mainly as a result of the diffusion of power to the three levels of Polish local government in 1998, which also decentralised the corruption problems, too.[15]

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10 "Opinie o korupcji w Polsce," CBOS BS/105/2013, Warszawa, 2013, p. 3, www.cbos.pl/SPISKOM.POL/2013/K_105_13.PDF.

11 "Scorecard: Poland 2010," Global Integrity, https://www.globalintegrity.org/global/the-global-integrity-report-2010/poland.

12 "Anticipated corruption threats in Poland," Central Anti-corruption Bureau, Warsaw, 2013, http://CAB.gov.pl/ftp/publikacje/ANTICIPATED_CORRUPTION_THREATS_IN_POLAND.pdf.

13 The scandal that was disclosed in 2013 involving high-ranking public officers and IT businessmen exposed the State Treasury to a loss of PLN 1.5 billion and was called by the CAB Director "the biggest corruption affair in Polish history." For more information, see: http://wiadomosci.onet.pl/kraj/to-najwieksza-afera-korupcyjna-w-historii-polski-wojtunik-beda-kolejne-zatrzymania/x021z.

14 J. Regulski, *Samorządna Polska*, Rosner i Wspólnicy, Warszawa, 2005, pp. 90–92.

15 "Monitoring the EU Accession Process: Corruption and Anti-Corruption Policy," OSI/EU Accession Monitoring Program, 2002, p. 404, www.opensocietyfoundations.org/sites/default/files/1euaccesscorruptionfullreport_20020601_0.pdf.

BEST PRACTICES

The Central Anti-corruption Bureau

Corruption in Poland is investigated by many different law enforcement agencies with competences in specific areas.[16] The first attempt to build a specialised anti-corruption body was made in 2002, when the unit appointed inside the Internal Security Agency began to deal with corruption among senior officials. However, the agency was criticised by the EU for its political dependence and low rate of corruption detection.[17]

CAB was founded in 2006 and is a separate secret service. Its first priority is to fight corruption. Its overall mission includes protection of the economic interests of the state. Its tasks are mainly repression of corruption and prevention, although CAB also disseminates information about corruption via its publications, guides to anti-corruption laws and training for public officers.[18] Furthermore, CAB identifies, detects and investigates crimes of corruption under the Polish Penal Code, and monitors asset declarations and political party financing.

The establishment of CAB took place in an atmosphere of deep political conflict between the biggest parties.[19] During the first three years of its existence, CAB has been accused of being a political tool of the Law and Justice (PiS) party.[20]

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[16] The organs dealing with corruption are: the police (including the Internal Affairs Bureau for investigating crimes by police officers), prosecutors, the Military Police, Border Guard, Customs Service, Military Counterintelligence Service, General Inspector of Financial Information and Internal Security Agency, although reform that would shift anti-corruption competences from the Internal Security Agency to the Central Anti-corruption Bureau is planned.

[17] "Comprehensive monitoring report on Poland's preperations for membership," Brussels, 5 November 2003, SEC(2003) 1207 COM(2003) 675 final, p. 17, www.uni-mannheim.de/edz/pdf/sek/2003/sek-2003-1207-en.pdf.

[18] See: Internet service led by CAB: http://antykorupcja.gov.pl.

[19] G. Makowski, "Diffusion of Corruption....," *op. cit.*, pp. 23–24.

[20] These accusations were partly confirmed by the invalidation of the sentence of the first head of the CAB, Mariusz Kamiński, to three years in prison and 10 years prohibition on holding public offices because CAB covert agents improperly provoked the bribe-taking. The proposal was addressed to colleagues of the leader of the Self-Defence party who agreed to take a bribe for

Much controversy surrounded its operational techniques, including charges of provocation of suspects, wiretapping and use of undercover agents. Poland's Constitutional Tribunal questioned the legality of some CAB competences as menacing to privacy and the presumption of innocence.[21] Moreover, from the beginning the appointment of the head of CAB has been seen as political,[22] as the director is directly supervised and can be appointed or dismissed at the discretion of the prime minister.[23] Accusations of political dependence are thus always hard to disprove.

Nevertheless, CAB filled a loophole in the Polish anti-corruption system. Its director cooperates with the chiefs of the other secret services in combating corruption and has the responsibility to coordinate both the operational/detection and informative/analytical procedures led by these agencies for anti-corruption purposes.[24] The head of CAB is also considered to be in charge of implementation of the Government Programme for Fighting Corruption in the period 2014–2019. CAB has been successful in the investigation of high-level corruption cases related to a gambling scandal,[25] detentions and arrests that followed from enquiries into match-fixing and other charges involving the

changing the status of any land farm from agricultural to residential. The so-called Ground Affair from 2007 caused serious political changes, the collapse of the coalition of Law and Justice, Self-Defence and League of Polish Families, and the announcement of early parliamentary elections: www.polityka.pl/tygodnikpolityka/kraj/1614205,1,mariusz-kaminski-byly-szef-cba-skazany-na-wiezienie-bez-zawieszenia.read.

[21] "86/6/A/2009 Wyrok Trybunału Konstytucyjnego z dnia 23 czerwca 2009 Sygn, akt K54/07."

[22] This was the case of the first director of CAB, Mariusz Kamiński, who before then had been a member of the ruling Law and Justice party and was considered by the opposition to do the bidding of then Prime Minister Jarosław Kaczyński.

[23] One of the requirements of the post of the CAB director is "impeccable moral, civic and patriotic attitude."

[24] Art. 29 of the Act on Central Anti-corruption Bureau, Dz. U. 2006 Nr 104 poz. 708.

[25] The "Gambling Affair" began in 2009 with a conversation that was recorded, probably by CAB agents, of a businessman attempting to illegally lobby the leader of the ruling party's (Civic Platform) parliamentary club to block any changes in an amendment to the Act on Games and Mutual Wagering. In reaction to what was reported by media and suggestions by the CAB director about a leak inside the government, the prime minister decided to re-order his five ministries as well as dismiss the CAB director.

Polish Football Association[26] and the so-called Infoaffair, involving government IT contracts.[27] Yet, despite a significant hike in the number of charges presented as a result of CAB investigations (from 387 in 2007 to 2,233 in 2013), the service has not yet achieved maximum capability.[28] This is partially due to its limited funding, which is insufficient to effectively perform all the tasks required of it (for instance, monitoring asset declarations).

Lessons learnt: As the controversies around CAB have faded with time, the agency has proved to be effective in the preservation of public assets. Bearing in mind that it targets corruption involving high-level politicians, strong legal provisions ensuring the independence of its chief and officers are essential to its success. Also, for it to function properly, it requires the security of adequate financial, organisational and personnel capabilities, proportional to the agency's duties.

The Supreme Audit Office

Established in 1919, the Supreme Audit Office (SAO) remained active throughout almost the entire period of the Polish People's Republic, yet with limited independence. Today, SAO is under the supervision of the Sejm (the lower house of the Polish parliament) and it controls and analyses state budget uses.

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[26] Corruption allegations related to the Polish Football Association involved several hundred players, referees, trainers and officials accused of bribery and the arrangement of match results. The first detentions and arrests were made by police in 2004. At a later time, CAB took part in the investigation into the former trainer of the Polish national team and member of parliament Janusz Wójcik.

[27] The CAB director in 2011 reported widespread irregularities in contracts with providers of IT applications for the police and public administration. He even tried to encourage corrupted officials and businessmen to make a voluntary confession through a toll-free phone number that might protect them from criminal responsibility. After that, accusations about enormous levels of bribery were made against businessmen and high-ranking officials, e.g., the vice-head of the Central Office of Statistics.

[28] G. Makowski, "Specific anti-corruption bodies," in: G. Makowski, C. Nowak, A. Wojciechowska-Nowak (eds.), *Implementation of Selected Provisions of the United Nations Convention against Corruption in Poland*, Stefan Batory Foundation, Warsaw, 2015, pp. 48–51, http://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/UNCAC_ang.pdf.

