

Study on Corruption within the Public Sector in the Member States of the European Union

Final Report

(as at June 2007)



**With financial support of the AGIS Programme
European Commission – Directorate-General Justice, Freedom and Security**

Contract number: JLS/2005/AGIS/095

Project term: 21.12.2005 – 20.06.2007

Contracting organisation and partners:

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Preface

Corruption is bad. This does not go without saying. During the last decades the argument was often heard that corruption were something to be accepted in the course of modernisation, that it were a kind of “collateral damage” connected with the abandonment of traditionalism, of tribal culture and of clientele structures within the developing countries in favour of more modern and presumably more rational structures of decision-making required by a globalised world. The dissolution of the soviet-dominated COMECON system during the 1990ies forms the historical arch-example for this line of argumentation: it was necessary to overcome the communist nomenclature with its overblown bureaucracy and its exaggerated cult of the state in order to establish rational structures of market centred competition. Neo-liberal economists valued the privatization of the crumbling state economy higher than the transitional phenomena of bribery and boodle taking.

This attitude of downplaying the negative aspects of corruption is on the wane since the middle 1990ies. Corruption is no longer seen as a peccadillo or a pure phenomenon of transition. Corruption is bound to lead to misallocation of resources and thereby rising prices on the national level as well as with the individual participants in the economic process. Corruption furthermore engenders a loss of trust in the legitimacy of the political system thereby seriously undermining its acceptance in the population. The OECD, the European Council, the United Nations and especially the European Union have realised this danger. The European Union has created OLAF, an institution specifically designed to combat any form of corruption within the the organisation of the European Union. OLAF appears to be very effective but this research project does not deal with its field of work but solely with corruption within the member states of the Union.

The AGIS programme of the European Union gave very substantial support to this project in order to examine the anti-corruption measures taken by the member states and to recommend improvements in detecting and combating corruption. The present volume represents the results of our efforts and we would like to express our gratitude towards those responsible for the AGIS programme for the precious opportunity to complete this work. Even though we are conscious that the competence of the Union on the field of anti-corruption policies within the member states still is rather limited we feel sure that the public awareness of this urgent problem is rising. We hope that by our study we can contribute to this process.

The final report consists of four parts: In the first part we delineate the underlying conception of corruption, the methodology we applied and the course of action we took. A second part contains detailed reports on the situation in every one of the 25 member states covered by this study. The reports, each of them ten to twenty pages long, share a common structure which ensures their comparability. Such a systematic and comprehensive survey is an innovative feat not achieved

before. The third part analyses in a systematic way the country reports. This analysis is another innovation in the realm of corruption research. In the concluding fourth part the results gained by the analysis form the basis for recommendations for future political measures to be taken by the European Union. These recommendations are ultimately condensed into 15 single points.

Finally we would like to thank all those who worked with us on this project and without whose contributions it would have been impossible to bring a project on this scale to a successful end. First of all we would like to express our gratitude towards our partner institutes in Athens and Rome, the Centre for European Constitutional Law (CECL) under the scientific direction of Prof. Xenophon Contiadis and the Chair for Comparative Constitutional Law at the Università La Sapienza, Rome, under the direction of Prof. Paolo Ridola. Our special thanks go to the project collaborators Gianluca Bascherini, George Katrougalos, Marianne Kostoula, Dionisia Loksa, Dimitris Manousis, Alessandra Di Martino, Maria Mousmouti, George Mpampetas, Marian Nikolakopouloy and Dr. Andrea De Petris.

Furthermore we wish to thank all the experts in the various member states very much. Their comprehensive answers to our long and onerous questionnaire, given out of first-hand knowledge, formed the indispensable and most valuable empirical basis of our work. Their efforts form an important part of this study and we want to fully acknowledge that.

Especially, we would like to thank Don and Anne MacDonald (translation bureau MacDonald Translations in Dusseldorf) for their tireless efforts. They translated the project report and linguistically adapted the different parts of the report written by several authors.

Finally, I would like to thank the project staff members of the “Institute for German and European Political Party Law and Party Research” (PRuF) at the Heinrich-Heine-University of Dusseldorf for their immense dedication and huge commitment: by name Alexandra Bäcker, Florian Eckert, Dr. Heike Merten, Prof. Dr. Martin Morlok, Susanne Mulch, Hanna Op den Camp, Sebastian Roßner (MA), Christian K. Schmidt, Anna Schwickerath, Dr. Thilo Streit (LL.M.) and Florence Tadros Morgane.

Now all of us who have been working on the project hope for a positive answer by the responsible persons to the challenge of corruption in Europe. The huge differences in corruption reality which we pointed out in our study demonstrate that corruption can be embanked successfully. Let’s join hands.

Prof. Dr. Ulrich von Alemann

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A. Introduction

I. Reasons/Aims of the Study

In the last years, politicians and the public administration have been suspected of corruption again and again. This shakes the trust of the citizens in the political class and in the flawless process of the administration.¹ The citizen is supposed to be able to assume that the decision-making authorities and resources entrusted to the political and public institutions are handled carefully and not misused for personal interests or for differently motivated reasons. Such scandals undermine the confidence in the constitutional state. An increasing loss of trust of the citizens in the democratic system is discovered, as well as a removal of the political elite from the constitutional standards, since real systems of retention of power can eclipse put the orientation towards public welfare into the background.

Next to the loss of confidence in the plausibility of the institutions, economical damages are also consequences of corrupt actions in politics and in the public administration – thus in the public sector. Corruption is accompanied by economic losses; according to estimates, their worldwide costs are 5% of the world economy.² Corruption can offer for example the fertile soil for over-regulation in the public administration. So-called bribes can result in qualified entrepreneurs no longer receiving contracts. Instead, those who can pay the highest bribes or who have the best connections come to the forefront. Important decisions are consequently distorted since decisions on the allocation of public contracts are no longer assigned according to economic calculation by the state but rather to the one who pays the highest bribe. It is no longer the qualified entrepreneurs who receive a contract, and it is no longer the able applicants who receive a job. Public funds are invested in the area in which bribes are to be expected the most. Consequently, the economic rationality is eliminated, which can lead to expensive and senseless state financed projects. Corruption produces inefficiency and injustice in the distribution of public profits and costs. Economically it can therefore be observed that unrestrained corruption leads to obtaining less performance at a higher price.³

The consequences of corruption are very serious for a democracy, as competition is distorted by the promotion of cartel and monopoly formation. Corruption can totally destroy the citizens' confidence in democracy, in public institutions and in politics as a whole, especially as the

1 Increasing bureaucracy, increasing election campaign costs, changes of the political competition as a consequence of increased use of media and the competition for state orders are often listed as causes for the increase of political scandals.

2 *Wolfgang Hetzer*, Korruption und Integration. Ist die Erweiterung der Europäischen Union ein Risikofaktor?, in *Europäisches Wirtschafts- und Steuerrecht 2003*, Frankfurt a.M., page 489 (494).

3 *Susan Rose-Ackerman*, Groß angelegte Korruption und Ethik in der globalen Wirtschaft, in: Ulrich von Alemann (ed.), *Dimension politischer Korruption*, Politische Vierteljahrszeitschrift, Sonderheft 35/2005, page 195 (198).

competition for votes – which represents the heart of democracy – is damaged. Because the fundamental democratic principles of transparency, equal political rights and equal access of all citizens to the state is hurt by corrupt politicians and civil servants, corruption affects democracy in a special way. As a last consequence, confidence in the political and economical stability of a country threatens to collapse. Furthermore, corruption supports the spreading of organized crime and consequently leads to a disintegration of the state and social structures.

To a large extent, there is agreement that corruption no longer represents an obscure phenomenon in most industrialized countries. Due to the harmful effects accompanied by corruption, measures for the fight against corruption, if only in the last years, are taken on local, national and supranational levels.⁴

The measures taken for instance by the UN, World Bank, OECD and the Council of Europe are to be named here. These abatement strategies also show how important it is to strengthen the civil society.

Both politically and economically, corruption represents a danger going against the regulations in art. 29 and 31 EUV. Scandals make clear that effective measures for the protection of the integrity of the administration and of the entire public sector are needed. It is therefore the goal of this study to determine the common characteristics of corrupt behaviour with the aid of empirical results. In this way, their causes should be localized in order to be able to develop attempts at solutions.

II. Subject Matter of the Study – On the Concept of Corruption

1. Variety of Corruption

The great variety of the definitions and attempted definitions of the term ‘corruption’ and the objective of the study, to develop basics for the judgment of existing regulations and for the development of new aspects of the term, speak against a rigid setting of one definition of corruption. Thus the conception of corruption can and should develop in the course of this study. Nevertheless, a conceptual definition of the investigated subject matter of corruption is needed to start with, as it must be determined which phenomena should be looked at. Our operational definition⁵ of corruption may change according to defined rules in the course of the investigation via qualitative analyses.

4 *Wayne Sandholz/ Mark M. Gray*, International Integration and National Corruption, in: International Organization 2003, München, page 761 (768).

5 Cp. e.g. *Jürgen Friedrichs*, Methoden empirischer Sozialforschung, Opladen 1980, pages 73-81 as well as *Dieter Opp*, Methodologie der Sozialwissenschaften: Einführung in Probleme ihrer Theorienbildung und praktischen Anwendung, Wiesbaden 2006.

The fact that up to now, no sufficiently established term for or predominating concept of corruption exists, must not hinder us from ascribing some concretely outlined contents to corruption in the sense of an initial thesis. Not, however, in the sense of an irrefutable definition of the term's contents. Moreover, the term is to further develop and to change where appropriate during the study, which is inductively designed in certain essential traits since we would still like to discover things hitherto unseen in corruption. A concrete starting point has to be determined and the frame and the rules of the possible development must be described. The necessary basis for the definition of a starting point and the rules for the further development are to be outlined shortly in the following.

The Latin verb *corrumpere* means 'to spoil'. In the sociological field (which is of interest to us additionally to the legal field), it is society which is spoiled – more concretely, the social relationships and social rules.⁶ The economic contexts are tightly interwoven.⁷

Everyone seems to know what corruption is. Nevertheless, there is no predominating or even homogeneous definition of corruption.⁸ Corruption can cover an incalculable number of individual phenomena. This is valid and especially so for the area of jurisprudence. A homogeneous definition of the term 'corruption' cannot be found even in legal science, although the term is often used. Both the legislative and the juridical literature fall back to the expression 'corruption' in order to characterize and sum up certain statements of affairs in life. All the more surprisingly that nevertheless, a general consensus on the definition is missing.

The term 'corruption' is frequently used in a legal sense, more or less as a general term for certain criminal offences, for instance acceptance of undue benefits, granting of undue benefits, accepting and giving of bribes. To narrow the term 'corruption' by a definition oriented at criminal laws does not live up to the purpose of the study. The restriction – and admittedly, nevertheless, the possible specification – of the (juridical) term of 'corruption' to a wanted construct of criminal law standards whose respective contents vary depending on historical, economical, social and political factors, is not able to capture the general scope of possible improper behaviour, not even a general spectrum relevant from a legal sciences point of view. A mere orientation towards criminal standards fades out the still unpunished circumstances leading up to corruptive actions as well as the improper and prohibited (yet not punishable) behaviour. In addition, the transition from legality to illegality can be very unclear. Whether a certain statement of affairs constitutes a legal offense can be sometimes disputable in legal sciences and

6 Cp. e.g. *Christian Höffling*, *Korruption als soziale Beziehung*, Opladen 2002.

7 Cp. among others *Johann Graf Lambsdorff*, *Wieso schadet Korruption?*, in: Ulrich von Alemann, *Dimensionen politischer Korruption*, *Politische Vierteljahresschrift*, Sonderheft 35, page 233-248.

8 Cp. *Michael Johnston*, *Keeping the Answers, Changing the Questions: Corruption Definitions Revisited*, in: Ulrich von Alemann (ed.), *Dimensionen politischer Korruption*, *Politische Vierteljahresschrift*, Sonderheft 35, Wiesbaden 2005, pages 61-76 as well as *Christian Höffling*, *Korruption als soziale Beziehung*, Opladen 2002.

the jurisdiction.⁹ Independently of whether these insecurities can be put down to concrete circumstances of the individual case pending decision, or whether a revision of punishabilities may be causal, a certain grey area can always be defined which significantly complicates the classification of a certain behaviour into the categories legal and illegal. A too narrow definition orientated at criminal law is therefore to be rejected; the access to the different varieties of corruptive behaviour would be systematically blocked by this, so that ultimately only a subset of what could be referred to as corruptive action is described.

Compared to that, a broader understanding of a concept of corruption is reflected by the German 'Law on the Fight Against Corruption'¹⁰. According to its main focus, it contains changes, extensions and sharpening of legally controlled corruption offenses as well as accompanying procedural follow-up regulations. Next to that, also some addenda consisting of employment law are carried out, however, concerning the acceptance of rewards and gifts by various office-holders. Although the law bears the term 'corruption' in its title, it refrains from giving a closer interpretation of the term, however. On the one hand, this legal abstinence illustrates existing insecurities with the range of definition of the term 'corruption'. On the other hand, however, the contents of the legal regulation make clear, that a legal narrowing of the term 'corruption' under criminal law is legally inadequate. However, the regulation contents of the law on corruption abatement can also give only restricted information on the contents of a potential juridical definition of corruption, as also with this viewpoint narrowed under criminal and disciplinary law, again only subsections of what could fall under the juridical concept of corruption are captured.

Let's take the case of Germany as an example. Provisions and rules, which are supposed to prevent corruption or to at least limit corruption, are not only found in the obviously corruption-related standards of criminal and disciplinary law, but also in many state and federal state laws up to ordinances and guidelines which define responsibilities and authorizations and regulate the correctness of the procedures. In turn, there are an infinite number of laws and provisions which are intended as control instruments against corruption, among other things. So for instance the budget law, the laws on civil servant rights and duties, internal and external auditing, but also for example the regulations on procurement. Many administration bodies also made internal regulations for the prevention of corruption. In the widest sense, all regulations which have as their subject matter division of power, the creation of transparency, the guarantee of control and the punishment of violations of previously mentioned rules, number among the corruption-relevant regulations. An approximation to a definition of corruption in the legal sense can

9 The only recently changed legislation in Germany regarding the punishability of members of the communal council may serve as a current example here.

10 Law on the Fight Against Corruption of 13th August 1997, Bundesgesetzblatt 1997 Part I page 2038.

therefore not solely focus on criminal and disciplinary law. The focus is also always to be cast on the flanking measures in all other legal matters affecting the public sector.

In spite of these inaccuracies which are consciously accepted, it can be assumed that with regard to the consequences of corruption, it is harmful on a moral as well as an economic level. The former is obvious because it may be assumed that a predominating system of rules and standards is damaged if it is weakened and spoiled by violations. Until recently, the economic damage was at least controversial. The opinion that corruption is useful in certain situations, as for example during transformation processes in developing countries, has now been proven wrong to a large extent; disproportionately high bureaucratic hurdles were not ultimately overcome through corruption, but were first established or reinforced by it. Lambsdorff¹¹ attempted to even calculate the economic damage which arises through stronger corruption.

After the preceding conceptual and normative placement, we will now take a short look at the historical roots. Corruption is not at all to be seen as only a phenomenon of recent times, even if this impression sometimes seems to be the case. It is rather to be assumed that corruption is more or less observed at certain times and in certain contexts. Corruption was known even in the Bible, in the New Testament as well as in the Old Testament, in Greek and Roman antiquity, in ancient China as well as in other epochs in other areas; it was described and people were called into the fight against it.¹² There are still innumerable views on corruption in the history of mankind. What does remain, however, is that mostly both actions and states of society were understood as corruption, and that corruption was associated with infringement and social decay.

2. Modern Concepts of Political Corruption under Social Science

a) Dimensions of Political Corruption

The variety of concepts of corruption becomes almost perceptible from what has been said. This variety is also based on definitions and concepts decisively depending on the formulation of the question. This becomes clear through the following typification which arranges research on corruption into five dimensions.¹³ Here, the term 'dimension' especially clarifies that it is an actively observed phenomenon that can be defined by different perspectives:

- Corruption as a social decay,
- Corruption as a differing behaviour,

11 *Johann Graf Lambsdorff*, Wieso schadet Korruption?, in: Ulrich von Alemann: Dimensionen politischer Korruption, Politische Vierteljahresschrift, Sonderheft 35, pages 233-248.