It assesses central and local government agencies in terms of legality, economy, advisability and integrity of public finance spending.[29] Its employees carry out inspections in response to a request from the Sejm, president, prime minister or on its own initiative. The SAO is headed by a president, appointed—on the request of the marshal of the Sejm or 35 deputies—by the Sejm via absolute majority, and with the agreement of the Senate, for a 6-year term, which guarantees the position's political independence. Additionally, the SAO chief has immunity and can be dismissed only under exceptional conditions. SAO vice presidents, the general director and officers supervising and executing inspections also cannot be charged without the assent of the Supreme Audit Office's College (governing board), even after the expiry of the employment agreement.

Combating corruption is one of the priorities of the institution.[30] On one hand, the SAO reports cases of infringement of the law, but on the other hand, it is active in advocacy of best practices, indicating loopholes in law, organisational shortages and state weaknesses in monitoring. In its annual reports submitted to the Sejm, the SAO analyses such areas as heightened corruption vulnerability and formulates recommendations.[31] Since an amendment to the act covering the SAO in 2010, its annual report also assesses the implementation of its previous recommendations. In 2013, 78 legislative proposals were presented by the SAO and seven of them had been implemented by 1 March 2014.[32]

While the SAO performs inspections and conducts monitoring, it does not have its own enforcement authorities. Hence, its effectiveness depends on whether its suggestions are taken into account by the public agencies

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[29] K. Batko-Tołuć, "Najwyższa Izba Kontroli," in: A. Kobylińska, G. Makowski, M. Solon--Lipiński (eds.), *Mechanizmy przeciwdziałania korupcji w Polsce. Raport z monitoringu*, Fundacja Instytut Spraw Publicznych, Warszawa, 2012, www.isp.org.pl/uploads/filemanager/Mechanizmyprzeciwdziaaniakorupcji.PDF.

[30] NIK also provides information via its website about detected corruption cases. See: www.nik.gov.pl/nik-o-korupcji.

[31] "Sprawozdanie z działalności Najwyższej Izby Kontroli w 2013 roku," www.nik.gov.pl/plik/id,6922.pdf.

[32] *Ibidem*, p. 45.

or local governments subject to an SAO audit.[33] If implemented, the tangible benefits of the SAO's recommendations to institutions are savings and profits (approximately PLN 190 million in 2013) and avoiding losses (approximately PLN 42 billion in 2013).[34]

Lessons learnt: The SAO needs to be a fully neutral body able to perform its tasks independently from the government. Only then will it have a powerful enough position to speak freely about threats and the mistakes politicians make. However, its potential can be fully capitalised only provided that the audited public institutions follow up on its recommendations.

Transparency in Public Funding of Political Parties and Election Campaigns

A system of public subsidies for political parties was introduced in 2001. It aims 1) to protect the integrity of the electoral system against parties' dependence on wealthy interest groups, 2) to provide parties, especially opposition ones, with more equal access to funding sources, and 3) to make parties' income and expenditures more transparent under state control. To this end, a catalogue of possible sources of financing was drawn up, comprising public donations and subsidies, membership fees, donations from individuals (only Polish citizens and to the amount specified in the act; donations from corporate entities are forbidden), inheritances and legacies, income from property and bank loans.[35] The introduction of public financing also enabled the state to keep better control over the distribution of funds. For example, part of the subsidy (from 5% to 15%) should be destined for a so-called Expert Fund, which serves to cover the costs of publications, educational activities and analytical works on the political platform and strategy. Another example is the Electoral Fund that parties need to set up for campaign purposes. Yet, the regulation contains a loophole because payments from the Electoral Fund—which is the only legal

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33 K. Batko-Tołuć, *op. cit*., p. 184.

34 "Sprawozdanie z działalności... ," *op. cit*., p. 53.

35 Dz. U. 1997 nr 98 poz. 604 późn. zm.

means for political parties' election committees to finance campaigns—are not allowed to distinguish each individual contribution.

According to the Polish constitution, the financing of political parties should be open to public inspection. Registered political parties are obligated to submit annual financial reports to the National Electoral Committee (NEC) with separate information on campaign costs within the Electoral Fund. Parties receiving subsidies (those receiving at least 3% of the votes in the last Sejm election) are also obligated to present additional information on their disbursement. The reports are then checked by statutory auditors on behalf of NEC.

NEC is considered politically independent thanks to its experienced judges. At the same time, its formal control over political parties focuses on the computed accuracy of their financial declarations without looking into unreported income or expenditures. Monitoring by CSOs has shown many such potential abuses, which are easy to hide in financial reports submitted a few months later than the transaction.[36] It is, in fact CAB that is charged with looking into election-related crimes (buying and selling votes) and those related to political party financing.[37] But taking into account such crimes detected in election years in comparison to the detection rates of other corruption types, the number is not very impressive.[38] The problem is that CAB officers as well as the police suffer from a lack of specific legal knowledge and experience, which the NEC possesses. Therefore, GRECO

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36 Some of the evidence cited in the Stefan Batory Foundation's conclusions are from the following elections monitoring reports: "Wybory prezydenckie 2005. Monitoring finansów wyborczych" (http://prezydent2005.monitoringwyborow.pl/files/monitoring-finansow-wyborczych-2005.pdf), final reports from 2006 local election campaign (http://samorzad2006.monitoringwyborow.pl/raporty-koncowe.html), "Wybory do Parlamentu Europejskiego 2009. Monitoring finansów wyborczych" (http://www.batory.org.pl/doc/Raport_finansowanie_kampanii_do_PE_2009_20100304.pdf). At this moment, the Institute of Public Affairs is also conducting its own monitoring report on the financing for the last campaign before the 2014 local government elections which will be available on okonakorupcje.pl.

37 "Act on the Central Anti-Corruption Bureau, paragraphs 2.1.1a and 2.1.1c."

38 There were 121 cases detected in 2010 (116 by police, one by CAB, and four by prosecutors); 144 cases were detected in 2011 (122 by police, 11 by CAB, 11 by prosecutors). See: "Mapa korupcji. Stan korupcji w Polsce w 2010 r.,"Warsaw, 2011, p. 22, http://CAB.gov.pl/ftp/publikacje/Mapa_korupcji2010.pdf; "Mapa korupcji. Stan przestępczości korupcyjnej w Polsce w 2011 r.," Warsaw, 2012, p. 28, www.CAB.gov.pl/ftp/mp3/Mapa_Korupcji.pdf.

recommended to Poland to grant NEC investigative power in this area for more effective supervision of campaigns.[39]

When it comes to penalties, if a political party obtained funds from an illegal source or accumulated funds outside of its official bank accounts, its financial report will be rejected. As a result, they will be prohibited from receiving public subsidies for the next three years.[40] Political parties that do not submit their annual reports on time are punished by the worst legal sanction, deletion from the political parties register.[41]

The downside of state budget financing of political parties is that it makes them addicted to public resources.[42] The result of this is that new political formations run in an uneven contest in which they have to compete with subsidised parties. Still, the success of the Palikot Movement in the 2011 parliamentary election proved the possibility to join the "big four" major parties, at least for a while.[43] The system is also constantly exposed to attacks by demagogic politicians and a significant number of voters who argue they are opposed to covering political parties with their taxes.

Lessons learnt: The keys to transparency in political party financing are the elimination of uncontrolled financing by businesses, a professional and politically independent institution to verify parties' incomes and expenditures, precise reporting by political parties about their financing, and adequate penalties. It is

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39 "Third Evaluation Round: Addendum to the Second Compliance Report on Poland," Greco RC-III (2010) 7E, Strasbourg, 6–10 October 2014, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282014%2916_ADD_Poland_EN.pdf.

40 A case in point was when, in 2013, the Polish Peasant Party was threatened with such a penalty, but its politicians lodged an appeal against the decision by the NEC, and the Supreme Court determined their had merit.

41 A. Kobylińska, M. Waszak, "Partie polityczne," in: A. Kobylińska, G. Makowski, M. Solon-Lipiński (eds.), *op. cit.*, www.isp.org.pl/uploads/filemanager/Mechanizmyprzeciwdziaaniakorupcji.PDF.

42 The parties' overall income, sometimes even more than 80% of it, consists of public subsidies. See: reports on the financial sources of political parties for 2014, http://pkw.gov.pl/sprawozdania-finansowe-partii-politycznych-za-rok-2014.

43 M. Gałązka, M. Waszak, "From Alternative Politics to the Mainstream: The Case of the Palikot's Movement," in: G. Mesežnikov, O. Gyárfášová, Z. Bútorová (eds.), *Alternative Politics? The Rise of New Political Parties in Central Europe*, Bratislava, 2013.

also important to establish a mechanism of effective and instant alarms about irregularities during an election campaign itself.

Mandatory Asset Disclosure by Public Officials

Regulations on asset disclosure are still imperfect in Poland, first of all because they are chaotic and spread across many legal acts. Yet, asset disclosure's impact is highly significant on the improvement of transparency in public life. It is also among the anti-corruption measures that are most appropriate to deal with high-level corruption.

The estimated number of public officials required to file personal financial information in Poland is 600,000 every year, including both high-ranking officials in key central institutions[44] and local authorities. Declarations are also compulsory for the public administration corps, as well as state agencies, banks and enterprises management, judges, prosecutors, and officers of the secret services. Officials in their declarations must show all property (including property belonging to spouses), financial assets, real estate, stocks and shares, and any assets acquired from the state through a tender.

Asset declarations by local government officials started to be made public in 2003. They are published in the *Public Information Bulletin*, in contrast to declarations submitted by the president, prime minister, ministers, vice-ministers, judges and prosecutors.[45] Their annual tax return, submitted simultaneously, is kept secret. Although the declarations by the prime minister and ministers are not forced to be made public by law, almost all ministers agree to publish them online.[46]

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44 C. Demmke *et al.*, "Regulating Conflicts of Interest for Holders of Public Office in the European Union: A Comparative Study of the Rules and Standards," p. 71, http://ec.europa.eu/dgs/policy_advisers/publications/docs/hpo_professional_ethics_en.pdf.

45 E. Ivanova, J. Kapiszewski, "Uwaga, absurd. Najważniejsze osoby w państwie nie muszą ujawniać oświadczeń majątkowych. Wywiad z Grażyną Kopińską," *Dziennik Gazeta Prawna*, 27 November 2013, http://prawo.gazetaprawna.pl/artykuly/748603,najwazniejsze-osoby-w-panstwie-nie-musza-ujawniac-oswiadczen-majatkowych.html.

46 They are available here: http://bip.kprm.gov.pl/kpr/oswiadczenia-o-stanie-m.

MPs and MEPs also tend to put their asset declarations online.[47] Generally, the Act on the Execution of Duties of Deputies and Senators, passed in 1996 and which obligates MPs to file income and asset declarations, is considered to be a well-designed law.[48] MPs must file their financial disclosures to the marshal of the Sejm or Senate before the day they take their oath as an elected deputy or senator, then by 30 April on an annual basis along with a copy of their annual tax return (PIT, which remains unpublished), and within a month from the day of an announcement of the next parliamentary election. Their asset declarations are available to view for six years. Analysis of data provided by MPs is conducted by a parliamentary commission or public revenue offices. In order to confirm their accuracy, relevant bodies are able to compare the disclosure to previous declarations and copies of the declarer's annual tax return.

Moreover, assets obtained by parliamentarians or their spouses that exceed 50% of the minimum salary in Poland should be noted in the Register of Benefits within 30 days. This register, published systematically on the Sejm and Senate websites, is also used to disclose either paid or volunteer MP participation in statutory bodies of foundations, commercial companies or cooperatives.[49] The same register is maintained by NEC for members of the government, secretaries and vice-secretaries of state, heads of central offices, voivodes, and members of the executive bodies of all three levels of local government.[50] However, when officials fail to provide the required information, there usually are no real consequences in fact, unless media or other observers raise the alarm.[51]

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[47] They are available on the following websites: www.senat.gov.pl/sklad/senatorowie and http://sejm.gov.pl/Sejm7.nsf/poslowie.xsp?type=A.

[48] "Comprehensive monitoring report...," *op. cit*.

[49] See more: I. Krześnicki, "Rejestr korzyści, czyli brak konkretnych definicji i sankcji," www.samorzad.lex.pl/czytaj/-/artykul/rejestr-korzysci-czyli-brak-konkretnych-definicji-i-sankcji.

[50] Available at: http://pkw.gov.pl/rejestr-korzysci-lista.

[51] That was the case of former Minister for Transport Sławomir Nowak, who omitted a valuable watch and a leased car in his financial declaration, which met with a reaction by a deputy from the opposition and an investigation led by CAB in 2013, http://natemat.pl/62261,sledztwo-w-sprawie-oswiadczenia-majatkowego-ministra-slawomira-nowaka.

GRECO has called attention to the risk of concealing real property by transferring it to parents, children or other family members not covered by the regulations. Hence, it suggests widening the scope of the asset declarations by parliamentarians, judges and prosecutors to include unpublished information on the assets of spouses, dependent family members and other close relatives. However, this proposal poses a threat to the right to privacy.[52]

As for penalties, the case of local authorities is quite representative. If members of local or regional councils do not submit declarations in due time, their mandate ends. In the case of members of a board or officials in management positions, a delay in filing a submission results in a loss of salary until the declaration is filed. In addition, any person intentionally providing false information in the asset declaration can be imprisoned for up to three years under Art. 233(1) of the Polish Penal Code.

Control over financial disclosures belongs to CAB. The agency verifies on a random basis 500–600 declarations every year.[53] However, the integrity of the mechanism remains doubtful as long as, for instance, the prime minister's asset declaration is verified by CAB, a service officially under the head of government.

Another shortcoming of the system is that its regulations are scattered across many different legal acts. This makes the mechanisms difficult to understand.[54] In 2014, work that began on a new act[55] aimed at the unification of all asset disclosures met resistance on grounds that it proposed to double number of required filers and would have made public almost all of the declarations

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52 "Corruption prevention in respect of MPs, judges and prosecutors resources," GRECO, Fourth evaluation round. Compliance report, https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/RC%20IV/GrecoRC4%282014%291_Poland_EN.pdf.

53 G. Makowski, *Specific anti-corruption*, *op. cit.*, p. 49.

54 E. Ivanova, J. Kapiszewski, *op. cit.*

55 Information about the act on asset declarations of persons holding public functions, together with remarks raised in public consultation, is available here: http://legislacja.rcl.gov.pl/lista/2/projekt/230491/katalog/230495.

(excluding those submitted by secret service officers).[56] Such a high number of submitted disclosures would need an implementing agency with adequate resources.[57] However, of the proposed changes, clarification of the required information, standardisation of forms, terms and punishments and electronic files (instead of scanned, often illegible copies) are in accordance with the expectations of CSOs.[58] Moreover, the availability of almost all of the declarations online in the *Public Information Bulletin* could seriously increase the number of irregularities detected by CAB with the help of citizens.

Lessons learnt: The system of asset declarations works better when it is aimed at positions with the most public risk, such as high-level officials who are directly responsible for public funds and can easily have a conflict of interest. Moreover, the public availability of all declarations, as well as the use of common electronic forms, clear requirements and penalties applied to all filers enhance public control over those who hold public functions. Finally, a legible framework for declaration submissions encourages officials to treat this obligation more seriously.