12 *Ulrich von Alemann*, Politische Korruption: Ein Wegweiser zum Stand der Forschung, in: *id.* (ed.), Dimensionen politischer Korruption, Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, pages 13-49.

13 *Ulrich von Alemann*, Abgründe politischer Theorie, Gründe für eine mehrdimensionale Konzeption der Korruption, in: Dietmar Fricke und Jörg Meyer (ed.), Sicherheit in einer neuen Weltära. Festschrift für Erhard Forndran zum 65. Geburtstag, Frankfurt a.M. 2003, pages 273-283.

- Corruption as a system of measurable perceptions,
- Corruption as ‘shadow politics’,
- Corruption as replacement logic.

aa) Corruption as a social Decay

A long-held conventional perception, which looks at the respective society, regards corruption as the consequence and the cause of a cyclical uprising and downfall of a society. Corruption is seen as an up and down of normative values. Changing elites bring down existing systems of order only to replace them by their own predominance. A change of political systems of this kind is based on the decay of social and moral qualities of the citizens caused by contentment. Finally, new social and moral qualities are formed.¹⁴

bb) Corruption as a differing Behaviour

First of all, the famous definition of corruption by *Senturia*¹⁵ is to be named for this dimension: ‘Misuse of public power for private profit’. The modern social scientific definitions of corruption are grouped around it. Furthermore, research of a sociological nature, as for example a current analysis of *Höffling*¹⁶, is found here, which as many other ones in this area is based on the ideas of *Niklas Luhmann*. This dimension is criticized for having categories which are too wide. This may however, become an advantage, if phenomena suspicious of corruption are to be collected as comprehensively as possible.

cc) Corruption as a System of measurable Perceptions

Since corruption is rarely measurable in a direct and concrete way, the perceptions and their measurement are often themselves decisive. The most significant instrument for this dimension is the Corruption Perceptions Index (CPI) of the non-profit-organization Transparency International. In the year 2006, 163 countries were judged by ranking according to their corruptivity. The methodically controversial index takes its information from several sources, in particular from expert opinions. The perception of corruption can be measured and judged and thus corruption itself along with it. According to *von Alemann*¹⁷, one of the results is that corruption statistically increases directly in proportion to increasing success in the prosecution. Therefore the emphasis of the corruption research here has to lie less on the purely quantitative measurement than on the investigation of the perception itself.

14 *Harald Bluhm/ Karsten Fischer*, Korruption als Problem politischer Theorie, in: dies., Sichtbarkeit und Unsichtbarkeit der Macht: Theorien politischer Korruption, Baden-Baden 2002.

15 *Joseph J. Senturia*, Corruption, Political, in: Edwin R.A. Seligman (ed.), Encyclopedia of the Social Sciences, New York 1931, pages 448-452.

16 *Christian Höffling*, Korruption als soziale Beziehung, Opladen 2002.

17 *Ulrich von Alemann*, The unknown depths of political theory: The case for a multidimensional concept of corruption, in: Crime, Law & Social Change 42 (2004), pages 25-34.

dd) Corruption as ‘Shadow Politics’

Since corruption is rarely observable, *von Alemann*¹⁸ developed the term ‘shadow politics’ as an analogy to shadow economy. Like informal politics, shadow politics is also considered neutral at first. For the description, evaluation and assessment of corruption, a continuum of opposites is used: formal – informal, open – confidential, legitimate – illegitimate, legal – illegal, regular – accidental, amongst others.

Shadow politics and informal politics illegal and/or illegitimate, etc., *per se*. They include legal as well as illegal areas as it is with shadow economy. They can be best represented as mentioned above. Hybrid forms can certainly arise here, meaning, certain states or processes to be evaluated can point to corruption on one level yet not on another.

ee) Corruption as Replacement Logic

A further model of *von Alemann* that is related to the Principle-Agent models on corruption appears useful since it does not depend on the concept of the public and their separation to the private but is rather technical, when naming a decision-maker in an organization or authority which violates a certain public good. Thus the replacement logic model names necessary pre-conditions. According to this, corruption is present if following criteria are fulfilled:

The *von Alemann* Replacement Model¹⁹ encompasses seven components:

1. The demander wants
2. a rare good (contract/order, concession, licence, position),
3. which the provider, the decision-maker in an organisation or authority, thus the corrupted, can grant.
4. He receives a personally concealed additional incentive (money or service of monetary value) for the granting above the normal price
5. thus violating publically accepted standards and
6. damaging third parties, competitors and/or the public good.
7. Therefore corruption takes place secretly.

With every kind of corruption, the medium of the exchange is money or an advantage of monetary value about which a formal or informal exchange agreement, also unspoken, has occurred or is at least conceivable.

18 *Ulrich von Alemann*, Schattenpolitik: Streifzüge in die Grauzonen der Politik, in: Claus Leggewie (ed.), *Wozu Politikwissenschaft? Über das neue in der Politik*, Darmstadt 1994.

19 *Ulrich von Alemann*, Abgründe politischer Theorie, Gründe für eine mehrdimensionale Konzeption der Korruption, in: Dietmar Fricke und Jörg Meyer (ed.), *Sicherheit in einer neuen Weltära*, Festschrift für Erhard Forndran zum 65. Geburtstag, Frankfurt a.M. 2003, pages 273-283.

A corrupt state or action can be characterized by these dimensions without them excluding each other. These dimensions may be changed or supplemented in the course of the investigation since the study is partially inductively designed.

b) Types of Corruption

An additional dimension of differentiation – dependent on the other five dimensions – often used for typification is the extent and persistence of the corruption and thus the quantitative seriousness and degree of the deviation. Of course this is never to be regarded separately from qualitative perspectives. However, it appears reasonable for the purposes of the analysis. Firstly to be named here is the distinction between petty and grand corruption.

Grand corruption is present if the central control systems of society and/or the state are already considerably eroded. Grand Corruption has thereby already considerably distorted the nature of the respective society while petty corruption lies quasi on the surface of the still intact system; because this concerns smaller amounts of money and return favours in the area of nepotism, clientelism and so forth.²⁰

In a similar way, *Bannenberg*²¹ differentiates among perspectives of persistence and regularity of corruption:

1. petty or occasional corruption,
2. mature corruptive relationships and
3. networks of corruption.

*Heidenheimer*²² carries out a further grading of the persistence. He distinguishes according to degree of corruption in petty corruption, routine corruption and aggravated corruption. Next to the degree of corruption, he focuses on societal tolerance. However, qualitative aspects do clearly come into the foreground in his grading.

All this grading goes back to the distinction of accidentally and structurally caused corruption – best to be described by the mentioned differentiation between petty and grand corruption. The

20 Cp. United Nations General Assembly: [UN-Konvention gegen Korruption] Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, 2004, pages 10-11. <http://www.unodc.org/pdf/crime/convention_corruption/session_7/422e.pdf>; 08.10.2004 as well as *Susan Rose-Ackerman*, Groß angelegte Korruption und die Ethik in der globalen Wirtschaft, in: Alemann, Ulrich von (ed.), Dimensionen politischer Korruption, Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005.

21 *Britta Bannenberg*, Korruption in Deutschland - Ergebnisse einer kriminologisch-strafrechtlichen Untersuchung, in: Hans Herbert von Arnim (ed.), Korruption: Netzwerke in Politik, Ämtern und Wirtschaft, München 2003, pages 204-234.

22 *Arnold Heidenheimer*, Perspectives on the Perception of Corruption, in: id./ Michael Johnston (ed.), Political Corruption: Concepts and Contexts New Brunswick, New Jersey 2002, pages 141-154.

former occurs occasionally, the latter one is based on stable, informal rules²³ designed with no temporal limits.

3. Starting Definition

It was described that we found a considerable diffuseness for the term ‘corruption’. Even if the many aspects of corruption can be ordered, as has been tried here and in many other places, many things remain open. It is therefore nevertheless vital to determine a fixed starting point to operationally define corruption for this investigation in order to select the regulations, standards and phenomena to be examined. This definition must show sufficiently wide categories in order not to block the view to something new right away. Thus specifications of the definition categories are to occur inductively from the data itself. The starting point is the often quoted definition of *Senturia*²⁴: According to this, corruption is

abuse of public power for private benefit.

Being an action-based approach (and not state-based), it offers sufficiently wide categories and therefore remains open to many phenomena.

4. Measurement of Corruption: the Corruption Perceptions Index by Transparency International

After the difficulties of a homogeneous definition of the term ‘corruption’ were explained before, it ultimately seems questionable to investigate corruption empirically. Especially due to the variety of offense forms inherent in the concept, it is difficult to determine a conclusive evaluation here concerning the occurrence of corruption or to even compare it country-wise. This challenge has been accepted by the Corruption Perception Index (CPI) published by the nongovernment organization ‘Transparency International’ (TI) since 1995. It is the objective of the CPI to determine the subjectively perceived occurrence of corruption within a state. In order to be able to grasp the perception of the offense, however, one must first of all orientate by a homogeneous definition. The authors of the CPI base their evaluations on those of *Joseph Senturia*. According to CPI²⁵, corruption is the abuse of a public power for the private benefit.

23 *Ulrich von Alemann*, Politische Korruption: Ein Wegweiser zum Stand der Forschung, in: ders. (ed.), Dimensionen politischer Korruption, Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, S. 32 sowie *Christian Höffling*, Korruption als soziale Beziehung, Opladen 2002 und *Britta Bannenberg*, Korruption in Deutschland - Ergebnisse einer kriminologisch-strafrechtlichen Untersuchung, in: Hans Herbert von Arnim (ed.), Korruption: Netzwerke in Politik, Ämtern und Wirtschaft, München 2003, page 206 f.

24 *Joseph J. Senturia*, Corruption, Political, in: Edwin R.A. Seligman (ed.), Encyclopedia of the Social Sciences, New York 1931, pages 448-452.

25 *Johann Graf Lambsdorff*, Wie läßt sich Korruption messen? Der Korruptionsindex von Transparency International, in: Zentrum für Europa- und Nordamerika-Studien (ed.), Politische Korruption, Jahrbuch für Europa- und Nordamerika-Studien 3, Opladen 2000, pages 45-71 (49).

Regardless of the fact that up to now, no other comparative value has been able to establish itself as well as the CPI in academic and political discussion, the limitation of the concept facilitates the use of the index for our investigation.

Next to the CPI, there are other evaluations of internationally comparative sources. First of all, the respective judicial authorities are to be named here, which access data on the preferment of charges and convictions of corresponding criminal offences. However, *Johann Graf Lambsdorff*, who developed the index, criticizes that these data are hardly comparable since they were assessed under different conditions and requirements; at the same time, a high level of convictions can also give inferences to the efficiency of the corresponding legal system rather than to measure the corruption actually occurring.²⁶ As regarding the complexity inherent to corruption offenses, one source can scarcely claim to assess and evaluate corruption; the CPI consciously relies on several data which are included in the index. At least three different sources must be used in the evaluation.²⁷ On the one hand, the evaluated sources inquire the assessment of the respective state residents, and on the other hand take into consideration such business persons and experts who express an external opinion. Thus the CPI acquires a mix of perceptions. ‘The strength of the index consists in a combination of sources to a homogeneous index thus increasing the reliability of individual information. [...] through the combination of sources, the influence of an ‘odd-man-out’ can be moderated through at least two other sources of information.’²⁸ The related data do not distinguish between administrative and political corruption, but include both forms considering the definition mentioned before.

Meanwhile it is problematic that the CPI does not approve any ascertainment of time series concerning the corruption level since the related sources can change annually in the same way as the selection of the interviewees or the methodology used.

The CPI drew criticism in particular since it discloses corruption, yet not those who are corrupt, for example the givers of bribes. TI took the criticism and now additionally publishes the ‘Bribe Payers Index’ (BPI).

26 *Johann Graf Lambsdorff*, Wie kann man Korruption messen? Der Korruptionsindex von Transparency International; in: *Entwicklung und Zusammenarbeit*, No. 11, November 1999, pages 300-303.

27 Sources include, among others: ‘World Competitiveness Yearbook’ the ‘Global Competitiveness Survey’, ‘Political and Economic Risk Consultancy’, ‘Gallup International’, ‘Economist Intelligence Unit’, ‘Political Risk Services’, ‘Weltbank’.

28 *Johann Graf Lambsdorff*, Wie läßt sich Korruption messen? Der Korruptionsindex von Transparency International, in: *Zentrum für Europa- und Nordamerika-Studien* (ed.), *Politische Korruption*, Jahrbuch für Europa- und Nordamerika-Studien 3, Opladen 2000, pages 45-71 (53).

III. Methods

1. Task of the Methods to be Chosen

The aim of the project and thus also of the method and the instrument is the ascertainment of standards on corruption of the state in 25 countries of the EU, their evaluation and the proposal of guidelines for the development of new regulations. The definition introduced above is to help in collecting the regulations on corruption in the marked area. The standards on political corruption in the state area are evaluated as well as their common characteristics, possible deficits, national and regional special features and forms of appearances of corruption. Next to the comparative analysis, the evaluation and preparation of best practices and the proposal guidelines is planned.

The determined data on corruption – as is to be expected – are homogeneous in some aspects, heterogeneous in other. On the one hand, there are many regulations which were derived from the hypotheses from conventions or available legislations. On the other hand there are results to be expected which do not fit in the developed system of categories. Furthermore there is a great need for an inductive ascertainment of new regulations at least in questions of details.

The method of the investigation therefore has to perform two things: It has to ascertain available regulations deductively through a system of categories, and on the other hand inductively evaluate those things not covered, i.e. be sufficiently open in order to find out new things and to order them, as for example best practices and/or assessments of regulations.

Thus it is to be expected that the country reports show different depths of analysis. This is expressly wanted, because the reports are shaped in many ways by subjective evaluations of the experts. Since one aim of the study is the proposal of guidelines, the qualitative evaluations of the country experts appear more valuable than a uniform analysis of content, designed in a strictly deductive way.

2. Written Questioning of Experts

Firstly, a conventional analysis of content is a possibility for the ascertainment of the available regulations²⁹, as the they can be classified into the existing understanding of corruption with it. Another aim of the study is to ascertain new information which exceeds the deduced category

29 On method of content analysis with a clearly quantitative focus, see e.g. *Klaus Merten*, *Inhaltsanalyse: Einführung in Theorie, Methode und Praxis*, Opladen 1995 as well as *Werner Früh*, *Inhaltsanalyse*, 5. überarb. Aufl., Konstanz 2001; on qualitatively oriented content analysis compare *Philipp Mayring*, *Qualitative Inhaltsanalyse: Grundlagen und Techniken*, 6. durchges. Aufl., Weinheim 1997.

scheme. For this, verbal expert interviews and/or guideline discussions³⁰ are the means of choice. Thus the application of two instruments appears reasonable for our purposes at first: a rather deductively designed content analysis and more qualitatively designed expert interviews.³¹

However, both methods contain considerable disadvantages for our purposes. The complexity of the standards and their different backgrounds do not even allow for a relatively undistorted analysis by means of a conventional content analysis. A content analysis alone is destined to fail, as work should be done on heterogeneous subject matter presupposing the same perceptions in all 25 examined countries, each with a different culture.

Moreover, an on-site perspective is necessary. In addition, as relevant components, best practices, assessments on quality and effectiveness of the regulations are to be openly evaluated. As mentioned above, expert interviews and/or *leitmotif* discussions are the means of choice for that. Only experts are able to adequately assess regulations of this kind. The large extent of questioning necessary and the abundance of the regulations and their application is, however, not to be covered within the framework of expert conversations. The experts must thoroughly deal with the material and where appropriate carry out their own evaluations in order to provide sufficiently well-founded and extensive data.

In order to consider both deductive as well as inductive aspects simultaneously, on the one hand to examine hypotheses and on the other to newly generate them in certain fields, it was decided to carry out a standardized written questioning³² of experts with mainly open questions. This mixed method appears to be adequate. It is more than a content analysis, as it is complemented by expert knowledge. This in turn is more than a verbal expert interview, as the written form and thus the longer time frame facilitates a more in-depth and detailed view. The instrument does not show the deficits which would arise with application of the instruments of content analysis and/or document analysis and expert conversation in our question formulation.

The contents of this questionnaire were derived from the knowledge already available on regulations on corruption. The larger part of the questions and/or the underlying hypotheses were gained from the specifications in the conventions on corruption and from the preconceptions of the partner institutes on regulations in Europe. Almost all of the questions are open; there should be sufficient space for the varying concrete regulations in the individual countries and, on the other hand, for data which are not covered by the available knowledge.