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56 M. Wójcik, "Oświadczenia majątkowe dla wszystkich, czyli… 800 tysięcy urzędników, notariuszy, sędziów podejrzanych o korupcję," http://wartowiedziec.org/index.php/start/felietony/22104-owiadczenia-majtkowe-dla-wszystkich-czyli800-tysicy-urzdnikow-sdziow-notariuszy-radcow-pra.

57 R. Burdescu *et al.*, *Income and Asset Disclosure Systems: Establishing Good Governance through Accountability*, p. 2, https://openknowledge.worldbank.org/bitstream/handle/10986/10175/549600BRI00EP1700Box349432B01PUBLIC1.pdf?sequence=1.

58 E. Ivanova, J. Kapiszewski, *op. cit.*

Alena Krempaská, Peter Weisenbacher

SLOVAKIA

The Development of Anti-corruption Mechanisms

The 1990s were marked by the authoritative style of governance by then Prime Minister Vladimír Mečiar and little was done to alleviate corruption, an intrinsic part of the system. Wide reforms were launched only after the election of a pro-European government in 1998. The first wave of reforms were initiated in 1999: a Freedom of Information Act was enacted and the first comprehensive National Programme for the Fight against Corruption was adopted in 2000.

As a result of continued criticism in the EC's comprehensive monitoring report on Slovakia,[1] the Act on Conflict of Interest, the Act on Public Procurement, and the Act on Budget Rules were enacted, and amendments made to the Act on Financing of Political Parties. Moreover, a code of ethics for judges and civil servants was created, and the position of ombudsman and the Office for Public Procurement were established. In developing the necessary frameworks for the administration of pre-accession aid and future EU funds, important reforms were

[1] "Comprehensive monitoring report on Slovakia's preparations for membership," European Commission, Brussels, 2002, 2003, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003DC0675 and http://aei.pitt.edu/44612/1/Slovavia_SEC_%282003%29_1209.pdf.

undertaken and the Central Finance and Contracting Unit was established. Yet, the process of structural redesign and implementation of the EU recommendations has been formal and the control of funds too vague, as a corruption scandal in 2001 demonstrated.[2] In 2003, the Special Criminal Court (SCC) was established as an authority with exclusive competence over corruption cases. Further reforms took place in 2010–2011, such as requiring courts to publish all their decisions online and the establishment of the Central Register of Contracts,[3] where all public contracts have to be published online. A follow-up "Strategic Plan for Fighting Corruption" was adopted in 2011.[4]

Despite these achievements, the overall progress in anti-corruption in Slovakia cannot be deemed linear: along with some achievements, drawbacks took place as well. For instance, the 2014 amendment to the constitution guarantees too strong of prerogatives for the Judicial Council (responsible for administration of judicial affairs) against individual judges.[5] The obsolete organisational structure of the General Prosecutor's Office is another weakness,[6] as the Prosecutor General can distribute and withdraw cases at his or her complete discretion. The control

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[2] Ronald Tóth, the head of the Department of Foreign Assistance of the Office of Government, responsible for EU funds management, was accused of directing assistance towards pre-selected companies, or companies in which he had a stake. The case has been investigated by national agencies as well as OLAF, and eventually Tóth was dismissed. More importantly, following the scandal, an important reform of the Act on Civil Service was undertaken.

[3] Central Register of Contracts, https://www.crz.gov.sk.

[4] "Strategic plan of fighting corruption in the Slovak Republic," Ministry of Interior, Bratislava, 2010, www.bojprotikorupcii.vlada.gov.sk/data/files/2240_8518.pdf.

[5] E. Kovachechova, "The amendment to the Constitution is worse than it seemed," Via iuris association, Bratislava, 2014, www.viaiuris.sk/aktualne/481-via-iuris-schvalena-novela-.html.

[6] Illustrative of the weakness of the prosecution was the tackling of a corruption scandal that erupted in 2011 with the leakage of the so-called Gorilla file. This file—the authenticity of which was implicitly confirmed by several relevant parties—contained transcripts of wiretapping by the Slovak intelligence Service. They were made in a flat where politicians discussed corrupt dealings with businessmen, mainly related to privatisation during the second Dzurinda government (2002–2006). As a result of the unprecented public outcry and mass protests that followed, in 2012 a special team of investigators was appointed by the Ministry of Interior, and parliament voted swiftly and unanimously to lift the immunity of its deputies from criminal prosecution (only judges remain immune from prosecution). Nevertheless, no charges were raised against any individuals involved in the affair as of today, adding to the mistrust of the General Prosecutor's Office.

system on political party financing is weak, ineffective and outdated. The use of EU funds and problems in public procurement are also areas of great concern, both for local watchdogs and international observers: the bidding process is often designed for a predetermined supplier, with tailor-made specifications that cannot be met by other contenders. Further matters of concern signalled in the latest (fourth) round of the GRECO evaluation[7] are the lack of regulations on lobbying and the weakness of legislation on asset disclosure by public officials. According to TI, "the most striking characteristics of the Slovak National Integrity System is the difference in scores between legal frameworks and their implementation."[8]

BEST PRACTICES

The Special Criminal Court

In 2003, the Act on a Special Court (458/2003) was passed, and then entered into force in 2004. The court had competence over criminal cases in three broad categories: a) corruption, organised crime, terrorism, and international crimes, b) economic crimes, and c) crimes by state officials.[9] The main reason for its establishment was the need to create a special jurisdiction over organised crime and crimes committed by officials.

Given its broad range of competences and high level of independence, the court was subject to fierce criticism ever since it began operation, presumably not without political motivation. For instance, a group of MPs questioned the

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[7] "Group of states against corruption: Fourth Evaluation Round, Evaluation Report Slovak Republic," Council of Europe, Strasbourg, 2013, www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282013%292_Slovakia_EN.pdf.

[8] "Corruption Risks in Visegrad Countries," TI Hungary, Budapest, 2012, www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf.

[9] "The scope of the Court," Special Criminal Court, Bratislava, 2009, www.specialnysud.sk.

constitutionality of the court's existence. Indeed, in 2009 the Constitutional Court decided the Special Court was unconstitutional in a ruling against the obligatory security clearance required of Special Court judges and against the disproportionately high salaries. The Special Court was then replaced by the Special Criminal Court in Act 291/2009. The elements addressed by the Constitutional Court were resolved and the Special Criminal Court has continued the previous work of the Special Court.

As of today, the Slovak judicial hierarchy is composed of local courts, regional courts, the SCC and the Supreme Court. Rulings in the SCC are a single instance and appeals advance directly to the Supreme Court. There are 13 judges working in the SCC and the chair is chosen through a selection process. An independent five-member committee is established to preside over the process, with two members from the SCC, one member from the Judiciary Council and two members from the Ministry of Justice.

According to TI's National Integrity System, review of nominations and selection of judges is generally apolitical and transparent, and their independence guaranteed and real. The budget of the court is sufficient and its proceedings are deemed more effective than those of general courts.[10] In its existence, the SCC has ruled on a number of important cases, i.e., the bankruptcies of non-bank entities that resulted in losses to individual clients, cases of organised crime, and rulings against state officials. To date, it has issued 479 decisions.[11]

Lessons learnt: The establishment of a specialised jurisdiction is a contentious matter. On one hand, it is not a systemic solution—it does not aim at eradicating the core problems of the judiciary, it merely establishes a separate unit for a narrow set of crimes. On the other hand, the Slovak experience shows that such a structure can prove more effective in prosecuting crimes of state officials. It can also issue independent verdicts and remain more immune than others against political or economic pressures, mainly due to the transparent selection process

[10] "National Integrity Study, 2012: Specialized Criminal Court," TI Slovakia, www.transparency.sk.

[11] "Specialized Criminal Court," TI Slovakia, Bratislava, 2015, www.otvorenesudy.sk/courts/64#!/decrees.

of the judges, their personal integrity and the high level of public attention paid to the court.

CSOs and Open-data Methods of Governance

The Freedom of Information Act (FOIA) has been an instrumental piece of legislation in helping civil society engage on better control over governance. Under the act, an individual or legal person can direct an inquiry into a particular matter—such as some public expenditure—to any public authority. In an amendment to the FOIA, the Central Register of Contracts was established, which publishes all the information on all the existing public contracts. This gives an unprecedented possibility for non-state actors to inquire on matters of public governance. FOIA is used by investigative journalists in exposing over-priced contracts and by CSOs, which are active both in raising public awareness and in promoting more transparency in governance.

As a result, new open-data methods of transparent governance are mushrooming, granting public access to information on public expenditures. These methods were promoted and advocated for by a number of CSOs, which also created search and data exploratory tools to simplify access to the published information. One successful example is the Fair-Play Alliance and TI Slovakia data mining website called "Open contracts,"[12] where a person can search the Central Register for any contract by a particular public authority, specific client or individual contractor. A visitor to the website can also comment on a given contract and provide pieces of information that can be of public interest, for instance, related to the prices specified in the contract. As the database of contracts is enormous, the individuals visiting the website have tools to launch a discussion on a certain matter with the aim of drawing public attention to a flawed or over-priced contract. Such issues can then be further picked-up by a CSO to direct an inquiry to the responsible authority.

[12] For more, see: www.otvorenezmluvy.sk.

The "Datanest" registry created by the Fair-play Alliance is another prominent example of improved access to information. The website collects data on the flow of public expenditures, such as a chronology of the disbursement of EU funds, public grants, information on privatisation deals and finances of political parties.[13] Apart from public expenditures, draft legislation is also published online, providing an opportunity for comments on existing drafts.[14] For instance, the website "Open courts" eases searching court decisions.[15] Additional research into methods to collect and aggregate data is ongoing, and new methods are being tested, such as online tools for data gathering.[16]

Endeavours such as the ones above benefit from grants from private foundations (such as the Open Society Foundation) and from public institutions. Among the latter, for example, are a number of CSO projects financed from the Ministry of Foreign Affairs under the grant scheme "Support and protection of human rights," via particular EU funds such as the Directorate General Justice programme or Active Citizenship programme, from the International Visegrad Fund, or the European Economic Area and Norway Grants—a joint consortium of Liechtenstein, Norway and Iceland.

Lessons learnt: Civil society plays a crucial role in eradicating corruption. Even when sound legislation is in place, there is a need for active control of the execution of related policies. Open-data methods and websites such as "Open contracts" facilitate access to the public to large amounts of data, and are a useful source for individuals, investigative journalists and independent watchdogs active in the field of anti-corruption. The sustainability of these non-state actors should also be backed by sufficient funding, including from public sources, either through a government office or through specific grant schemes of other authorities with strict rules for independent grant commissions in place.

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13 For more, see: http://datanest.fair-play.sk/pages/index.

14 For more, see: https://lt.justice.gov.sk/Default.aspx?AspxAutoDetectCookieSupport=1.

15 For more, see: http://otvorenesudy.sk.

16 For more, see: http://opendata.sk/liferay/open-data-node.

Transparency of Local Governance

In the gradual process of decentralisation, local governments, namely municipalities, have been granted increased budgets to ensure efficient operations under the subsidiarity principle. The aggregated budget of local and regional governments amounted to €1 billion in 2014.[17] The local governments were generally plagued by difficult access to information and low level of control over budget execution.

In response to this challenge, in 2010 TI Slovakia launched a pilot project called "Open governance"[18] in which it scrutinised the level of transparency and anti-corruption mechanisms of 100 municipalities. The project established a chart of municipalities evaluated on their openness towards citizens. In the rating process, the municipalities were asked to answer a set of questions. The ranking of each municipality is benchmarked against three criteria: 1) the level of information published on their website, 2) their responses to FOIA requests, and 3) the extent of anti-corruption mechanisms adopted within the internal workings of the municipality.

The chart triggered public debate and attracted attention to how municipalities operate. It also provided an incentive for local authorities to improve their anti-corruption mechanisms, and thus their rankings in the chart. Since 2010, the 100 biggest municipalities have been evaluated. The population of these municipalities comprises approximately 2.6 million inhabitants, which amounts to half of the population of the country, even though there are 2,934 municipalities in total. As of 2014, 41 municipalities out of the 100 surveyed publish audio recordings of municipal council sessions on their websites, and 22 have adopted a code of ethics for their employees. Both of these figures have tripled since 2010.[19]

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[17] "Zakon o statnom rozpocte na 2014," National Council of Slovak Republic, Bratislava, 2014, www.finance.gov.sk/Default.aspx?CatID=9522.

[18] For more, see: http://mesta2014.transparency.sk/sk/sets/mesta-2014.

[19] *Ibidem*.

TI Slovakia offers package programmes to municipalities that consist of an audit of their transparency mechanisms, identification of shortcomings and loopholes, and a design of an anti-corruption strategy in cooperation with local officials.[20] The first city to join the programme was Martin with 60,000 inhabitants. The TI experts made recommendations in 17 areas, including staffing, public procurements and public participation. These were compared to the existing policies and rules and gaps were identified and new regulations proposed for Martin. The city has consequently implemented the proposed mechanisms. For instance, the introduction of an electronic auction for public procurements has saved the city 28% of anticipated costs in the first six months. The mayor concludes that the project has increased the interest of investors, who value the decrease in collusive practices.[21] In 2011, the city of Martin was awarded the prestigious UN Public Service Award for Preventing and Combating Corruption in Public Service.

In the framework of the TI project, further successful pilot strategies have been completed in other regional municipalities. Among them are Žiar nad Hronom,[22] for which an audit has been conducted, the city of Prievidza[23] and the municipalities of Bratislava-Ružinov and Banská Bystrica,[24] for which lists of recommendations have been drawn up. These successes give grounds for the possible adoption of this approach on a larger scale.

Lessons learnt: Civil society activities and public control can also be effective in promoting transparency on the local level. As municipalities are traditionally not under the spotlight of public control, they are more open to improvements

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[20] "Offer for an anti-corruption strategy for city councils," TI Slovakia, 2010, www.transparency.sk/ponuka-protikorupcnej-strategie-tis-pre-mesta.

[21] "Impacts," Martin City Council, Martin, 2010, www.transparenttown.eu/?s=impacts.

[22] For more, see: www.transparency.sk/audit-transparentnosti-procesu-riadenia-samospravy-mesta-ziar-nad-hronom.

[23] For more, see: www.transparency.sk/audit-a-priprava-vybranych-protikorupcnych-opatreni-v-meste-rievidza.

[24] For more, see: www.transparency.sk/budovanie-sieti-pre-zvysenie-kapacit-na-posilnenie-udrzatelnosti-transparentnych-miestnych-samosprav-na-slovensku-a-v-madarsku/#audity.

once public attention is directed towards their activities. The TI Slovakia project proves that municipalities are often keen on incorporating mechanisms allowing for more transparency but lack the know-how or administrative resources to enhance them. In cooperation with CSOs, the municipalities can be motivated to improve their anti-corruption mechanisms.

CONCLUSIONS AND MAJOR LESSONS

Looking at the cases of Moldova and Ukraine, despite the different dynamics of reforms in each, the map of current challenges is largely similar in the two countries: lack of independence of the judiciary and public prosecution, political influence over mass media, lack of transparency in public administration at both the central and local levels, non-transparent political party and electoral campaign financing, and, last but not least, high public tolerance for corruption. Indeed, Moldova is a few steps ahead in terms of legislation (relevant laws adopted on party financing, professional integrity testing, etc.) and institutional solutions (the establishment of NAC, NIC, CNP). Comprehensive reforms of the public administration and judiciary have been launched.