30 On leitmotif discussions, cp. amongst others *Rainer Schnell* et al., *Methoden empirischer Sozialforschung*, 7., völlig überarb. u. erw. Aufl., München/Wien 2005, pages 387-388.

31 Einen übersichtlichen Vergleich qualitativer und quantitativer Methoden liefert *Siegfried Lamnek*, *Qualitative Sozialforschung*, Weinheim 2005, S. 271-273. Es ist zu erwähnen, dass die strenge Unterscheidung zwischen quantitativen und qualitativen Methoden oft wenig hilfreich ist, da in aller Regel beide Richtungen miteinander eng verwoben sind.

32 On the instrument of written questioning cp. e.g. *Rainer Schnell* et al., *Methoden empirischer Sozialforschung*, 7., völlig überarb. u. erw. Aufl., München/Wien 2005, pages 358-362.

The last part of the questioning has a more strongly inductive qualitative character; particularly here, evaluations and conclusive opinions are asked for which are rather characteristic of an expert discussion. From these questions, rather new hypotheses are gained which can serve the ascertainment of best practices and guidelines.

3. Qualitative Evaluation of Open Questions

At the core, the evaluation of contents given on the open questions is carried out using content analysis according to the method by Philipp Mayring.³³ This is suitable above all for material which already shows a rather advanced structuring. It is carried out in three steps, which are simplified here:³⁴

- a) *Summary*: The contents are summarized in a multistage process in order to be able to better understand and assess the data. Nevertheless, the material gives a true image of the starting material. An levelling paraphrasing is carried, the superfluous data is omitted. A ‘coding-book’ written during the construction of the questionnaire can help with this reduction and summary.
- b) *Explication*: According to certain rules, additional material is brought in for unclear or incomplete passages. The passage is thereby explained, new references are set.
- c) *Structuring*: Here the data are considered according to defined rules under certain comprehensive points of view in order to reach assessments based on different question formulations.

Where appropriate, each of the three steps can be subdivided into further single steps. So a multistage summary can be carried out for a larger amount of text. Or the explication and structuring are necessary in several directions and stages.

The present instrument of the written questioning of experts is suitable, on the one hand, for checking the hypotheses generated by foreknowledge, the conventions and their bases, and knowledge from national regulations. On the other hand, it is suitable for ascertaining information which exceeds the deduced categories. In this way, it combines the advantages of a written questioning with the advantages of expert interviews.

4. Comparison of Political and Legal Sciences

It is the aim of this study to determine corruption-relevant standards in the public sector through comparative country analysis in order to develop approaches to solutions for prevention and abatement through this. At the same time, however, the specific differences between the respective states are also represented.

33 For details on this method: *Philipp Mayring*, *Qualitative Inhaltsanalyse*, Weinheim 1997.

34 Cp. *Philipp Mayring*, *Qualitative Inhaltsanalyse*, Weinheim 1997, page 58.

The social, political and legal circumstances in the public sector are examined to find out whether certain general conditions are so widespread that they can be regarded as indicators of corruption-favouring and inhibiting structures. Furthermore, the country reports which were created on the basis of the questionnaire reflect the respective efforts of the member states in the area of the corruption abatement. These can develop new ideas, concepts and dogmatic approaches which create the stimuli for obvious alternatives.

Therefore study metatheoretically relies on an empirical-analytical understanding of science. According to the focusing on corruption-relevant standards and the question whether the respective national standards of corruption abatement are useful, the epistemological interest basically justifies itself on the collection and description of the respective standards. Accordingly, the procedure of the study is descriptive. The investigation of the actors and the general conditions set to them (in which they act) forms the core of the study.

a) Comparative Law Analysis

As a method for the acquisition of the basis of decision-making, comparative law is especially necessary and also reasonable when viewed in a community-legal context of the European Union. Due to a comparison to the legal systems of member states on a European level, corresponding measures of the legislative organs can be used in order to achieve a common solution in light of an objective of integration.

The methodic procedure of comparative law is that of a functional comparison.³⁵ A functional method here is understood as putting the phenomena of interest in relation to certain problems and to consider them under the point of view whether and what they can contribute to the solution of these problems; accordingly, it is a question of the solution of the problem being discussed.³⁶ In order to be able to exert an influence, the work in comparative law must be concentrated on defined questioning and has to produce ideas that can be integrated into the process of legal reform or the decision of concrete legal quarrels without complications. Accordingly, the functional consideration of the comparison is a question of problem-oriented thinking.³⁷ during. This means that from its functionally thinking standpoint, comparative law

35 *Martin Morlok*, Rechtsvergleichung auf dem Gebiet der politischen Parteien, in: Dimitris Th. Tsatsos et al., Parteienrecht im europäischen Vergleich, 1. edition 1990, page 695 (713); *Christian Starck*, Rechtsvergleichung im öffentlichen Recht, in: JZ 1997, page 1021 (1028); *Florian Haase*, Einführung in die Methodik der Rechtsvergleichung, in: JA 2005, page 232 (235); *Oliver Brand*, Grundfragen der Rechtsvergleichung – Ein Leitfaden für die Wahlfachprüfung, in: JuS 2003, page 1082 (1086).

36 *Martin Morlok*, Rechtsvergleichung auf dem Gebiet der politischen Parteien, in: Dimitris Th. Tsatsos et al., Parteienrecht im europäischen Vergleich, 1. edition 1990, page 695 (713).

37 *Martin Morlok*, Rechtsvergleichung auf dem Gebiet der politischen Parteien, in: Dimitris Th. Tsatsos et al., Parteienrecht im europäischen Vergleich, 1. edition 1990, page 695 (713).

does not try to develop solutions from a certain standard but by taking individual problems as a starting point.³⁸

The exploration of the different forms of corruption in the state sector is an indispensable condition for the abatement of corruption in these areas. In order to show guidelines for new regulations (best practices), it is necessary to uncover gaps in corruption-relevant standards and to examine possible enforcement deficits with regard to national and international anticorruption standards. As in the legal system, only that which fulfils the same function can be compared, this system was applied during the creation of the questionnaire, which forms the basis of the country reports. For logical reasons, the comparison itself had to start only after the finishing of the country reports; where the entire context of the respective country could not be disregarded in order to better understand the corresponding legal system and to find out which way the respective member states have chosen in order to act in the area of corruption abatement in the best possible way. Furthermore, the legal standards and institutes were related to each other not only in their function, but also in their effects.

The comparison is aimed at finding out whether there are common characteristics in the area of corruption which can be summarized as common principles.

b) Comparison in the Political Sciences

The study focuses on the comparison of more concrete corruption-relevant standards. In the study, the national standard and the consciousness in connection with the abatement of corruption are understood as an independent variable; in turn, the standards affect the possibility of corrupt behaviour. Accordingly, corruption and its aspects are taken as a dependent variable.

In connection with the evaluation of the corruption-relevant standards, the study uses the procedure of comparison for a union of states whose membership equally requires the complete takeover of the entire community property (*acquis communautaire*). The study focuses on a community of states shaped by homogeneous normative claims, institutions and objectives. Regarding this homogeneous group of states (from this point of view), the Difference Method is the measure of choice for the comparison. Here, the extraction of as many constant environment variables as possible is a central condition. Nevertheless, the states must distinguish between the dependent variable or its various possible forms.

For the EU member states, environment variables concerning the state structure can be understood as constant.³⁹ In this respect, the study will no longer concentrate on the constant

38 *Martin Morlok*, Rechtsvergleichung auf dem Gebiet der politischen Parteien, in: Dimitris Th. Tsatsos, Parteienrecht im europäischen Vergleich, 1. edition 1990, page 695 (713).

39 The EU member states are to be classified homogeneously as constitutional democracies; they have at their disposal an executive power divided into a Head of State and a government led by a Head of Government; in all

context variables and no longer take these into consideration, they form the framework of the study.

Although the EU stresses in article 29 and 31 of the EUV that corruption represents a danger both economically and politically, which runs counter to the objectives, corruption is pronounced to different degrees – at least in the public perception. The perception of corruption varies in the member states of the EU. In order to be able to comparably cover this for all EU member states, the ‘Corruption Perception Index’ (CPI) from ‘Transparency International’ (see A.II.4.) is used in the following. The CPI certifies a variance which encompasses much more than a third of the in total 158 evaluated rankings within the EU. In 2006, the range reaches from 1st place – hardly corrupt – (Finland) up to 61st place (Republic of Poland).

In conclusion, this means that on the one hand, different degrees of the dependent variable in the examined countries are to be found, and that at the same time many environment variables can be seen as constant. Accordingly, the subject matter of the investigation corresponds to the requirements of the ‘Method of Difference’ developed by Mill. This is the measure of choice in order to extract the connection between the dependent and the independent variables. ‘The Method of Difference focuses in particular on the variation of certain features amongst others that do not differ (strongly) across comparable cases’.⁴⁰ Thus the study is based on the elimination of those factors (independent) for which at first no direct influence on the corrupt behaviour in the public sector is postulated (dependent variables). The political system and the international conventions are regarded as such in the study. Accordingly, the political system, among other things is not concentrated on as a whole; in the same way, the international conventions mainly ratified by the EU member states in connection with corruption abatement are not more closely analysed. On the other hand, differences exist in the national state standards concerning the position of political mandate-holders, political office-holder and the parties. The focus of the study is therefore on exactly those as the central actors to be investigated; they are examined in the questionnaire which collects the data homogeneously for all EU member states.

examined EU member states, constitutional changes are made more difficult regarding simple laws; in the respective states, the cabinet acts as a cooperative advisory and decision-making body, whereas individual responsibility is warranted to departmental ministers; the structure and the mechanisms of the governments are strongly shaped by the party system; there are multi-party systems and systems with a plurality of parties in the EU member states; the EU membership requires the complete adoption of the entire *acquis communautaire* and the examined states have ratified the OECD Convention on corruption abatement, which must be implemented within national criminal and/or civil law (cp. *Wolfgang Ismayr* (ed.), *Gesetzgebung in den Staaten der Europäischen Union*, Opladen 2002; *idem*, *Die politischen Systeme Westeuropas*, Opladen 2003; *id.*, *Die politischen Systeme Osteuropas*, Opladen 2002).

40 *Hans Keman*, *Comparing political systems: Towards positive theory development*, Working papers Political Science, University Amsterdam 2006, page 16 (emphasised in the original).

B. Reports

The country reports have been composed on the basis of a questionnaire fielded by experts for each country and supplementary own research. The structure of the country reports corresponds to a standardized outline, which is only deviated from in case of specific national features. Individual outlines precede every country report. To ensure comparability of the country reports the following standardized outline is applied:

I. Sources of Data-collection on Corruption in the Public Sector

- Public sources of data-collection on corruption in the public sector
- Private sources of data-collection on corruption in the public sector

II. Legislation dealing with Corruption

- Specialised legislation dealing with the fight against corruption
- Definition of corruption given by law
- Legality/ expediency principle
- Right of access to administrative files

III. Control and Sanctions

- Administration facilities with the task of preventing and fighting corruption
- Parliamentary facilities with the task of preventing and fighting corruption
- Role of media, science and NGOs

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

- Structure of the public sector and employment structure
- Special legal obligations and privileges
- Incomes
- Privatization

b) Allocation of Financial Resources

- Duties and responsibilities of bodies controlling the allocation of financial resources
- Tender procedures

c) Public Services Law and Human Resources in the Public Administration

- Influence of political parties regarding staffing in the public sector
- Secondary employment
- In-house facilities with the task of preventing and fighting corruption
- Undue influence: criminal law and disciplinary measures

2. Members of the National Parliament

a) Legal Position within the National Legislation

- Status of members of parliament
- Incomes of members of parliament
- Incompatibilities

b) Additional Incomes of Members of the National Parliament

- Secondary employment/ additional incomes
- Disclosure requirements

c) Undue influence

- Special criminal provisions of bribery
- Other sanctions
- Codes of conduct

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

- Status of political office-holders
- Incomes of political office-holders
- Incompatibilities

b) Additional Incomes of Political Office-holders

- Secondary employment/ additional incomes
- Disclosure requirements

c) Undue Influence

- Criminal provisions of bribery
- Other sanctions
- Codes of conduct

4. Political Parties

a) Legal Position within the National Legislation

- Regulatory framework
- Legal form/ organizational character

b) Revenues of Political Parties

- State party financing
- Private funding/ donation prohibition

c) Legislation on Transparency of Political Party Funding

- Accountability
- Duties of disclosure
- Sanctions

V. General Comments

- Assumed main reasons for corruption
- Assumed main areas of corruption
- Influence of corruption scandals on legislation
- Best practise-mechanisms of fighting corruption

Report Austria⁴¹

41 We would like to thank Prof. Dr. Manfred Stelzer, head of the Department of Constitutional and Administrative Law at the University of Vienna, and Mrs. Cornelia Köchle, scientific assistant, for answering the questionnaire and supporting the realization of the Report Austria, written by Alexandra Bäcker.

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I. Sources of Data-collection on Corruption in the Public Sector

STATISTIK AUSTRIA (STATISTICS AUSTRIA)⁴², which has been an independent non-profit federal institution of public law since the 1st January 2000, deals with the statistical acquisition of crimes in general and thus also crimes of corruption. The basis for the legal criminal statistics⁴³ managed by STATISTICS AUSTRIA is an extract from police records⁴⁴ which contains all final convictions by Austrian criminal courts of the year under review. The allocation of the case numbers occurs according to offense groups in the sequence of the crimes set through the *Penal Code*. So indeed the punishable breach of duty in public office and related punishable actions are summarized in list form. A clear allocation of corruption offences does not take place in this way, however. Additionally, in the case of sentencing of multiple punishable acts, the sentencing will be allocated to the ‘leading offence’, which means, that paragraph decisive for the degree of penalty. The non-leading offences are not covered separately.

The ‘Federal Bureau for Internal Affairs’ (*BIA*)⁴⁵ also maintains statistics on corruption-relevant statements of affairs. The *BIA* is a specialized department of the Federal Ministry of the Interior (*BMI*) and leads national security and criminal police investigations as an independent and self-directing organisational unit in the cases of suspicion of malpractice and corruption in public office. Investigations are mainly conducted on ‘internal offenders’. This primarily corresponds to the acceptance and inspection of accusations and complaints against employees of the *BMI* as well as its subordinate offices and are to be allocated to the area of malpractice in office (§§ 302-313 *Penal Code*); it also includes all other accusations raised such as theft, fraud, but also mobbing and other violations of official duty. In addition, the *BIA* has also established itself as a specialized office for the investigation of corruption cases in other areas. So if required, pertinent acquisitions are carried out in other departments, in city magistrates and district authorities, in municipalities, but also in the private sector. The *BIA* works directly with the prosecutors and courts responsible in all of its tasks. All reported complaints are registered in the statistics kept by the *BIA*. Everyone and anyone has the right to lodge a complaint.⁴⁶

The prevention of and fight against corruption has also just been brought into focus on the local level. So the task of corruption prevention and abatement has been assigned to the Internal

42 It arose through the detachment of the Austrian Central Statistical Office from the Federal Service through the Federal Statistics Act 2000 (BStatG); see <http://www.statistik.at>, 22nd August 2006.

43 The last publication of the legal criminal statistics by STATISTICS AUSTRIA from 2004 comprises 209 pages and can be purchased as a printed version with ISBN 3-902479-52-3 for € 31.00. The main part of the publication is available on the internet pages of STATISTICS AUSTRIA as a PDF download, see <http://www.statistik.at/neuerscheinungen/kriminal04.shtml>, 22nd August 2006.

44 § 13 of the Criminal Records Act 1968, BGBl. Nr. 277, as amended.

45 <http://www.bia-bmi.at>, 22nd August 2006.

46 See *BIA Statistik 2004*, page 3, http://www.bia-bmi.at/downloadarea/de/statistik_2004.pdf, 22nd August 2006.

Revision of the Vienna City Council since the 1st May 2004.⁴⁷ Among other things, a central set of disciplinary statistics has been created since then regarding offences under the general heading of corruption, which could be observed in the city council. Complaints and legal convictions, decisions of the criminal courts and disciplinary authority have been collected retroactively since the 1st January 2002, in each case under quotation of sentencing. With contractual employees, decisions of the labour and social courts are also considered as well as the number of the dismissals carried out due to corruption.⁴⁸

In addition to the public offices that keep statistics on corruption, private offices do not play any significant role. For example there has only been an Austrian national chapter of Transparency International since spring 2006.⁴⁹ Indeed there are private facilities that deal with corruption, for example within the framework of research projects - partially with the aid of empirical inventories.⁵⁰ However, for a permanent on-going collection of corruption-relevant data, which is published regularly, no noteworthy degree of familiarity is attributed to private offices.

II. Legislation dealing with Corruption

Within the Austrian legal system, no universal legal definition of the term corruption exists which is valid for all branches of the law.

Indeed two laws were enacted in Austria which were respectively referred as Anti-Corruption Law⁵¹ and Second Anti-Corruption Law.⁵² However, the penal regulations created or changed through this as well as any other penal regulations directed towards corrupt behaviour can be found (today) in the 'general' Austrian Criminal Code (*StGB*).

The legal system provides the principle according to which only the prosecutor has the duty to institute criminal proceedings.⁵³ Exceptions to this compulsory prosecution for the prosecutor are only provided for in very few cases regulated by law.⁵⁴ If a public authority or public

47 Generally, it checks legality, correctness, thrift, economic efficiency and expediency of administration, <http://www.wien.gv.at/verwaltung/internerevision/antikorrupcion.html>, 28th August 2006.

48 Cp. <http://www.wien.gv.at/verwaltung/internerevision/pdf/statusbericht04.pdf>, 28th August 2006.

49 http://www.transparency.org/contact_us/organisations/austria, 28th August 2006.

50 So the Institute for Conflict Research - a legally non-profit organization external to the university, in existence since 1976 (<http://www.ikf.ac.at>, 29.08.2006) - carried out a temporary research project which dedicated itself among other things to the spread of corruption in Austria. The project entitled 'Korruption in Österreich: Verbreitung, Trends, Perspektiven der Prävention' was completed in June 2000, see http://www.ikf.ac.at/a_proj00/a_pro07.htm, 29th August 2006.

51 Federal law on penal regulations for the fight against breach of trust and corruptibility, BGBl. 1964/116.

52 Federal law which changed and complemented the regulations of the penal code for the abatement of mismanagement and corruption, BGBl. 1982/205.

53 The duty to prosecute exists in the case of sufficient suspicion and results for the prosecution authority from § 34 para.1 *StPO* (Code of the Criminal Procedure), for the authorities in the administrative court criminal proceedings from § 25 Administrative Penal Act – VStG.

54 According to Article 34 para. 2 Code of Criminal Procedure: in the case of multiple offence, foreign actions, or in cases of extradition as well as according to article 42 Criminal Code in lacking punishability of the action

administrative office should come to know about a suspicious act within their legal jurisdiction, they are obliged to file a complaint with the prosecution or law enforcement agency according to Article 84 para. 1 of the Code of the Criminal Procedure in supplement of the principle of compulsory prosecution.

The federal act on conflicts of interest of the highest offices and other public officials (*UnvG*) is to prevent and punish corruption. According to Article 9 *UnvG*, mandate holders can be deprived of their mandate if they misuse their position with the intention of seeking profit.

The fight against corruption is not restricted on punishment and disciplinary law. The prevention of corruption through the creation of openness and transparency has a special significance in Austria that is also shown in that the constitution itself provides regulations on this. Article 20 para. 4 of the Federal Constitutional Law (*B-VG*) standardizes a duty for administration officials to grant information on matters in their sphere of action, as long as it does not conflict with the official secrecy on a constitutional level according to Article 20 para. 3 *B-VG*. The duty to grant information is regulated more closely by the Duty to Grant Information Act of the Federal Government and/or Duty to Grant Information Act of the states. The laws provide the citizens a subjective right concerning the granting of information. In the case of a refusal to grant information, a ruling can be demanded which is to be justified and can be contestable before the administrative court. A constitutionally guaranteed right to the granting of such information does not exist, however. Article 10 *ECHR*, which has a constitutional status in Austria, simply standardizes the right to inform oneself from publicly accessible sources.

III. Control and Sanctions

The *BIA* –already mentioned above– takes the central role of a specific anti-corruption authority. Next to that there are also, however, further administration facilities which are concerned with the control of administration procedures and, accordingly, also the exposure of corruption – depending on tasks and responsibilities with different emphasis and target settlement. Some examples are: the Ombudsman Board⁵⁵, the Court of Auditors and the State Court of Auditors as

and/or in the administrative court criminal proceedings according to § 21 VStG with insignificant fault and insignificant consequences of the infringement or at disproportionate prosecution expenditure.

55 Art. 148a to 148j B-VG and the Ombudsman Act 1982 (BGBl. No. 433/1982 - WV) regulate responsibilities and tasks. Fundamentally it investigates claimed grievances in the administration of the Federal Government. Through their state constitutions, seven of the nine states appointed the Ombudsman Board to also control the administration of the state and the municipalities. Two more states created their own state ombudsmen; see <http://www.volksanw.gv.at>, 4th September 2006.

well as the departments set up in the public authorities and appointed with internal revisions such as the municipal controlling authority.⁵⁶

A control of public processes also occurs on the parliamentary level. According to art. 53 *B-VG*, the National Council for the inspection of the political responsibility of members of the Federal Government can establish investigation committees for certain processes in the federal administration by means of majority vote.⁵⁷ These ad-hoc arranged committees have representatives sent to them by the parties and have the authorization to carry out a hearing of evidence - all authorities are obliged to cooperate on an official level - and to provide the National Council a final report.⁵⁸ The National Council then decides on sanctions (for example motions of no confidence against a Federal Minister or the government).

Although the use of an investigation committee is not organized as a minority right, the Austrian Constitution recognises other control instruments that enable the respective opposition to perceive a kind of guardian function towards the ruling majority. These are not 'rights of parliamentary opposition in the narrower sense', but rather rights that can be exercised by a minority of members. They are, however, primarily used as instruments of government criticism.⁵⁹

Government criticism as well as the uncovering of grievances or the branding of behaviour as 'indecent' occurs frequently in the public media as well. In the course of each current 'scandal', it is particularly politicians of the opposition parties who again and again publically express accusations of corruption towards the government parties that are then spread by the media. However, the public attention for such cases of political corruption can rather be classified as minor.⁶⁰ In Austria, 'investigative journalism' is more a domain of the weekly periodicals than

56 Generally it is incumbent on the controlling authority to inspect the municipality's management of financial resources regarding the accuracy of the figures, the correctness, thrift, economic efficiency and expediency; see <http://www.kontrollamt.wien.at>, 4th September 2006.

57 The committees were of greater political importance in the cases of 'Wiener Allgemeines Krankenhaus' in the years 1980-81 (see below, page 11 and <http://de.wikipedia.org/wiki/AKH-Skandal>, 4th September 2006), 'Lucona' in the years 1988-89 (see <http://de.wikipedia.org/wiki/Lucona>, 04.09.2006) and 'Noricum' in the years 1989-90 (see <http://de.wikipedia.org/wiki/Noricum-Skandal>, 4th September 2006), which also led to the resignation of prominent politicians. Since then, investigation committees rarely play a role anymore. However, it does not seem completely out of the question that another investigation committee could be formed concerning the BAWAG affair (see <http://de.wikipedia.org/wiki/BAWAG-Affaere>, 4th September 2006), currently being discussed.

58 See Article 33 Federal Law on the rules of procedure of the National Council (Federal Law on the Rules of Procedure of the National Council 1975) and the procedural order for parliamentary investigation committees (VO-UA).

59 Numbering among these: the right of interpellation (art. 52 *B-VG*, more closely regulated in the National Council's rules of procedure - NRGOG), the calling of an exceptional session of the National Council on requests of a third of the members of the National Council (art. 28 para.2 *B-VG*), the examination of the book-keeping by the Court of Auditors on request of 20 members (art. 126 b para.4 *B-VG* in connection with art. 99 para. 2 NRGOG).

60 For the possible causes: see below, V.

of the daily newspapers, which usually do not raise any direct accusations of corruption - they rather report 'indirectly' on that.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

The structure of Austria's administration follows the federal division (art. 2 *B-VG*) into an upper state (federation that consists of several sub-states (nine)). The administration of the federation occurs through its own administrative authorities⁶¹ (Federal Administration) and through the states (mediate Federal Administration). The areas of mediate Federal Administration are delegated to the state governor (uppermost organ of the state administration) and then on to the state authorities subordinated to him. The district authorities and the district administrative bodies form the lowest level. A third area in addition to federal and state administration is the self-administration. Territorial autonomy is led by the municipality (its own sphere of activity). Tasks of the Federal Administration and the State Administration can, however, also be transferred to the municipality (transferred sphere of activity). The municipalities are then part of the Federal/State Administration as so-called administration districts. Further autonomous bodies are for example chambers (professional and economical self-administration), social security facilities, universities (cultural self-administration) and so on.

There were a total of 436,103 employees in the public administration in the year 2004⁶², almost half of them employees of the state administrations and only slightly more than one third in the Federal Administration. The least amount of employment was allotted to the municipalities and associations of local government authorities with only 20%. In total the number of public service employees has been declining since the end of the eighties due to an increasing tendency of privatization, for example in the fields of street infrastructure, telecommunications and financial market supervision.⁶³

The public service regulations recognizes two forms for the appointing of public employees: permanent civil servants appointed through nomination and contract staff engaged by private law employment contract.⁶⁴ The duties of the public servants are legally regulated.⁶⁵ According to

61 For example tax authorities, customs offices.

62 See Statistisches Jahrbuch 2006 by STATISTICS AUSTRIA, chapter 07 'Beschäftigung und Arbeitsmarkt', point 7.14 and 7.15, http://www.statistik.at/jahrbuch_2006/pdf/K07.pdf, 4th September 2006.

63 The Österreichische Industrie Holding AG (OIAG) has been the investment and privatization agency of the Republic of Austria since 1987. An overview of the history of the OIAG and the privatizations from 1987 on can be found at: <http://www.oeiag.at/html/oiag/geschichte.htm>, 26th September 2006.

64 There are twice as many civil servants employed in the Federal Administration as contractual employees, while this relationship is reversed on the state level, the municipalities employ even more than six times as many

this, civil servants must ensure by their overall behaviour that the confidence of the general public on the objective perception of official duties is kept. In principle, the civil service status of a civil servant is nonterminable, but can be terminated on the part of the civil servant at any time through withdrawal from office, or on the part of the regional authority only within the framework of the disciplinary proceedings regulated in Article 91 ff. *BDG*. Upon reaching the appointed age limit, civil servants are entered into retirement per ruling, but remain ‘civil servants’ and thus also subject to disciplinary law.

The public service regulations of the contractual employees are regulated by the Federal Law on Contractual Employees of 1948 (*VBG*). A special protection against dismissals is offered for contractual employees⁶⁶; however, the employment as a contractual employee is much more flexible than that of civil service. The disciplinary rights – which are supposed to implement the civil servants’ duty to comply with instructions – are not used on contractual employees. Instead of this, legislative labour sanctions are applied in the case of service violations, examples being giving notice or dismissal.

For the most part, the same social legislative conditions are valid for the contractual employees as for employees in the private sector. However, they have been medically insured by the same insurance company as the civil servants for some time now.

Different regulations are valid in some areas of social protection for officials in the public service, depending on the employer (Federal Government, states, municipalities etc.). Civil servants are neither insured for unemployment nor retirement, they acquire direct claims from their respective employer. If a civil servant is dismissed due to a culpable service violation, he does not receive any unemployment pay and loses his claim to civil servant retirement. The retirement coverage for officials appointed after 1st January 2005 will be calculated according to the same regulations as in the legal pension insurance.⁶⁷

The income of the civil servants and the contractual employees is generally determined by similar criteria. The civil servants and the contractual employees receive monthly income and special payments. The monthly income consists of a basic salary defined by law plus various extra payments. Both employee groups receive special payments for every calendar quarter amounting to 50% of the monthly income. The income amount is determined in each case by the classification into a certain salary bracket, which for the civil servants is determined by the

contractual employees; see Statistisches Jahrbuch 2006 by STATISTICS AUSTRIA, chapter 07 ‘Beschäftigung und Arbeitsmarkt’, point 7.14, 7.15, http://www.statistik.at/jahrbuch_2006/pdf/K07.pdf, 4th Sept. 2006.

65 See §§ 43 ff. Service Code for Civil Servants 1979 (*BDG*).

66 At least according to the opinion of the Constitutional Court, VfSlg. 13720/1994.

67 Since 1997, the civil servant's superannuation (which is more generous in some areas) and the statutory pension insurance have become more and more similar. Due to the pension reform of 2004, the regulations on the special civil servant pensions are now only applicable for those civil servants born before 1955.

allocation to a certain table of grade and within this by the salary bracket, and for the contractual employees through allocation to a table of salary which again is subdivided into compensation groups and compensation stages. Principally, every employee advances into a higher salary group after every two years of service. Additionally there are further possibilities of advancement, for example via promotion or the transfer into a higher compensation group.

The incomes of public service employees are calculated in such a way that a full time civil servant is not dependent on an additional income.⁶⁸ The average income of a masculine, full time public employee is less than the average income of all men in full time employment in the private sector.⁶⁹ Women who are in the public service earn more on average than women in the private sector do. In contrast to those in the private sector, incomes in the public service have an upper limit due to the preset table of salary. One can therefore assume for example that a lawyer having a top position in the legal department of a large company has clearly better income possibilities than a lawyer in the public service.

b) Allocation of Financial Resources

Public finances are subject to control by the Court of Audit.⁷⁰ In some states, there are State Courts of Audit in addition to the (Federal) Court of Audit. According to art. 121 para. 1 *B-VG*, the main task of the Court of Auditors is to control whether public finances of the Federal Government, the States, the municipalities and other legal entities such as the social security agencies have been properly and efficiently administered. The control carried out by the Court of Audit consists of the accuracy of the figures, the legality⁷¹ as well as the thrift, cost-effectiveness and expediency of usage of funds. The task of fighting corruption is not directly allotted to the Court of Audit; however, not only financial measures (income and expenditures) are to be understood by the term ‘bookkeeping’ but also all conduct, which directly or indirectly is of financial importance. Due to the wide range of meaning for this term, the Court of Audit can subject virtually all processes to an inspection that are in its jurisdiction. For this purpose it can demand information, examine accounting records and carry out investigations according to Article 3 *RHG* (Federal Act on the Board of Audit).

68 Compare <http://www.goed.at/files/877/Gehaltstabellen-2006.pdf>, 5th September 2006.

69 Report on average income according to art. 1 para. 8 section 4 Limitation of Emoluments of Holders of Public Offices, point 3.1.4, http://www.rechnungshof.gv.at/Berichte/Einkommen/Einkommen_2004_01/Einkommen_2004.pdf, 5th September 2006.

70 The constitutional general regulations of auditing and book-keeping control can be found in the articles 121 to 128 *B-VG* and are concretised by the Federal Act on the Board of Audit, 1948 (*RHG*) as amended.

71 It is to be noted that especially regarding contracting law, a homogeneous, objectifiable procedure for the awarding of government contracts has arisen only in the course of Austria having joined the EU. Before that there was no contracting law as such; the awarding of government contracts occurred according to a system not determined by legal specifications (sometimes by ‘self-commitment’), in which political criteria were presumably often decisive in who was awarded a contract.

The Court of Audit issues reports on the results of its investigations. A ‘negative’ report from the Court of Audit does neither have immediate legal consequences for the place investigated, nor can the Court of Audit order or carry out measures in order to rectify possible grievances found there. This is the responsibility of the National Council and/or the respective *Landtag* (State Parliament).

After the investigation results have been supplied to the office in question for commenting, the report is announced to the National Council and/or to the respective *Landtag* and then published.⁷² Reports from the Court of Audit are generally taken note of in the daily press and faults found by the Court of Audit are usually represented as being appropriate and objective criticism. In fact, such strong confidence is given to the Court of Audit that it is usually difficult for the administration authorities to publically rebut with any effect, no matter how legitimately.

The cost explosion connected to the almost four-decade long reconstruction of the Viennese General Hospital (AKH) - from the initial 1 billion to more than 40 billion ÖS (almost € 3 billion) - led to permanent controversies between government and opposition: the so-called ‘AKH Scandal’.⁷³ The reconstruction became a ‘Mega-Scandal’ in the spring of 1980, when the journalist Alfred Worm uncovered that bribe payments had been made to the Viennese official Adolf Winter in connection with the awarding of contracts for the AKH's construction. It turned out that several enterprises which had been awarded contracts for the construction of the AKH with the aid of Winter had transferred approx. 40 million ÖS to the accounts of the letterbox companies of ‘Plantech’ and ‘Geproma’, both founded by Winter in Liechtenstein between 1972 and 1979.

c) Public Services Law and Human Resources in the Public Administration

Legally speaking, the party-political orientation is irrelevant for the staffing in the public service. Nevertheless, the political parties have, in fact, great influence on position placement. On the national level, this is furthered by the Federal President delegating the right of appointment for federal public servants, to which he is legally entitled, to the department ministers who are usually representatives of a political party. If the Federal President himself exercises his right of appointment, he is then bound by proposals.