Yet, many of these measures taken mostly as a result of EU conditionality during the association negotiations have turned out to be half-hearted. For instance, anti-corruption institutions were created and reformed, but with such low funding and vaguely defined competences that their effectiveness leaves much to be desired. To this add a significant level of institutional fragmentation, which generates competition, rather than cooperation. Unfortunately, a similar trend can be observed in Ukraine, not only in reforms undertaken in the Yanukovych era but also in the recent post-Euromaidan reform wave during which many of the measures have been designed and undertaken in a hasty and uncoordinated manner, without extensive public consultation.

The country-by-country analysis of the V4 clearly shows that the four countries not only had very similar starting points in 1990 but also that the course of developments that followed had many commonalities. In the first decade of transition, none of the four states had a conducive environment for anti-corruption policy: with a lack of checks and balances, the privatisation of publicly-owned property was both a big temptation and a serious counter-motivation for the old-new political elite. Generally, the V4 governments were not mobilised for reforms before the obtainment of a clear EU membership perspective at the end of the millennium.

The EU's influence on the V4 states' approaches to fighting corruption was strongest during the pre-accession period thanks to conditionality, when continuous monitoring, and yearly country reports by the EC certainly contributed to the development of anti-corruption legislation. Brussels, though, has had significantly fewer instruments to boost anti-corruption policy in the Member States after accession, aside from the recently launched biannual Anti-corruption Reports.

The extent to which EU conditionality has effectively contributed to the development of anti-corruption can be assessed differently in each of the V4 states. In many cases, the legislation and strategies drawn up in response to EU expectations often had a façade-like character in the lack of proper implementation. Yet, significant, direct impacts of Europeanisation are also traceable, for instance, reform of public administration and public procurement (even if with varying success in the particular countries) in the bid to meet EU conditions for administration of pre-accession aid and future EU funds.

Overall, the experience of the four countries highlights telling common **trends in which EU conditionality can effectively drive reforms** and which are issues on which its impact has mostly been limited (usually by a lack of political will among the governments):

1. Areas of success:

- **Free access to information** seems to be an issue that was dealt with first among the reform measures in all the V4 countries. With more access to information, **competent and creative CSOs** could play a crucial role in complementing the role of institutions in safeguarding the rule of law (although it is clear that their activities cannot replace the state and its political will in fighting corruption on a large scale) and also in raising public awareness and reducing public tolerance of corruption. The sustainability of these non-state actors needs be backed by sufficient funding, including from public sources. As the Slovakian experience demonstrates, civil society activities and public control can be effective not only in support for reforms and improving governance standards at the national level, but also in promoting transparency in local governance (often neglected, even when central governance is functioning well).
- EU conditionality also facilitated tangible results in terms of **anti-corruption institution-building** by providing financial and expert support for their establishment, as well as clear conditions for them. As examples worth attention, identified here were the supreme auditing institutions in Poland and Hungary, as well as the Central Anti-corruption Bureau in Poland. Together, they show the importance of adequate financial and human resources and the need to keep the appointment, control and dismissal procedures for the chief of the body independent from political pressure.

2. Areas with limited success:

- As all four of the country analyses demonstrated, **depoliticising and modernising the civil service** is an essential first step in modernising a country. Still, the V4 shows a varying track record in this respect: while Poland took crucial steps in the early 1990s, the Czech Republic, on the other extreme, failed to adopt a Civil Service Act until 2014. This is

a cautionary tale on how the homework left unfinished before accession is even more difficult to push through after it. Overall, the Visegrad experience also shows that because reform of the state administration is popular with neither the public nor the political class (which is interested in maintaining its grip on the civil service), it can only be achieved through constant pressure by a coalition of CSOs, international actors and external donors.

- Even where civil service was well-reformed, challenges—to a varying degree—remain in all the V4 states on the level of **local government and public administration** in the form of clientelism, favouritism and nepotism. A valuable example of how an actively engaged civil society can be a remedy to this problem is the case study from Slovakia: through innovative and successful projects, CSOs can effectively push local authorities to increase their standards of transparency.

3. Areas with scant success:

- A common challenge for the entire V4 remains the **independence of the judiciary and public prosecution.** As the Czech case demonstrates, without first a strong lobby of mixed stakeholders (CSOs, cross-partisan political actors), it is hard to establish any public debate on such contentious reforms, and secondly, and more importantly, to make politicians consider these issues relevant.
- Another contested issue in the whole region is **transparency in party and electoral campaign expenditures**. In terms of legislation and general practice, Poland seems to be a few steps ahead (in Slovakia the legislation is outdated; in the Czech Republic and Hungary, it is not complex enough, even though in the latter it was just adopted in 2014). The Polish case demonstrates the importance of party financing from the state budget as an anti-corruption and transparency mechanism, as well as for efficient mechanisms of controlling their spending. Yet, it

also shows that legislation is not enough; there is also the need to set up an independent body to investigate and scrutinise party financing and ensure that sanctions are applied for violations of the law.

- Among the missing legislative measures in the V4 states remains **protection of whistleblowers**, regulated thus far only in Hungary (although CSOs argue it has significant shortcomings). It is, however, also clear that legislation alone is not enough and an official enforcement mechanism should be set up. Also, as long as integrity standards in state institutions are weak, they can hardly be relied on to deal with whistleblowing internally. Therefore, in such cases, independent institutions might be able to provide stronger guarantees of protection for whistleblowers.
- Another issue that none of the four countries has solved yet is **regulation of lobbying** (only Poland has such regulations, but there, too, the law is in need of amendment).

These trends comprise a relevant prognosis for the reform paths of Moldova and Ukraine as they are likely to encounter the same difficulties. Actually, parallels can already be identified in that both have already achieved a civil society relatively impactful in safeguarding the rule of law and have made significant progress in institution-building, whereas judicial reform appears to be a major challenge. The experience of the V4 also warns that if some of the essential reforms (of public administration and the justice system) will be carried out half-heartedly, the consequences will be in the long term.

Generally, all six of the country chapters reach the conclusion that the simple adoption of internationally sound legislation is not enough to enhance the fight against corruption. The prospective implementation of anti-corruption measures should receive more attention during the reform process and sufficient institutional and financial support needs to be allocated for it. Interestingly, the analysis on the EU's support of Moldova and Ukraine shows that the EU has not learnt its lessons from past enlargement rounds and commits the same

mistakes in applying conditionality to its association partner states in the east that facilitate policy-making, but not implementation. Also, both the V4 and EaP experience confirms that while the EU's financial assistance itself is the single most important stimulus for reforms, it could be by far better exploited if it was less fragmented and if the control was undertaken more vigorously.

RECOMMENDATIONS

Recommendations for Moldova:

- **Increase the accountability of the government**: Enforce clear and impartial proceedings for parliament and prime minister. Introduce sanctioning mechanisms for violations of the law regarding transparency in decision-making processes. Introduce clear regulations on special circumstances when the prime minister is entitled to decide to hold close government meetings.
- **Enhance the role of parliament in anti-corruption**: Parliament must refrain from interfering in the activity of other branches of state government and must commit to adopt laws on anti-corruption envisioned by the Strategy for Judiciary System Reform and the Anti-corruption Strategy. Increase the transparency of parliament's decision-making process and degree of accountability for its members. Strengthen the role and capacity of parliament in controlling the efficient use of public money. Remove the immunity of MPs from criminal liability, or at least immunity from prosecution on grounds of corruption. The experience of the Czech Republic with the difficulties of excluding members of parliament from criminal prosecution is a cautionary tale worth studying.