Persons of trust of the respective minister who will then leave office with him again usually occupy positions in ministerial offices. A change in government has therefore immediate influence on the staffing, at least on this level. On the other hand, for the remaining employees in the ministries and in the authorities subordinated to them, it has only organizational effects if at

⁷² The reports of the National Council can be seen online at <http://www.rechnungshof.gv.at/>, 14th July 2006.

⁷³ The case was also the subject of a parliamentary investigation committee procedure, see above footnote 17.

all, as the schedule of responsibilities of the ministries mostly follows given loyalty structures and less so objective points of view.

According to Article 56 para. 1 *BDG*, civil servants are not permitted to carry out any secondary occupation which hinders the fulfilment of their official tasks, which evokes the supposition of bias or which endangers other essential official interests. Secondary occupations which are used for the obtaining of appreciable revenues as well as an activity on an executive board, supervisory board, administration council or any other organ of a profit-oriented legal body of civil law is to be reported to the respective office (Article 56 para. 3 and para. 5 *BDG*). A paid secondary occupation for part-time civil servants or those on leave even requires authorization according to Article 56 para. 4 *BDG*. With contractual employees, the pursuance of a secondary occupation that can interfere with full impartiality in the service and is not given up in spite of request by the main employer is a reason for dismissal according to Article 34 para. 2 e) *VBO*.

Breaches of duty while employed in the civil service can be legally and/or disciplinarily punished depending on the type of violation. Fundamentally only such violations of the official duties that affect the public interest concerning the dutiful administration of an office or public function are subjected to the criminal law while breaches of duty that only affect the work relationship of the civil servant to the state are subject to disciplinary law.

Punishable offences are: oppression (Article 302 *Penal Code*), acceptance of gifts by civil servants or executives of a public company and/or their employees, expert consultants and experts (Article 304, 305, 306, 306a *Penal Code*), bribery (Article 307 *Penal Code*), the undue influence on official decision makers (so-called prohibited intervention, Article 308 *Penal Code*) and further crimes not specifically corruption-related, but often crimes committed in connection therewith as the violation of official secrecy (Article 310 *Penal Code*), falsifying of an official document by a public official (Article 311 *Penal Code*) or also fraud and infidelity. The term of civil servant according to the Penal Code defined by Article 74 *Penal Code* covers all persons who are entrusted with the performance of task for the government (so-called functional concept of a civil servant). Most crimes of corruption crimes are sanctioned by imprisonment, fines being the exception. In addition, the loss of office of civil servants follows conviction, if the imposed imprisonment amounts to one year or longer (Article 27 *Penal Code*).

In addition to the legally sanctioned violations of duty, there are numerous service code regulations with similar contents, the non-observance of which is to be punished as subject to disciplinary law. Thus for example, according to Article 59 para.1 *BDG*, it is forbidden for a civil servant ‘with regards to his official position, to ask for, accept or be promised a gift or other pecuniary benefit as well as any other kind of benefit for himself or for a third party’, tokens of small value which are customary in a region or country, however, are not regarded as gifts. Furthermore, a civil servant is allowed to accept so-called ‘honorary gifts’, but must inform his

employing authority about it, who can forbid the acceptance (Article 59 para. 3 *BDG*). Comparable regulations can also be found in the statutes of public servants of the states and municipalities.⁷⁴

The disclosure and punishment of duty violations is guaranteed by organizational precautions, on the one hand and mainly by the BIA - already described earlier in more detail. Yet in a wider sense, both the departments dealing with the 'internal revision' in the ministries as well as the controlling authority established on state and municipality levels also serve the internal fighting of corruption.⁷⁵ Their task consists of checking the efficiency, thrift, and cost-effectiveness of the respective department's task fulfilment, showing grievances and drawing up proposals for remedial actions. A legal obligation to establish such internal facilities does not exist, however.

Some Austrian diplomatic authorities abroad are reproached with having issued and/or extended illegal residence permits for 'payment' in the so-called 'Visa Scandal'. According to the final report of an investigation commission set up in November 2005, it only concerned misdemeanours of individual employees. The prosecution also took on the reproaches and even today still investigates high-ranking civil servants. So, for example, a former consul who had falsely issued more than 600 visas in the Austrian diplomatic authority in Nigeria was sentenced in January to a two-year imprisonment (six months unconditional and 18 months on probation) for abuse of administrative authority and bribery.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The status of a member is more closely defined in the constitution, which standardizes the basic principle of the free mandate (Article 56 para. 1 *B-VG*) and grants immunity to the National Council representatives both during the practice of their activity as parliamentarians as well as beyond that⁷⁶ (Article 57 *B-VG*). In addition, Articles 9 to 12 of the Federal Law on the Rules of Procedure of the Austrian National Council (*NRGOG*) deal with the legal position of the members. The Incompatibility Act specifies the positions that are incompatible with the status of being a Member of Parliament.

Article 26 *B-VG* contains relatively encompassing regulations of the basic principles for the election of the National Council, the implementation of which is more closely regulated in the

74 In some cases there are implementing regulations on the elements of civil service status; but in other cases 'only' behavioural recommendations which have no immediate effects under disciplinary law, compare e.g. <http://www.wien.gv.at/verwaltung/internerevision/antikorrupption.html>, 27th September 2006.

75 Based on Article 7 para. 4 of the Federal Ministries Act 1986 and two decisions by the Council of Ministers from 12th September 1981 and 12th March 1983 respectively, departments for internal revisions were established in all ministries.

76 Detailed regulations on this can be found in art. 9 *NRGOG*.

parliamentary elections law (*NRWO*, *BGBL.* 471/1992). The mandates are assigned according to a very strongly list-dependent system of proportional representation.⁷⁷ Quite often, political parties are actually the ones behind the electoral parties for the National Council Elections so that the list construction follows the criteria embodied in the respective party statutes. The voter can change the sequence of the candidates on the lists by means of placing preferential votes.

Members of the National Council receive monthly salaries of € 7,905.02⁷⁸ for their parliamentary work. Added to that are special payments in the form of a 13th and 14th monthly salary, according to Article 5 *BBezG*. The monthly salary is regarded as a ‘base amount’ for the calculation of the salaries for the office-holders of the Austrian state according to the so-called ‘salary pyramid’ (Article 3 *BBezG*). Thus, for example, the President of the National Council receives 210% of the ‘base amount’ (Article 3 para. 1 point 4 *BBezG*); the Second and the Third National Council Presidents each receive 170% of the monthly payment of a regular National Council member (Article 3 para. 1 point 8 *BBezG*). Furthermore, according to Article 10 para. 1 *BBezG* a refund is due to the members of the National Council for all expenditures that arise in the line of their mandate⁷⁹ to the amount of the actual costs, not exceeding 6% of the base amount per month, according to Article 2 *BBezG*. Also, business trips taken by members of the National Council on behalf of the President of the National Council are to be compensated according to Article 11 para. 1 *BBezG*.⁸⁰ Apart from that, travel costs from the habitation to the parliament can be asserted (Article 10 para. 2 *BBezG*).

In addition to that, the members receive a one-time compensation on termination of the pursuance of their profession, depending on the duration (Article 14 para. 2 *BezG*⁸¹) as well as an interim allowance on termination of their mandate (Article 6 *BBezG*). The representatives remain members of the pension fund they belonged to before the assumption of their office; the Federal Government will pay an allowance to this pension fund upon termination of the mandate (Article 13 *BBezG*). According to Article 24 para. 1 *BezG*, a right to a pension already exists after a 10 year term of office.

77 The control of the legality of the election is carried out according to art. 141 B-VG by the Constitutional Court. More exact conditions for the proceedings contesting an election result are contained in the art. 67 to 71a VfGG.

78 As per art. 2 para. 2 of the federal law on the emoluments of persons in highest offices, the members of the National Council and Bundesrat and the Members of the European Parliament originating from Austria (Federal Salary Act – *BBezG*) in connection with the President of the Court of Auditors’ announcement on the adjustment factor for determining the amount of the payments for public officials, which then again according to art. 3 para. 1 *BBezG* is to be determined annually and published in the ‘*Amtsblatt zur Wiener Zeitung*’, for 2006 see *Wiener Zeitung* from 23rd Mai 2006.

79 Travel expenses, overnight costs, office costs, including the company costs and expenditures for employees, as far as they are not compensated according to the legislation pertaining to parliamentary workers, *BGBL.* no. 288/1992, all other expenditures except for entertainment expenses, where applicable.

80 According to the Travelling Expenses Regulation 1955, *BGBL.* no. 133, valid for federal civil servants of the highest table of salary.

81 Federal law on the emoluments and pensions of the persons in the highest federal offices and other officials (Emoluments Act - *BezG*).

b) Additional Incomes of Members of the National Parliament

The function as a member in the National Council is incompatible with some other public functions, as for example with the office of a member of the *Bundesrat*, the office of a Member of the European Parliament (Article 57 *B-VG*), the office of Federal President (Article 61 *B-VG*) or of a member of the Supreme Court of Justice, Superior Administrative Court or Constitutional Court. The mandate is, however, compatible with government office. Some of these incompatibility regulations also have an after-effect. Thus, for example, a member cannot hold the function of the president or vice-president of the Constitutional Court for up to four years after expiration of his mandate.

According to Article 2 *UnvG*, the president of the National Council as well as the spokesmen of the parliamentary club may not pursue any profession with the aim of gainful employment, according to Article 2 para. 4 *UnvG*; however, the administration of one's own property, the pursuance of functions in a political party, of a legal representation of interests or a voluntary professional association do not count as the pursuance of a profession.

It is entirely usual for members of the National Council to hold other positions in addition to their mandate such as in legal representations of interests, trade unions, political parties, social insurance providers, as civil servants or also as officials or in enterprises. Some members stay self-employed entrepreneurs in agriculture and forestry.

According to art. 9 *BezBegrBVG*, all supplementary incomes that annually amount to more than 14% of the monthly basic salary of a National Council member are to be made public. Only unearned income is excluded from the duty of disclosure according to Article 9 *BezBegrBVG*. With revenues from self-employed, freelance, agricultural or forestry work, only the profession and/or the legal body through which the revenue is achieved is to be indicated, not the amount of income. Members who are employed in the public service must annually announce to a 'payment control commission' which arrangements they have made for release from the service or for a field service position and how their job performance is reviewed. The commission annually sends a report to the National Council and the Federal Council that is to be published (Article 59 b *B-VG*).

Persons other than the members themselves are not included in the duty of disclosure.

The list of additional income of the members that is to be made by the President of the National Council must be granted to anyone on request. It can be viewed at the visitor center of the Austrian parliament in Vienna.

According to an assertion of the then opposition party, Dr. J. Höchtl, (ÖVP) member of the National Council, supposedly received a civil servant salary for years for his position as

scientific assistant at the Vienna University of Economics and Business Administration on top of his payments as a member, without actually performing any services there. The ‘Höchtl case’ earned a lot of media attention in the summer of 1996 and led to a change in the legal situation. For that time now, according to Article 59a *B-VG*, members of the National Council who are employed in public service at the same time can either have them released without any further payments (but with a guarantee of return) or have their employment reduced to part-time so that compensation is only made for services actually carried out.

c) **Undue Influence**

The Austrian legal system does not recognize any statutory criminal offence concerning the bribing of a member of legislature just as it does not recognize regulations that would explicitly forbid members the acceptance of gifts and/or trips at the expense of companies. Article 9 *UnvG*, however, does provide for the possible deprivation of a National Council member's office if he abuses his position with the object of gain. So far, however, there is no known case in which this possibility has been made use of.

No cases of undue influence are known. However, the recent scandal around the money-losing deals of the *BAWAG* that belongs to the trade union *Österreichischer Gewerkschaftsbund* (ÖGB) not only lead to the resignation of leading ÖGB officials, but also caused a vehement debate on whether leading officials in representations of interests should also simultaneously hold a mandate on the National Council. Consequently, the executive committee of the Social Democratic Party (SPÖ) - to which the ÖGB traditionally has a specific close relationship - decided that National Council members who belong to the social democratic parliamentary club might not hold offices of either President of the ÖGB or chairperson of a partial trade union.

3. **Political Public Office-holders on the National Level**

a) **Legal Position within the National Legislation**

Article 69 to 78 *B-VG* as well as the Federal Ministry Law 1986⁸² deal explicitly with the legal position of the Federal Government as a collegial body, the Federal Chancellor and the Federal Ministers. The legal position of the Federal President is more closely regulated in Article 60 to 68 *B-VG*, the position of the secretaries of state in Article 19, 71, 78 *B-VG*.

In addition to that, the Federal Constitutional Law on the limitation of emoluments of holders of public offices (*BezBegrBVG*), the federal law on the emoluments of persons in highest offices, the members of the National Council and *Bundesrat* and the Members of the European Parliament originating from Austria (Federal Salary Act – *BBezG*), the federal law on the

82 As amended by BGBl. I 2005/92.

emoluments and pensions of the persons in the highest federal offices and other officials (Emoluments Act - *BezG*) as well as the Federal Act on Conflicts of Interest (Incompatibility) of the Highest Offices and other public officials (Incompatibility Act – *UnvG*) apply for all aforementioned office-holders as well.

According to the so-called ‘salary pyramid’⁸³, the base amount for the payment calculation of the Austrian government office-holders is the monthly payment of a (basic) member of the National Council to the amount of 7,905.02 EUR. Taking this as a starting point, the payments for the office-holders are calculated in accordance with the percentage ratio determined in Article 3 para. 1 *BBezG*. Thus, for example, the Federal Chancellor is entitled to 250% of the base amount – € 19,762.60 per month (Article 3 para. 1 point 2 *BbezG*). The Federal Ministers receive 200% – € 15,810 per month; State Secretaries receive 160% or 180% of the base amount depending on whether they are entrusted with certain tasks – € 12,648 or € 14,229. In addition to that, the office-holders are entitled to reimbursement of expenses in accordance with art. 9 *BezG*.

Office-holders have a right to a pension after just four years in office (Article 35 para. 1 *BezG*): According to the regulations for the politician retirements which were valid until 1997, a former minister was entitled to a retirement pay of up to 80% of the last received payment after a nine year term; this privilege was abolished in 1997. However, all those politicians who had been members for ten years or who had already been in the government for four years as of the 31st July 1997 automatically remained in the ‘old retirement system’. Others could choose between the old system and the financially less attractive new regulations (Pension Fund System), according to which on-going contributions are paid to the chosen pension fund by the beneficiary, which then also produces the resulting pension services. There are currently 502 persons receiving services according to the ‘old’ remuneration. Only a very small part of these pensions are covered by contribution payments and cost the Austrian state approx. € 26.4 million in 2005.

Under certain legally more closely regulated conditions, retiring office-holders have a claim to continued remuneration as an interim solution while returning to professional life (see Article 14 para. 1 *BezG*).

Members of the Federal Government may simultaneously belong to the National Council. However, if government members renounced their mandate or do not accept their election, art. 56 para. 2 to 4 *B-VG* allows them a so-called ‘right to return’ to their position as parliamentarian.⁸⁴

83 See above.

84 Usually the Federal Ministers give up their seat in the National Council for the benefit of successor party colleagues (who are often called ‘temporary civil servants’ due to the government member's ‘right to return’).

b) Additional Incomes of Political Office-holders

For political office-holders, law standardizes numerous incompatibilities. Thus, the following positions are incompatible with the position as a member of the Federal Government: the Federal President (art. 61 *B-VG*), the President of the Court of Auditors (art. 122 para. 5 *B-VG*), member of the Ombudsman Board (Article 148g para. 5 *B-VG*) and judge of the Supreme Court of Justice, Administrative Court and Constitutional Court (Articles 92, 134 and 147 *B-VG*). If a Member of the Federal Government is also a public employee of the Federal Government, they are removed from their public office for the duration of their service in the Federal Government with omission of respective payment (Article 19 *BDG*; Article 29i *VBG*). In addition to this, according to Article 2 para. 1 *UnvG*, persons holding the following offices may not pursue any profession with the aim of gainful employment: the Federal President, for whom this prohibition is constitutionally valid and without exception (Article 61 *B-VG*), Members of the Federal Government as well as State Secretaries. Members of the Federal Government and State Secretaries must notify the Incompatibility Committee of any pursuance of a profession immediately after their assumption of office. The Incompatibility Committee can then either prohibit or allow it depending on whether an objective and uninfluenced administration of office can be guaranteed (Article 2 para. 2 *UnvG*).