- **Ensure the full independence, adequate competences and credibility of anti-corruption institutions**: Reduce the institutional fragmentation and clarify the working arrangements between NAC and NIC, while considering a potential merger of the two institutions. Adopt legal amendments to consolidate the operational capacity of NIC, clarifying the roles of the commission's members and vesting NIC with sanctioning powers. Update the Penal Code so sanctions for conflict of interest and other irregularities uncovered by NIC gain a deterrent effect. Ensure sufficient funding for both NAC and NIC that enables them to perform their full range of duties. Increase the credibility of the anti-corruption bodies by making them take a positive attitude towards cases reported by citizens, motivate and protect whistleblowers, and, most importantly, bring cases to finality (thus persuading citizens that their calls to the NAC hotline are not useless).
- **Develop sector-based strategies and action plans for preventing and combating corruption**, with the active involvement of CSOs and local public authorities. Provide strategies with realistic budget planning and evaluation. Bearing in mind the limited resources and expertise on anti-corruption of public administration at the local level, the experience of Slovakian CSOs in offering technical support to municipalities is a good practice worth replicating.
- **Capitalise better on eGovernment platforms and infrastructure**: Enforce the use of these newly created instruments by line ministries. Extend the existing structures to include local governments. Devise and implement any public sector reform in accordance with the eTransformation agenda.
- **Increase the professionalism and independence of the judiciary:** Support oversight of the judicial system by the Superior Council of Magistrates and civil society. For this, make the council more accountable via increased pressure by NAC. Make compulsory the use of court rooms for all case hearings and require audio recording of court proceedings.

Ensure uniform judicial practices at Supreme Court of Justice. Both the Supreme Council of the Magistracy and the Supreme Council for Prosecutors should undertake concrete actions against inappropriate behaviour of judges and prosecutors by applying appropriate disciplinary sanctions. The members of both the Supreme Council of the Magistracy and the Supreme Council for Prosecutors should be established in a transparent, accountable and balanced manner. Examine the Law on the Disciplinary Liability of Judges and examine and pass the Code of Administrative Procedure.

- **Implement the much-postponed reform of the public prosecution service**: Reduce the number of prosecutors, improve appointment and dismissal procedures, disciplinary measures, and carry out demilitarisation. Increase the level of efficiency of corruption investigations by establishing relevant performance indicators for the prosecuting bodies. Revise the appointment procedure of the Prosecutor General (one of the suggestions supported by TI Moldova is to have the Prosecutor General appointed by the head of state at the proposal of the Superior Council of Prosecutors).
- **Pass the reform on the mechanism of asset declarations and conflict of interests of high officials and public servants**: Asset declarations should be made using standard forms and they should be allowed to be filed electronically. Introduce civil seizure of unjustified assets and property of high officials and public servants. Ensure that all relevant draft laws (on reform of NIC, on the declaration of wealth and personal interests) are consistent with each other and elaborate financial planning for their implementation. The Polish system of asset declaration offers valuable lessons in this respect.
- **Further increase the role and competence of civil society**: Improve the working standards of CSOs by encouraging them to develop quality-control mechanisms, and enhance their accounting and reporting. Improve the capacity of CSOs so they can have active involvement in making, implementing and evaluating anti-corruption policy. Increase

the level of responsibility of CSOs, especially of those that have expressed their desire to be part of the parliament's Council of Experts or NCP. For this, raise the accountability of board members of CSOs and continuously engage them in exercising their competences. Organise training by specialised CSOs on anti-corruption subjects for other civil society organisations. Establish partnerships of CSOs with mass media actors for sustainable projects on measures that can be taken to counter corruption.

- **Increase public intolerance for corruption and protect whistleblowers**: Improve civic education on the long-term effects of corruption, for instance, by the introduction of courses in high schools. Adopt a law and implement appropriate mechanisms for the protection of whistleblowers. As the Hungarian case shows, establishing legal guarantees for the protection of a whistleblower is of key importance; as long as integrity standards in state institutions are weak, an independent institution should provide guarantees for whistleblowers.
- **Strengthen the role of mass media in investigating and publicly denouncing cases of corruption**: Modify the legal framework in order to decrease the concentration of media ownership and ensure transparency of mass-media owners. Enable mass media to engage lawyers to consult journalists when reflecting on subjects of public interest. Ensure a solid partnership between mass media institutions and public institutions in developing programmes for public information and education on anti-corruption attitudes and measures.
- **Make the existing external financial assistance more effective**: Ensure that information on projects financed by external donors are available in a systemic and transparent manner with detailed information on the objectives, criteria for evaluation and decision-making process. Donors should pay more attention to the challenges affecting CSOs and encourage initiatives on the enhancement of transparency of their activities.

Recommendations for Ukraine:

- **Establish without delay the NAPC and NAB and ensure that they will be able to exercise their powers**: Provide these institutions with adequate resources. International donors should make reserving funds for them in the national budget a prerequisite for further disbursement of loans and development assistance. Minimise political influence during recruiting the management of NAPC. Draw lessons from the process of the NAB's formation: in particular, more thorough screening of candidates' biographies is necessary and, possibly, also relaxing some of the qualification demands (such as the one requiring 10 years of experience with official law enforcement) to prevent leaving out good prospective employees. Build their capacity in cooperation with successful institutions in Central and Eastern European countries, for instance, the Polish Central Anti-Corruption Bureau.
- **Ensure quick and effective application of new and improved anti-corruption mechanisms**, such as illicit enrichment, conflict of interest regulation and cancellation of decisions taken in such situations, verification of assets and income declarations and lifestyle monitoring. Ensure that the highly publicised arrests of officials and judges end up with real charges, imprisonment and confiscation of assets. Change investigation procedures and build capacity for effective tracking and seizure of corruption proceeds.
- **Introduce and implement corruption measurement and risk assessment systems at the national, sectoral and regional levels based on international practice**: Elaborate sectoral and regional anti-corruption programmes, because particular areas of corruption in Ukraine (customs in western Ukraine and Odesa, coal mines in Donbas, etc.) have to be dealt with in cooperation with relevant stakeholders. Provide public financing for the preparation, implementation and evaluation of regional anti-corruption programmes in consultation with civil society.

Engage foreign donors, not only with the central authorities but also with local councils and local law enforcement bodies. This step would be an integral part of the decentralisation reform, which would transfer more competences and financial resources to local communities, therefore stipulating the need for more thorough control and transparency at the local level. The experience of building integrity and transparency in municipalities of Slovakia in cooperation with civil society should be studied for inspiration.

- **Continue reforms of public finance management**: Focus in particular on areas of strategic budgetary planning, introduction of budgetary rules, forecasting, prioritisation of investment projects, internal controls and internal audits. The experience of the Polish and Hungarian audit offices presented in the report could be taken as an example. Improve transparency and competitiveness in public procurement by bringing the list of exceptions from the sphere of public procurement in line with the EU Public Procurement Directives. Continue projects geared towards the introduction of electronic tenders and publishing the results of all public contracts in an open access database to ensure proper oversight by civil society.
- **Implement comprehensive reform of the funding of political parties and electoral campaigns**: Base this reform on the provisions of the CM CoE Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.[1] Introduce clear and transparent mechanisms for monitoring the financing of political parties and CSOs that are sponsored by oligarchic groups and individual donors with vested interests, with possible caps on both campaign financing and media access. The Polish experience with formulating rules and enforcing their implementation as presented in the report is worth following.

[1] For more details, see www.coe.int/t/dghl/monitoring/greco/general/Rec%282003%294_EN.pdf.

- **Increase the independence, capacity and accountability of the judiciary:** Amending the constitution and adopting new versions of laws governing the judiciary, in line with international standards and in close consultation with CoE and the Venice Commission. The laws should create mechanisms to streamline the structure, renew the personnel, reduce immunity and eliminate the major risks of political interference (appointments, transfers and dismissals by the president and parliament). Introduce a system for recruiting young legal professionals with foreign education into courts that review arbitration cases for business entities in order to increase the level of trust of foreign and domestic investors in the court system. Establishing a specific court, such as the Specialised Criminal Court in Slovakia, could be an option worth consideration.
- **Implement the law on public prosecution**: Increase its independence, capacity and accountability by removing special provisions from the constitution, limiting its competences to criminal offences and reducing the president's influence on the appointment and dismissal of the Prosecutor General. Create a specialised anti-corruption prosecution service independent from the Prosecutor General and other branches of power. As part of broader civil service reform, the headcount of prosecutors could be reduced to raise the base salaries of the remaining, most qualified employees and thus reduce financial stimuli for corrupt activities.
- **Launch comprehensive reform of public administration**: Speed up the adoption and implementation of laws on public service, executive institutions and administrative procedures in line with proposals discussed with foreign partners and experts for the past year. Appoint an institution at the government level to be in charge of implementing the reform. This should ensure a clear delineation of political and professional public servants, professionalism and integrity of public servants, as well as their protection against political interference. Introduce competitive, transparent, and merit-based recruitment in public service, establishing

clear and stable remuneration schemes adequate to the scope of tasks assigned to public servants. Speed up decentralisation and territorial reform to strengthen local communities and their elected authorities.

- **Increase the role of civil society in fighting corruption:** Engage it actively in the discussion on anti-corruption initiatives at the initial stage of preparation**.** Develop procedures for public authorities to take into account results of anti-corruption screening of legal acts and their drafts drawn up by CSOs. In the lack of consensus among CSOs on the need to formalise public participation in policy-making, work out a consensual hybrid model combining both formal and informal public participation mechanisms. The NAPC should be designated as a counterpart to CSOs in this process. Improve cooperation of local governments with CSOs, and increase further the latter's insight into the decision-making process of municipalities.
- **Take measures that bring quick and visible results in fighting low-level corruption** (particularly in the police, healthcare and education systems), as only this can prevent a rapid erosion of the new administration's public support. Adopt and implement police reform, including the establishment of a complaint mechanism for allegations of ill-treatment or torture by law enforcement officers, and an independent and an effective investigative mechanism for such crimes. Carry out patrol police reform in Kyiv and in other big cities (Lviv and Odesa), with a possible extension of its mandate to include investigations of low-level crimes at the local community level. Identify service standards in healthcare and education, change financing mechanisms to ensure service availability and quality and strengthen public oversight as part of a broader reform in these sectors.
- **Increase the fight against growing corruption in the defence sector**, which is crucial in the context of the military threat from Russia and the growing defence budget of Ukraine. Improve mechanisms for purchasing weapons and materiel to decrease supply periods. Increase oversight by civil society in the sector by continuing the practice of

involving experienced army volunteers in the purchasing departments of the Ministry of Defence. Extend the practice of volunteer oversight over supplies from foreign countries on shipments by government contractors.

Recommendations for the EU:

- **Ensure that the EaP's anti-corruption priorities are reflected by financial aid**: During the 2014–2020 financial perspective, make EU priorities go hand in hand with relevant financial allocations on chosen goals. Accordingly, further develop activities aimed at good governance and anti-corruption policies. For instance, allocate more funding for reforms in this sphere together with support for national and local watchdogs. At the same time, prioritise social campaigns and media programmes focused on anti-corruption policies, with the involvement of popular authorities in the given country.
- **Use EU funds as leverage for implementation of anti-corruption conditions**: Such allocations are a proven—and the only—"stick and carrot" tool for anti-corruption reforms, even in Member States after EU accession. That power should thus be exploited better in the partner states as well. To do this, the EU should strengthen the conditionality on transparency of public finance management in all budget support operations. In cases of any breaches of such conditions, the funds should be spent in other forms (i.e., on the basis of grants or tenders). Enhance EU budget support monitoring mechanisms, focus on concrete, measurable conditions related to the implementation stage of reforms, and make technical assistance procedures more flexible in order to launch it in a timely manner. To help EU rules be better understood, make guidelines on implementing budget support programmes offered to local stakeholders less theoretical by including more practical hints (based, for instance, on lessons learnt from previous programmes, even from other EaP states).

- **Limit good governance priorities in the multilateral dimension of EaP:** Let cooperation in this area be more flexible: only partner states with genuine political interest should engage in the good governance and democracy support agenda. Make anti-corruption policies a clear priority for CoE projects funded by the EaP's Platform 1 on good governance, democracy and stability. Grant the anti-corruption panel funding for projects to be elaborated in common by reform-oriented countries.
- **Revise EU support for public administration:** Make public administration reform one of the highest political priorities in bilateral talks with the partner states, with a focus on anti-corruption mechanisms and transparency. Discuss ways of effective support for public administration reform through a high-level advisory mission. An absolute necessity is also the launch of a larger consultation at the EC level and with the involvement of experts from the EU and EaP on revising the current support for public administration reform in the partner countries.
- **Put political pressure on a more rigorous treatment of corruption in the justice system:** Along with financial and expert support of reform of the judiciary, corruption needs to be more efficiently fought in the justice system itself. For this, the EU needs to go beyond requesting the formal implementation of reform measures and make the fair prosecution and sanctioning of judges involved in corruption a political condition. This would not only contribute to cleaning up the court system, but would also have a repellent effect on other corrupt judges.
- **Engage national opinion-making groups to capitalise on domestic support for reforms in the field of anti-corruption**: Build comprehensive support for reforms by balancing the involvement of various actors—not only those who are obvious (CSO representatives) but also the less obvious ones (trade unions, businesses, and MPs). The experience in Georgia with EU support for agriculture and rural development reform is an example worth consideration in this respect.

- **Enhance regular and strict monitoring of progress and regress:** Continue the biannual publication of the EU Anti-corruption Reports on Member States despite the initial apparent low impact. Keeping in mind that the EU has no real lever on EU members' anti-corruption policy after accession (other than transparency of public finances by withholding EU funds), the report is not only a stimulating factor for national governments, but also signals candidate and associated states that reforms need to be sound and properly implemented, as post-accession monitoring will continue.

ABBREVIATIONS

AA—Association Agreement
CAB—Central Anti-corruption Bureau (in Poland)
CIB—Comprehensive Institution Building
CoE—Council of Europe
CSO—Civil Society Organisation
DCFTA—Deep and Comprehensive Free Trade Area
EaP—Eastern Partnership
EC—European Commission
EIDHR—European Instrument for Democracy and Human Rights
ENP—European Neighbourhood Policy
ENPI—European Neighbourhood and Partnership Instrument
FH—Freedom House
FOIA—Freedom of Information Act
GRECO—Group of States against Corruption
MEP—Member of European Parliament
MP—Member of Parliament
NAB—National Anti-corruption Bureau (in Ukraine)
NAC—National Anti-corruption Centre (in Moldova)
NAPC—National Agency for Prevention of Corruption (in Ukraine)
NCP—National Council for Participation (in Moldova)

NEC—National Electoral Committee (in Poland)

NIC—National Integrity Commission (in Moldova)

NSA&LA—Non-State Actors and Local Authorities

OECD—Organisation for Economic Cooperation and Development

OLAF—European Anti-fraud Office

TI—Transparency International

SAO—State Audit Office (in Hungary)

SAO—Supreme Audit Office (in Poland)

SCC—Special Criminal Court (in Slovakia)

V4—Visegrad Group

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Corruption is the most oft-cited obstacle in relations between the EU and two of its eastern partners, Moldova and Ukraine. Seeping though public and private exchanges alike, systemic corruption impedes sectoral reforms—a crucial element of modernisation. In response to the quandary of corruption, this handbook assesses today's situation in Ukraine and Moldova, creates concrete case studies from the Visegrad countries' anti-corruption policy tracks and offers solutions to shape cogent anti-corruption practices. The handbook makes recommendations on how Moldova and Ukraine can best capitalise on the EU's expertise, financial assistance and political momentum in anti-corruption reforms to minimise risk and optimise success.

The Polish Institute of International Affairs (PISM) is a leading Central European think tank that positions itself between the world of politics and independent analysis. PISM provides analytical support to decision-makers, initiates public debate and disseminates expert knowledge about contemporary international relations. The work of PISM is guided by the conviction that the decision-making process in international relations should be based on knowledge that comes from reliable and valid research. The Institute carries out its own research, cooperates on international research projects, prepares reports and analyses and collaborates with institutions with a similar profile worldwide.

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