The administration of one's own property, the exercising of functions in a political party, in a legal representation of interests or in a voluntary professional association are not regarded as pursuance of a profession according to Article 2 para. 4 *UnvG*.

In principle, federal ministers and secretaries of state are also not allowed to practice any leading position⁸⁵ in a corporation (*AG*) or a limited company (*GmbH*) in the fields of banking, commerce, industry and trade or in a municipal saving bank or mutual insurance company (except a state insurance institution). There is an exception to this prohibition, however: if the Federal Government (*Bund*) has shares in the enterprise and the Federal Government (*Bundesregierung*) declares that the practicing of said leading function lies in the interest of the Federal Government (*Bund*) and that this was approved by the National Council (Article 4 in connection with Article 5 para. 1 *UnvG*). Such a function may always be carried out in an honorary office only (Article 5 para. 2 *UnvG*).

Occasional incompatibility regulations are also valid through so-called cooling-off periods beyond the term of office: in this way, the incompatibility with the function of the president or vice-president of the Constitutional Court is still valid for another four years after the withdrawal from office.

85 Especially as an executive board member or member of the supervisory board.

Until recently it was entirely usual that ministers simultaneously held leading positions in representations of interest; something, however, which was not pursuant of a profession according to Article 2 para. 4 *UnvG*. This practice has been fought against in the last years, however, and is sometimes harshly criticized.

Supplementary incomes from those activities approved by the Incompatibility Committee as well as allowed by Article 2 para. 4 *UnvG* must be disclosed only to the President of the Court of Auditors. According to Article 9 *BezBegrBVG*, the disclosure duty of the supplementary incomes is also valid for ministers simultaneously holding a mandate as member of the National Council.

Furthermore, Article 3 *UnvG* obliges the members of the Federal Government as well as the State Secretaries to indicate their shares and/or ownership of enterprises (including the shares of spouses) to the Incompatibility Committee of the Parliament. The Federal Government is not permitted to grant contracts to these enterprises (apart from the exceptions in Article 3 para. 3 *UnvG*) if there exists an equity holding of more than 25% (including that of the spouse).

Duties of disclosure are also standardized for properties and economical holdings. According to Article 3a *UnvG*, the members of the Federal Government and the State Secretaries are obliged to disclose their financial situation (real estate, capital assets, businesses and shares of businesses, liabilities) to the President of the Court of Auditors every two years as well as three months after entering and leaving office. These data are not publicly accessible, however.

At the end of 1980, the Minister of Finance and deputy party chairperson of the SPÖ, Hannes Androsch, had to resign from his office on pressure of the former Federal Chancellor Kreisky because of the coalescence of private additional earnings and state offices. In addition to his activity as Minister of Finance, Androsch also practiced a tax consultation office which was thought to be involved in the bribery scandal concerning the new construction of the *Wiener AKH*. Only after the ‘Androsch Case’ was the Austrian Incompatibility Act put into force, which also contains the incompatibility of public offices and private-economical activities in addition to the inter-incompatibilities of public offices regulated by the *B-VG*.

c) **Undue Influence**

Among others, all higher offices such as the members of the Federal Government and the Provincial Government just the same as the mayors or employees of the ministries are included under the concept of a civil servant under criminal law.⁸⁶ Thus the bribery of these political

⁸⁶ According to the definition of art. 74 point 4 StGB, this included all persons appointed to carry out legal acts on behalf of the Federal Government, a state, a municipalities association, a municipality or another public legal entities, except for a church or religious society, as a sole body or together with another, or who are otherwise entrusted with tasks of the federal, state or municipal administration as well as persons who are at an

office-holders also falls under the penal provisions of Article 302 *StGB* ff. (already mentioned above, see II.).

The sanctions possibilities provided there range from fines to imprisonment to the deprivation of mandate according to Article 9 *UnvG*.

Great public attention is being given to an incident concerning the Minister of Finance K.H. Grasser, who - despite being Minister of Finance (supreme body of the Federal Financial Supervisory Authority) - accepted a private invitation from a banker to board a yacht (and thereby supposedly having met a manager deeply involved in the BAWAG Scandal). The reactions of the government parties to the attacks of the opposition alone show that such things are apparently entirely usual, just as it is also in general entirely usual that private companies present gifts during election campaigns (for example vehicles and planes being put at disposal).

4. Political Parties

a) Legal Position within the National Legislation

The Austrian legal system is familiar with three party concepts that are no longer significantly distinguishable in practice, however. The following are to be legally distinguished: electoral parties, parliament parties (parliamentary clubs and/or factions and political parties).

The electoral party (Article 26 para. 6 *B-VG*) is a group of voters that participates in elections for general representative bodies. Its purpose consists only in election campaigning; at the end of the election its status as legal entity becomes void. According to the standing orders of the respective representative bodies, parliament parties are the unions formed by the members of a campaigning party.

The Political Parties Act elaborates the legal position of a political party.⁸⁷ The political party obtains the status of legal entity by the lodging of its statutes with the Federal Minister of the Interior (Article 1 para. 4 Political Parties Act - *ParteienG*). It normally takes part in elections via electoral parties using its party denomination, which is why the legal difference is no longer recognizable for voters. The law does not stipulate the legal form in which political parties have to organize themselves. However, they are not regarded as private associations. Current opinion considers them as being corporations of civil law.

equal level to an Austrian civil servant for a national tour of office according to another federal law or due to an interstate agreement (functional civil servant concept).

87 BGBl 404/1975.

b) Revenues of Political Parties

Political parties receive direct state finance allowances from both the federal budget as well as - and to a greater extent - from the state budgets. According to Article 2 para. 1 *ParteienG*, political parties receive funding from the Federal Government for purposes of public relations. From the total funds available, every political party represented in the National Council according to the strength of the parliamentary group annually receives a basic sum to the amount of € 218,019. The rest is distributed to the political parties represented in the National Council in relation to the votes given to them during the last National Council election. However, political parties not represented in the National Council which received more than 1% of the valid votes at a National Council election have a one-time claim to allowances for the election year.

Political parties which are represented in the National Council after the National Council election and which make a related request to the Federal Chancellor Office before the election day have a claim to a campaign allowance - according to Article 2 para. 1 Political Parties Act - after every National Council election.

According to the *Klubfinanzierungsgesetz*⁸⁸, the parliament parties (factions, clubs) also obtain direct allowances from federal funds to cover costs arising from the fulfilment of their parliamentary duties as well as funding for public relations purposes. Since the work done by the club can not always be separated exactly from that of the political party, this funding also frequently benefits the political parties, in particular within the framework of public relations. Further supportive measures also include political academies and party press within the scope of the *Bundesgesetz über die Förderung politischer Bildungsarbeit und Publizistiken*.⁸⁹

Due to similar regulations existing in the states, political parties also receive financial allowances from the states.

Compared to the public allocation of funds, membership fees and party donations have by far a smaller role in party financing – according to account reports from the parties. However, donations and membership fees are frequently not given to the political party itself, but rather to one of their prior organizations or to organizations close to the party. Payments to these organizations are not payments to political parties and so consequently do not emerge in the account reports. There are no prohibited types of party donations.

88 KlubFG, BGBl. I 1997/30.

89 BGBl. I 1997/130.

c) **Legislation on Transparency of Political Party Funding**

According to Article 4 para. 4 *ParteienG*, every political party receiving allowances as defined by the Political Parties Act must publically account for their income and expenditures every year. The statement of account is to be checked and signed by two auditors not associated by an association of lawyers. If political parties receive allowances for their public relations (Article 2 para. 1 Political Parties Act), they are required to keep ‘exact records’ of the dedicated usage of these funds, which again in turn will be annually checked by two sworn auditors and published in the ‘*Amtsblatt zur Wiener Zeitung*’.

Article 4 para. 7 *Political Parties Act* stipulates the obligation to state in an attachment the sum of all donations made in the year under review obtained by either the political party itself or any of their organizations (provincial, district or local) if this amount is more than € 7,260. In this ‘donation list’, only the total amount of the large donations in their respective categories need to be shown and not, however, individual donations with specification of the donator. The latter information is to be incorporated into a separate list that must be sent solely to the President of the Court of Audit.

According to Article 4 para. 10 Political Parties Act, the account statement along with the ‘donation list’ must be published by the 30th September of the following year in the ‘*Amtsblatt zur Wiener Zeitung*’.

Should a party not meet their obligation to create the statement of account or should they not do so within the time period allotted, the allowances due (according to the Political Parties Law) are to be held back by the Federal Chancellor according to Article 4 para. 10 *ParteienG* until the obligation is fulfilled. No sanctions are provided for in the case of content-related mistakes in the statement of account or the ‘donation lists’.

Since the legal regulations are so arranged that ‘scandals’ would rarely be legally pursuable, the authorities do not explicitly deal with the disclosure of violations.

V. General Comments

On the one hand, a strongly developed ‘intervention culture’ does exist in Austria and the using of ‘relations’ is not regarded as being ‘corrupt’ at all by large parts of society. On the other hand, the population classified politicians as being especially prone to corruption so that this may be a reason why revealed corruption cases find so little attention, as they only confirm what everyone already presumes. This presumption is supported for example by a survey recently published in the daily newspaper ‘*Die Presse*’ in connection with the above-mentioned ‘Grasser Scandal’. According to this opinion poll, 55% of the Austrians could not find anything disreputable about

it, only 28% were touched in a negative way by it and the rest of the people asked were undecided.

Further possible causes of corruption may also be the party system in its interlacing with many other subsystems as well as the lacking role separation due to the small size of the country as well as the narrowness of society.

Corruption is particularly wide-spread in the area of the political and administrative system.

The scandal concerning the Minister of Finance Androsch⁹⁰ should be mentioned here to serve as a model for the influence of corruption scandals on the legislation. It was used as an opportunity to significantly tighten the incompatibility regulations.

Another example is the 'Höchtel case'. The scandal around his multiple payments was the reason for a fundamental legal revision of the system of payment for politicians, in the course of which the so-called 'income pyramid for politicians' was created.

The 'external control' seems to be the most effective, meaning control by independent authorities and/or courts. Standards and input for this are probably also best if given from 'outside', meaning for example from an European level, as shown in the example of the public procurement law.

90 See also above IV.3.b).

Report Belgium⁹¹

91 We would like to thank Arne Dormaels, assistant of the Association of Flemish Cities and Municipalities (Vereniging van Vlaamse Steden en Gemeenten – VVSG), for answering the questionnaire and supporting the realization of the Report Belgium, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

The public source of data-collection on corruption is the Belgian Financial Intelligence Processing Unit CTIF-CFI. The unit was established in 1993, as an independent administrative authority with legal personality, charged with combating money laundering from criminal proceedings. It receives and analyses suspicious transaction reports transmitted by specified (financial) institutions and individuals.

Its composition, organisation, operation and independence are regulated by the Royal Decree of 11th June 1993. The unit publishes a report of its activities every year. The reports, as well as other relevant documentation are freely available to the public through the unit's webpage.⁹²

2. Private Sources of Data-collection on Corruption in the Public Sector

The main private institutions that collect similar data would be Transparency International⁹³ and World Audit.Org⁹⁴. Transparency International is a well-known institution dealing with the monitoring of corruption in many countries, while, regarding World Audit, is an international nonprofit company, registered in England by the World Concern registered charity. The primary objective of its website is to educate and inform. The world-wide focus is on democracy, human rights, press freedom, corruption and the rule of law.

As already clear, all the data collected by the above organizations are published on the Internet and are accessible for the public.

II. Legislation dealing with Corruption

The Belgian Criminal Code provides for a criminal law definition of corruption. According to this code, *Active Bribery* is defined as the proposal of a promise or benefit in exchange for behaving in a certain way.⁹⁵ Furthermore, the principal legal text dealing with corruption, the Anti-Corruption Act of 10th February 1999 has considerably widened the definition of corruption within the Belgian Criminal Code. Hence, a government official or employee who *requests* or *accepts* a benefit for himself or somebody else in exchange for behaving in a certain way commits the crime of *Passive Bribery*. This is a new element as, until 1999, the Belgian anti-corruption law did not cover attempts at passive bribery.

92 <http://www.ctif-cfi.be/menu.php?lang=en>.

93 www.transparency.org.

94 www.worldaudit.org.

95 Article 247 of the Belgian Criminal Code.

Additionally, the Anti-Corruption Act introduced the concept of ‘private corruption’, i.e. corruption among private individuals. A (branch) manager, a director or a mandatory of a corporate body or natural person who *requests* or *accepts* a benefit for himself or somebody else, without the consent or authorization of the board of directors, general assembly, principal or the natural person, in exchange for behaving in a certain way is defined as *private passive bribery*. *Private active bribery* is defined as the proposal of a promise or benefit in exchange for behaving in a certain way.⁹⁶ There is no criminological or sociological definition given by law.

Regarding the existence or not of an obligation to prosecute, the Belgian criminal system is based on a mixed system, which combines the principles of discretionary and mandatory prosecution. The prosecutor is under a duty to examine the legality of proceedings, which is to say, to assess whether there is a *prima facie* case for a public prosecution and whether such proceedings would be admissible. He also has discretion to consider whether proceedings would be appropriate. The judicial inquiry is carried out by the police under the direction and supervision of the ‘Magistrat’ (prosecutor or investigating judge). The prosecutor institutes criminal proceedings and the investigating judge investigates the case for the prosecution and for the defence.⁹⁷ There is no formal obligation to prosecute. The Public Prosecutor has the sole jurisdiction on the criminal proceedings.⁹⁸

However, the discretionary powers of the Public Prosecutor are subject to certain limits:

- The Principal Crown Prosecutors and the Ministry of Justice may give Crown Prosecutors positive instructions to initiate proceedings;
- Secondly, the criminal policy directives drawn up by the Principal Crown Prosecutors and the Minister of Justice are binding on all members of the public prosecution service;
- Thirdly, the injured party himself may cause the prosecution to go ahead by himself joining as a civil party;
- Lastly, a decision to discontinue proceedings without any action taken must be reasoned and communicated to the injured party; it remains a provisional decision until such time as the criminal proceedings have been extinguished.

Finally, regarding the right of access to administrative files for individuals who are not concerned in a particular case, Pursuant to Article 32 of the Belgian Constitution everyone has the right of access to governmental documents. Therefore, the federal, regional and community parliaments have established arrangements to publish administrative activities within their jurisdiction.

96 Article 504bis and 504ter of the Belgian Criminal Code.

97 Group of States Against Corruption, Council of Europe, First Evaluation Round, Evaluation Report on Belgium adopted by the GRECO at its 4th Plenary Meeting (12th to 15th December 2000), p. 4; URL: [www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1\(2000\)1_Belgium_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2000)1_Belgium_EN.pdf).

98 Article 28 quarter, paragraph. 1, of the Code of Criminal Investigation.

In the case of the *Federal Authorities*, the Administrative Information Act of 11th April 1994 established a system of actively providing information and responding to requests for it. Citizens are entitled to have inaccurate or incomplete information corrected. If they encounter difficulties, they may consult the commission on access to administrative documents and benefit from a 'reconsideration procedure'. They may then appeal against any decision taken to the *Conseil d'Etat*. Since the Formal Reasons for Administrative Decisions Act of 29th July 1992, reasons must be given for any unilateral legal action or decision concerning individuals taken by the government. The only exceptions concern external state security, public order, the right of privacy and professional confidentiality.

In the case of the *Regional Authorities*, the Administrative Information Decree of 26th March 2004 of the Flemish Community establishes a system of actively providing for information as well as responding to requests of citizens relating to administrative documents of the Flemish Parliament, Flemish administration, provinces, cities and communities, public utility boards, etc.

III. Control and Sanctions

There are a number of administrative bodies that exist for the prevention of corruption in the public sector and the fight against it.

First of all, the *Office of the Federal Ombudsman of Belgium*⁹⁹, set up by Act of 22nd March 1995. This body is entitled to receive complaints from citizens concerning the operation of federal administrations, including acts constituting corruption. However, such complaints are rare: only one or two out of an average of 3500 complaints per year.¹⁰⁰ In the event that the concurring facts suggest there may have been a criminal offence, the College will forward the relevant cases for investigation to the competent prosecutor. The College is independent and presents an annual report to the Parliament.

*The Court of Auditors*¹⁰¹ is mainly responsible for the examination and the settlement of accounts of state services and all bookkeepers for the Treasury. It collects all the information and documents needed for this purpose. It also determines sums to be recovered by ministerial commitments officers on expenditure committed in violation of the law or on damage suffered by the Treasury. In the framework of its role of supervision, the Court of Auditors may become aware of certain information that could be related to corruption cases. When such cases constitute crime, the court, as well as any other authority, has to report this information to the law enforcement authorities in accordance with Article 29 of the Code of Criminal Procedure.

99 www.federalombudsman.be.

100 Group of States Against Corruption, Council of Europe, First Evaluation Round, Evaluation Report on Belgium adopted by the GRECO at its 4th Plenary Meeting (12th to 15th December 2000), p. 4; URL: [www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1\(2000\)1_Belgium_EN.pdf](http://www.coe.int/t/dg1/greco/evaluations/round1/GrecoEval1(2000)1_Belgium_EN.pdf).

101 www.ccrek.be/EN/.

In 1999 the Flemish Parliament approved a genuine deontological code, which provides a number of provisions and descriptions on how the members of the Flemish Parliament have to behave when rendering services to the citizens. A *Deontological Commission of the Flemish Community* treats any complaint made by citizens. Nonetheless, the Belgian Federal Parliament has so far refused to adopt a deontological code.

A number of administrations or departments of the state also have *audit or supervisory departments*, which may play a role in detecting cases of corruption. This is the case, for instance, with Committee P (Standing Committee for the Supervision of Police Services) which, although it does not concentrate especially on questions of corruption, it does take the issue into account when carrying out its checks (corruption is one of the aspects checked during audits on the basis of a recapitulative list of evidence).

At the federal level the Belgian authorities have established an '*integrity monitoring*' department in the Federal Public Department (Ministry) on 'budget and management control authority'. The new department advises and provides operational support to all federal departments and proposes measures to prevent corruption. The first federal code of conduct was approved in 2004 for the FEDICT (the computer department), the Prime Minister's office, budget and management control, and personnel and organization. The integrity monitoring department now assists all federal departments in drawing up and assessing codes of conduct.

Apart from the above-mentioned administrative bodies, the cases of corruption in the public sector are also subject to parliamentary control mechanisms. The House and the Senate are both authorised to set up committees of enquiry (Article 56 of the Constitution: 'Each chamber has a right to hold an enquiry').

These committees enquire about problems that have appeared within our society (for example the committee of enquiry on sects, organized crime and terrorism, the enquiry committee on child disappearances, etc). The House of Representatives thus exercises control over the government and the policy followed by previous governments. Such enquiries also allow collecting a large amount of information, which can possibly lead to improvements in the existing legislation. The House of Representatives and the Senate have had the right to conduct enquiries since 1830. It is regulated by a law of the 3rd May 1880, amended by the law of 30th June 1996 and, as far as the House of Representatives is concerned, by the Standing Orders which were adopted by the Assembly on 23rd October 1997.

Only a few enquiry committees were created in the first half of the twentieth century.¹⁰² But for some years now, this means of control has been used much more often. Below is an overview of the most recent enquiry committees (abridged unofficial titles):

- 1972 : television advertising
- 1980 : maintenance of order and private militias (senate)
- 1985 : the events during the Liverpool-Juventus match of 29th May 1985 (Heysel disaster)
- 1987 : arms supplies
- 1988 : fraud and breaches of the nuclear non-proliferation treaty by the Centre of Studies for Nuclear Energy and related companies
- 1988 : the fight against organised crime and terrorism (Brabant Killers I)
- 1992 : the trade of human beings
- 1993 : arms purchases
- 1996 : sects
- 1996 : enquiry on the disappearance of children
- 1996 : Brabant Killers II
- 1999 : dioxin
- 1999 : Lumumba
- 2002 : SABENA

The process for the establishment of an enquiry committee is as follows:

One or more parliamentarians submit a proposal aimed at setting up an enquiry committee. The assignment of the committee must be described as accurately as possible in this proposal. The proposal is examined in the same way as any other Private Members' Bills (monocameral procedure): examination in committee, possibility of amendment, discussion and adoption in the plenary meeting.

The members of the enquiry committee (no maximum or minimum number is provided) are designated by the plenary session and are members of it, according to the system of proportional representation. Each group thus has a certain number of members in relation to its size. The committee appoints a chairman and a board.

The mandate of the enquiry committee is always limited in time. The time limit for the enquiry is set by the plenary session on the proposal of the conference of presidents.

The enquiry committee has the same powers as an investigating magistrate in an ordinary enquiry. The committee may thus summon witnesses and hear them under oath, confront one witness with another, request or seize documents, order searches, organise visits on location, etc.

¹⁰² Sofie Staelraeve, *Zin en onzin van parlementaire onderzoekscommissies. Van 1830 tot de Sabenacommissie (The use of enquiry committees. From 1830 to the Sabena commission)*, Ghent, Academia Press, 2003, 104.

To carry out acts of investigation, the committee sends a request to the first president of the Court of Appeal, who then designates the competent magistrates. They are placed under the authority of the chairman of the committee.

The enquiry committee may also call on the special Standing Committee for the Supervision of Police Services and Intelligence (committees P and I). These are control bodies that belong to the Parliament and exercise control on the police and intelligence services.

In principle, the committee meetings are public, unless the committee decides otherwise. The committee members are bound by confidentiality with regard to the information obtained during meetings in camera.

The observations of the enquiry committee are consigned to a report by the rapporteur(s). This report is submitted to the plenary session which then reaches a decision on the conclusions and recommendations given in it. These reports are public documents.¹⁰³

So far, there has been no particular committee of enquiry dedicated to particular cases of corruption in the public sector.

The parliamentary opposition can also provoke the setting up of an *enquiry committee* as described above and, furthermore, has the right to interpellations and parliamentary questions.

Interpellation is a means of parliamentary control allowing a member of the House to ask one or more federal ministers to account for a political act, a given situation, or general or specific aspects of government policy. At the end of interpellations, *motions* may be submitted, calling into question the responsibility of the government or a member of the government, or making a recommendation to the government. Ministers may only be questioned on their policy and not on their intentions. The right to interpellate members of the federal government is reserved to members of the House. Only the House is competent for the political control of the federal government. The right to interpellate is not expressly provided by the Constitution. Its foundation is contained in the constitutional principle of ministerial accountability to the House.

The *parliamentary question* is one of the means that Members of Parliaments have at their disposal to collect some political information. The right to ask questions is not explicitly provided by the Constitution but it is contained in the principle of ministerial accountability to the House. Parliamentary questions differ fundamentally from interpellations. The question is not put to the government but to a particular minister. The answer to a parliamentary question cannot give rise to the submission of a motion or a vote. The parliamentary question thus does not end

103 http://www.dekamer.be/kvvcr/pdf_sections/pri/fiche/11_10E.pdf.

up in the question of confidence in the government or a minister and should not in principle lead to the resignation of the minister or government.¹⁰⁴

Finally, regarding the role of the media, the academic world, the society or NGOs in the discussion and perception of corruption, we could note that, in general, the roles of different actors are difficult to assess. However, since the mid-1990ies, corruption of public officials has become a major topic of public debate in Belgium, both in the media and in the political arena. A number of academic researches took place e.g. on the perception of corruption or into anti-corruption policy. Public as well as political awareness of the problem results from this continued academic and media attention.

IV. Actors

1. Public Administration

The Belgian public administration is structured on four levels: federal state, the communities and the regions (Flanders, Wallonia and Brussels-capital); the middle level is occupied by the provinces; and the lower level is that of the municipalities.

In many ways, federal rules have been taken over into regional regulations with slight differences. Only relevant and interesting differences between federal and regional provisions will be referred to.

a) Legal Position within the National Legislation

In Belgium, the civil service regulations takes the form of royal decrees, whereas the number of Parliamentary Acts on the civil service is very limited.¹⁰⁵ There exists no general Civil Service Act. The Belgian federal civil service is ruled by the so-called Camu statute, a Royal Decree from 1937, which has been modified to some extent on several occasions since then. But the basic principles of which have never been put into question. It contains detailed provisions about recruitment, selection, staff evaluation and promotion.

Public servants dispose of freedom of speech and expression. However, if a piece of information could damage the interests of the state, falls within the scope of medical secrecy, relates to the protection of public order, or similar limitations, secrecy must be respected.

¹⁰⁴ See for more information on the working of the federal Parliament: http://www.dekamer.be/kvvcr/showpage.cfm?language=en§ion=|pri|fiche&story=fiche.xml&rightmenu=right_pri.

¹⁰⁵ United Nations, Kingdom of Belgium: Public Administration, Country Profile, Division for Public Administration and Development Management (DPADM), Department of Economic and Social Affairs (DESA), March 2006.

A public servant has the right to permanent training and formation, can appeal to job-mobility within a department and among the different federal departments.

The social security provisions for public servants are distinct from those applied in the private sector and civil servants enjoy a stand-alone special pension. Civil servants are appointed statutorily (although there are certain departments that use a lot of contractual staff, for example the Ministry of the Interior, where the contractual staff reaches a 45.5% of the total workforce), giving them security of tenure, extensive social benefits, and defined career prospects.

Their remuneration is based on seniority and salaries are low in comparison to the private sector in general. However, the final salary schemes are generous.

Grade	Minimum wage scale	Maximum wage scale
A	€ 21,880	€ 66,780
B	€ 15,122	€ 35,196
C	€ 14,273	€ 27,166
D	€ 12,491	€ 19,800

There are four grades: from highest to lowest, they are A, B, C, and D. Grade A is largely restricted for university graduates, but the possibility of promotion from grade B exists. Within grade A, there are a number of sub-grades, distinguishing between Secretary-General, Director-General, Counsellor General, Counsellor and Attaché.

For example, the average income in 2003 was € 12,655/person.¹⁰⁶

The privatization process in Belgium mainly includes telecommunications (Belgacom), electricity and gas supply, waste management.

b) Allocation of Financial Resources

The *Belgian Financial Processing Unit* CTIF-CFI plays a key role in the fight against money laundering. This intelligence unit, established by the Law of 11th January 1993 (Law of 11th January 1993 on preventing the use of the financial system for purposes of laundering money (and terrorism financing)), is an independent administrative authority with legal personality, charged with combating money laundering from criminal proceedings. The unit receives analyses of suspicious transaction reports transmitted by specified (financial) institutions and individuals. They are not charged with fighting corruption in particular, but some cases of money laundering are the result of a corruption case.

106 Belgian Federal Department of Economy, Self-employed and Energy, http://statbel.fgov.be/downloads/fisc2003_nl.xls.

The *Court of Audit of Belgium* plays an *overseer* role for the House of Representatives with respect to the federal government. The Court of Audit monitors how the government uses the public purse and informs the House of Representatives of its observations. The House of Representatives needs this information to properly fulfil its role of control over the federal government. The Court of Audit sees that the principle of speciality is observed. In the budget, the House of Representatives only authorises clearly defined expenditure. According to the current legislation, the Treasury may, in principle, not make any payments without the prior authorisation of the Court of Audit who has to grant its approval. The Court of Audit verifies that:

- There is sufficient credit for the expense in question;
- the expense has been imputed to the appropriate item of the budget;
- the debt actually exists and may be proven by means of supporting documents;
- all the legal provisions have been respected.

If the Court of Audit refuses to authorise one expense or another, the Cabinet (council of ministers) will examine the reasons for such a decision. The federal government may decide that the expense in question must nevertheless be made. In this case the Court of Audit grants its authorisation ‘with reservations’ and immediately informs the House of Representatives of it.

The prior approval of the Court of Audit is not required for fixed expenses, i.e. expenses of a recurrent nature (wages, pensions, rent, etc). Around 80% of expenses are fixed expenses.

The Court of Audit of Belgium is not formally appointed to fight corruption, but the activities of this court can reveal cases of corruption.

Both controlling bodies publish reports of their activities and cases they dealt with.

The *Belgian Financial Processing Unit* reports to the Ministers of Justice and Finance annually. The annual reports are also available online.¹⁰⁷

The *Court of Audit of Belgium* submits its audit reports to assemblies and councils, either in the form of syntheses integrated into the annual Book of Comments or in the form of special publications. The Court's documents that are transmitted to the different assemblies are discussed in committees for finances in the presence of a Court representative. These reports are also available online.

An older but very prominent case of corruption concerning tendering procedures worth noting, would be that of the *Agusta – Dassault scandal (1988)*. It resulted from the purchase of a military helicopter of the Agusta type by the Belgian Army in 1988. Within this context, Agusta

¹⁰⁷ http://www.ctif-cfi.be/menu.php?lang=en&page=ann_rep.

and Dassault bribed various office-holders. In total, Agusta and Dassault paid more than € 4 million to the *Parti Socialiste* and *Socialistische Partij*. The investigation into the purchase was started by the investigative team looking into the 1991 assassination of André Cools, a Socialist Party (PS, Parti Socialiste) politician and former Deputy Prime Minister, when it turned out that Cools had knowledge about the Agusta deal. Several politicians had to resign along the course of the investigation into the purchase. A number of prominent persons have been convicted in 1998: Willy Claes (Minister of Economic Affairs), Guy Coëme (Minister of Defense), Guy Spitaels (Chairman Parti Socialiste), Gerge Dassault of the Dassault company.

c) Public Services Law and Human Resources in the Public Administration

In principle, political parties do not have influence regarding the staffing of the public sector. Access to jobs and functions within the public sector (civil service) is only possible after the successful passing of a competitive examination organised by the federal selection and recruitment office (SELOR).

Moreover, promotion is based on objective factors such as length of service, performance appraisal, and recommendations. However, the (informal) reality was often different from the (formal) rules and within the system, political criteria have played a preponderant role in promotions of university graduated civil servants. Very recently, the newspapers reported on several cases in which political influence has been applied for the appointment of high functions (e.g. within the Federal Department of Finances).

Public servants have the right to cumulate professional activities. Only in the case that their secondary job can damage the interest of their service or could undermine the confidentiality of their function will the execution of the secondary job be prohibited. Articles 49 and 52 of the state staff regulations forbid state officials or trainees from undertaking any activity, either directly or through an intermediary, liable to interfere with the discharge of their duties or incompatible with the dignity of their office.

In general, secondary employment is not subject to approval. The federal government abolished a Royal Decree of 1982 forbidding secondary professions in 2002.

Regarding internal revision of operations in the public sector, there are internal auditing mechanisms. Specifically, a Royal Decree of 26th May 2002 introduces an internal monitoring system operated by and applicable to the governing body, management and staff of each federal department or agency. It comprises a series of measures to avoid risks, such as the risk of corruption, and secure the objectives of operational effectiveness, credible financial and management information and compliance with legislation and regulations. Besides, dossiers with a financial repercussion are internally controlled by a detached finance inspector. Externally, there is the above-mentioned revision by the Court of Auditors.

As for undue influence in the public administration, the *Anti-Corruption Act* has enlarged the definition of corruption within the Belgian Criminal Code considerably. A government official or employer who *requests* or *accepts* a benefit for himself or somebody else in exchange for behaving in a certain way is defined as passive bribery. Until 1999, Belgian anti-corruption law did not cover attempts at passive bribery. Active bribery is defined as the proposal of a promise or benefit in exchange for behaving in a certain way.¹⁰⁸ Corruption by public officials carries heavy fines and/or imprisonment of between 5 and 10 years.

The state staff regulations or the so-called *Camu Statute* defines that breaches of the ethical rules in the government codes of conduct are liable to disciplinary sanctions. For example a public servant may not seek, demand for or receive, directly or via an intermediary, gifts, gratuities or other donations, even outside his professional duties if the action is connected to them. Article 77 of the statute lays down the following sanctions, which remain in individual staff files for periods of at least six months to three years: warning, reprimand, withholding of salary, disciplinary transfer, disciplinary suspension, relegation in step, downgrading and removal from post, with or without loss of pension rights.

Moreover, article 8 of the state staff regulations, prohibits travel at the expense of companies or an individual, acceptance of presents and other activities potentially leading to corruption.

In general there is no predominating anti-corruption strategy. However, with the coming into force of the ‘integrity monitoring’ department in the Federal Public Department on ‘budget and management control authority’ new initiatives have been started. This new department advises and provides operational support to all federal departments and proposes measures to prevent corruption. E.g. the first federal code of conduct was approved in 2004 for the FEDICT (the computer department), the Prime Minister's office, budget and management control, and personnel and organization. The integrity monitoring department now assists all federal departments to draw up and assess codes of conduct. It now plans to take a series of steps to put these codes into practice in the field.

The most recent case of corruption in the public administration worth noting would be the following:

In early 2006, the Brussels Public Prosecutor's Office had been receiving regular anonymous letters describing certain malpractices within the department responsible for State Buildings since 2004. Leading civil servants working in the department are thought to have used privileged information to help ‘friendly’ contractors beat their competitors when bidding for a contract for work on a government building. In return for this information, the contractors would carry out work in the private homes of the ‘helpful’ civil servants. The cost of this work was then billed to

108 Article 247 of the Belgian Criminal Code.

the Department for State Buildings. Other charges facing the top civil servants involve false billing for services and accepting trips abroad from those applying for the contracts put out to tender. The investigation is still pending.

d) Privatization

The Mayor of Aarschot (Flemish Brabant) will have to appear in court to answer charges of passive corruption. It is thought that the Mayor let himself be influenced during the negotiations with the company Sita for a waste collection contract in Aarschot. A further civil servant and three contractors also face prosecution.

The possible fraud came to light a couple of years ago when the public prosecutors office received an anonymous tip indicating irregularities in various tenderings of contracts with the Aarschot local council. In return for such ‘gifts’ such as a free trip, the mayor kept Sita up to date with counter bids made by competitors. The contract to collect waste within the municipality is worth around € 30 million and runs for 15 years.¹⁰⁹

2. Members of the National Parliament

a) Legal Position within the National Legislation

The status of Members of Parliament is regulated in the following legal texts:

- Belgian Constitution.
- The rules of procedure of the Belgian House of Representatives.
- Special law of 2nd May 1995 relating to the obligation to deposit a list of mandates, positions and professions and a declaration of assets.
- Law of 26th June 2004 for the application of the special law of 2nd May 1995 relating to the obligation to deposit a list of mandates, positions and professions and a declaration of assets.
- Law of 6th August 1931 establishing incompatibilities and interdictions concerning ministers, former ministers and Ministers of State, as well as Members and former Members of the Houses of Parliament.

Regarding the procedure of candidates for parliamentary election nomination, all parties can submit a nomination list with candidates in each electoral district. To be able to submit this list, each party has to gather a number of signatures. E.g. for the senate, the signature of 5,000 electors or two resigning senators should be gathered. For the Chamber, three resigning members have to sign the nomination list or 500 signatures should be gathered within an electoral district of 1,000,000 electors, 400 in case of an electoral district with 500,000 to 1,000,000 voters or 200 signatures in any other case. See article 116 of the General Electoral Law (coordinated until

¹⁰⁹ VRT, Flanders news service, www.vrtnieuws.net.

February 2007). Article 117 also provides for an equal proportion on the nomination list between women and men.

Article 64 of the Belgian Constitution provides the following eligibility criteria to be respected for each candidate:

- Belgian nationality,
- not be deprived of civil and political rights,
- have completed the age of twenty-one,
- be a legal resident of Belgium.

Members of the Parliament receive for their mandate approximately € 69,000 gross each year. This is taxable income after a contribution towards pension of 8.5%. The amounts of holiday pay and year-end bonus are respectively € 5,307 and € 2020.76, both taxable.

Besides that, Members of Parliament receive an expense allowance of 28% of their remuneration. This is a tax-free amount up to € 19,381.33 each year.

Other MPs' benefits:

- Free use of all means of public transport,
- Traffic allowance of € 0.25/km,
- Recruitment of an assistant,
- Financial support for computer equipment.

Members of Parliament also enjoy a reimbursement of their social welfare contribution.

From the age of 52, Members of Parliament can enjoy early retirement. A full pension of 75% exists, calculated on the last salary and is achieved after 20 years of service. Pension can be cumulated with additional incomes but may not exceed the full parliamentary income.

Members of Parliament who are not re-elected receive a *retirement allowance*. A Member of Parliament residing less than six years collects a retirement allowance of one year (income of one year). From the seventh year of membership of Parliament, each year of extra seniority means an additional retirement allowance of two months with a maximum of 48 months.

Members of the federal assemblies (senate and Chamber of Representatives), members of the regional parliaments (Flanders, Wallonia and Brussels Capital) and Members of the European Parliament of Belgian nationality are not liable for opinions expressed in the exercise of their functions, the so-called '*parliamentary irresponsibility*'.

They also have parliamentary immunity. These privileges are provided for in the articles 58 and 59 of the Belgian Constitution. This immunity prevents acts of pursuit and arrest to be carried out during the duration of the session without the authorisation of the Chamber, except in the

case of *beings caught in the act*. Unlike the acts of investigation which a judge cannot perform unless he has the authorisation of the Chamber, fact-finding measures may be taken without such authorisation. In addition, where immunity does not apply or has been waived, the procedure goes ahead as it would in the case of any other individual.

However, ministers do not have the privilege of immunity for offences committed during the exercise of their mandate. Article 103 of the Belgian Constitution declares that the articles 59 and 120, providing immunity for members of the (Regional) Parliaments, do not apply to ministers. Permission given by the Parliament is required in order to start a criminal proceeding against a minister before the Court of Arbitration.

As far as incompatibilities between parliamentary mandates and other public offices or private positions are concerned, there is now a general ascertainment. Newly elected Members of Parliament are formally reminded of these incompatibilities. The following incompatibilities are laid down in Article 1 of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, former ministers, minister of state and members and former Members of the Parliament:

- Civil servant,
- Permanent lawyer for the federal civil services,
- Government commissioner with a limited liability company,
- District Council Governor (Provincial Governor),
- Member of the District Council (provincial council),
- Member of the Regional Government (Flanders, Walloon, Brussels),
- District commissioner,
- Judge or clerk (of the court) of the Supreme Administrative Court of Belgium, Court of Arbitration, Court of Audit of Belgium,
- Military in active duty,
- Member of the board of directors autonomous government concern,
- Member of the EU Parliament.

Article 50 of the Belgian Constitution also provides for an incompatibility between a parliamentary mandate and the mandate of a minister (federal and regional).

There is no such thing as a general incompatibility between a parliamentary mandate and functions within private corporations, companies, etc.

The most common practice for Members of Parliament is to also work as mayors, lawyers, managers, consultants, physicians, etc.

There is a cooling-off period of one year before Members of Parliament can be appointed for a public office function. However, this is not the case for the mandate of minister, diplomatic

functionary and district governor. See article 5 of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, former ministers, minister of state and members and former Members of Parliament.

b) Additional Incomes of Members of the National Parliament

Members of Parliament have the right to receive additional income. They can cumulate with one paid political mandate at most.¹¹⁰ However, the amount of the additional income resulting of this parliamentary mandate (allowances, salaries or attendance fees collected in exchange for the activities undertaken by the Member of the House of Representatives or the senate) may not exceed half of his parliamentary allowance.

For the calculation of this amount, the allowances, salaries or attendance fees ensuing from the exercise of a parliamentary mandate, a position or a public office of a political nature are taken into consideration.

If the limit is exceeded, the amount of the parliamentary allowance will be reduced, except when the mandate of the Member of the House of Representatives or the senator is exercised concurrently with tenure of office as Burgomaster, Deputy Burgomaster or Chairman of a social aid council. In this case, the salaries relating to the office of Burgomaster, Deputy Burgomaster or Chairman of a social aid council are reduced.

The Rules of Procedure of each assembly stipulate the modalities for implementation of these provisions.¹¹¹

On the other hand, Members of Parliament do not have to publish their additional income, nor do their family members. Nevertheless, a list of offices held, public or private, indicating whether they are remunerated or not, shall be deposited with the Court of Audit each year by every Member, at the start of the parliamentary session or whenever he takes his seat during the session. The lists are published in the Belgian Statute Book. The Act of 2nd May 1995 on the obligation to lodge a list of elective offices, functions and professions and a declaration of assets has been implemented and extended by a special act and an Act of 26th June 2004.¹¹²

When an MP takes his seat and when he or she leaves the office, they must deposit a declaration of assets in a sealed envelope with the Court of Audit. This declaration is strictly confidential and may only be used within the framework of a criminal investigation.

110 Article 1 quarter of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, late ministers, minister of state and members and late Members of Parliament.

111 Article 163 of the rules of procedure of the Belgian House of Representatives.

112 Articles 161 and 162 of the rules of procedure of the Belgian House of Representatives.

c) **Undue Influence**

There is no special criminal provision of bribery committed by Members of Parliament. Bribery perpetrated by a Member of Parliament falls within Title IV, Chapter 4 of the Belgian Criminal Code (see point II. for more information).

The punishment for acts of corruption committed by public officials varies from heavy fines and/or imprisonment of between 5 and 10 years. Also the loss of the right¹¹³:

- of occupation within the public administration;
- to be elected, political mandate;
- to bear a title of honour or noble title;
- to be juror, expert or testify with other purposes than giving information;
- to act as a guardian, official receiver, legal counsellor;
- to bear arms, serve the army.

Regarding other prohibitions, such as travel at the expense of companies or an individual, acceptance of gifts, there are no relevant statutes, at least at the federal level of Parliament.

However, the Flemish Regional Parliament has approved a genuine deontological code. The Flemish Parliament for example established that ‘The Deontological Committee supervises the Flemish representatives’ in compliance with the deontological code concerning services to the people. The code aims at a change in mentality of both the politicians and the people but does not explicitly address questions relating to corruption.

A relevant case of undue influence that has led a Member of Parliament to resign would be that of the Wallonian Premier Jean-Claude van Cauwenberghe, who was forced to resign in October 2005. Earlier, three aldermen were removed from office of the *Partie Socialiste*. One of the aldermen and a former senator are now facing fraud charges, in consequence of the alleged fraud at the social housing company ‘La Carolorégienne’ in Charleroi.

Three leading Charleroi Socialists were accused of corruption in the management of social housing company ‘*La Carolo-regienne*’. Van Cauwenberghe's law firm is reported to have benefited indirectly from the alleged fraud. The law firm is reported to have received some 140 cases from the housing company between 2001 and 2004. Workers of the housing company allegedly did some jobs for a lawyer of the law firm during their working hours. One of the councillors, Claude Despiegeleer, has been formally charged.

One year later, Jacques Van Gompel, the mayor of Charleroi, tendered his resignation. He is accused of fraud and abuse of his position as a civil servant. The case turns around the alleged

113 Article 252 of the Criminal Code.

fraud of city officials that are said to have cheated with the city's public contracts. Some friendly suppliers are said to have been given preferential treatment by dividing the order forms and splitting up large commissions into smaller ones in order to avoid the procedure of a public contract.

Patrick Henseval, secretary general of his cabinet, has been involved in a bribery scandal involving several sports associations. He is suspected of tampering with sponsorship funds, together with a second suspect, and of bribing civil servants.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The status of political office-holders is regulated in the following statutes:

- Belgian Constitution,
- the rules of procedure of the Belgian House of Representatives,
- special law of 2nd May 1995 relating to the obligation to deposit a list of mandates, positions and professions and a declaration of assets,
- law of 26th June 2004 for the application of the special law of 2nd May 1995 relating to the obligation to deposit a list of mandates, positions and professions and a declaration of assets,
- law of 6th August 1931 establishing incompatibilities and interdictions concerning ministers, former ministers and ministers of state, as well as Members and former Members of the Houses of Parliament.

The income of political office-holders is formed as follows:

Parliament: Charmain, vice-chairman, quaestors¹¹⁴ and leaders of a parliamentary party

They enjoy the same income as Members of Parliament. Moreover, they have some additional benefits: extra allowance of 11 to 72% based on the parliamentary income. This is settled with the *retirement allowance* as explained above.

Members of Parliament benefits:

- Free use of all means of public transport,
- commuter traffic allowance of € 0.25/km,
- recruitment of an assistant,
- financial support for computer equipment.

114 The College consists of five members, elected as Quaestors for the duration of two years by the plenary assembly. The Quaestors are responsible for the daily management of the House (buildings, personnel, computers, etc). The College draws up the draft budget for the House. Nothing may be spent without its approval.

Government: ministers, ministers of state:

Ministers receive for their mandate approximately € 178,921 gross each year. Ministers of state receive € 168,435,01. The amounts of holiday pay and year-end bonus are respectively € 5,000 and € 2,500, both taxable.

Regarding additional benefits of political office-holders, in comparison to employees of the private sector; *Parliament: Charmain, vice-chairman, quaestors and leaders of a parliamentary party* enjoy reimbursement of social welfare contribution.

From the age of 52, Members of Parliament can enjoy early retirement. A full pension exists of 75% calculated on the last salary and is achieved after 20 years of service. Pension can be cumulated with additional incomes but may not exceed the full parliamentary income.

Charmain, vice-chairman, quaestors and leaders of a parliamentary party who are not re-elected receive a higher *retirement allowance* than the other Members of Parliament: extra allowance form 11 to 72% of their income. *Political office-holders* of the Parliament residing less than six years collect a retirement allowance of one year (income of one year). From the seventh year membership of Parliament, each year of extra seniority means an additional retirement allowance of two months.

Government: ministers, ministers of state: pension provisions are the same as for the Members of Parliament.

Members of the government receive expense funds to the amount of € 3,312 for a minister and ministers of state. The Prime Minister and the Vice-Prime Ministers together with the Minister for Foreign Affairs obtain twofold this amount.

For the purpose of housing, the members of the government get € 12,802.50. They can also apply for a car with chauffeur.

The following incompatibilities for political office-holders are laid down in Article 1 of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, former ministers, minister of state and Members and former Members of Parliament:

- Civil servant,
- Permanent Lawyer for the Federal Civil Services,
- Government Commissioner with a limited liability company,
- District Council Governor (Provincial Governor),
- Member of the District Council (provincial council),
- Member of the Regional Government (Flanders, Walloon, Brussels),
- District Commissioner.

- Judge or clerk (of the court) of the Supreme Administrative Court of Belgium, Court of Arbitration, Court of Audit of Belgium,
- Military in active duty,
- Member of the board of directors autonomous government concern,
- Member of the EU Parliament.

It is a common practice that political office-holders hold other positions. In this context, the Members of Parliament (Chairman, vice-chairman, *quaestors* and leaders of a parliamentary party) frequently hold positions as: mayors, lawyers, managers, consultants, physicians, etc. The members of the government are often occupied as town councillors as well.

Regarding regulations, restricting (former) political office-holders from particular employment or employment fields after leaving office, a former minister is prohibited from being connected in any way to a company that has become concessionaire of the state through his intermediary during his ministry for a period of four years after his retirement.¹¹⁵ Additionally, Members of the Parliament can only be appointed for a public office function after a period of one year. However, this is not the case for the mandate of minister, diplomatic functionary and District Governor.¹¹⁶

b) Additional Incomes of Political Office-holders

The Members of Parliament do have the right to receive additional income. They can cumulate with at most one paid political mandate.¹¹⁷ However, the amount of the additional income resulting of his parliamentary mandate (allowances, salaries or attendance fees collected in exchange for the activities undertaken by the Member of the House of Representatives or the senate) may not exceed half of his parliamentary allowance.

For the calculation of this amount, the allowances, salaries or attendance fees ensuing from the exercise of a parliamentary mandate, a position or a public office of a political nature are taken into consideration.

If the limit is exceeded, the amount of the parliamentary allowance shall be reduced, except when the mandate of the Member of the House of Representatives or the senator is exercised concurrently with tenure of office as Burgomaster, Deputy Burgomaster or Chairman of a social

115 Article 4 of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, late ministers, minister of state and members and late members of the parliament

116 Article 5 of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, late ministers, minister of state and members and late members of the parliament.

117 Article 1quater of the Act of 6th August 1931 on the incompatibilities and disqualifications of ministers, late ministers, minister of state and members and late members of the parliament.

aid council. In this case, the salaries relating to the office of Burgomaster, Deputy Burgomaster or Chairman of a social aid council are reduced.

The Rules of Procedure of each assembly stipulate the modalities for implementation of these provisions.¹¹⁸

Political office-holders, as well as MPs, do not have to publish their income, but a list of offices held, public or private, indicating whether they are remunerated or not, shall be deposited with the Court of Audit each year by every Member, at the start of the parliamentary session or whenever he or she takes his or her seat during the session. The relevant lists are published in the Belgian Statute Book. As already mentioned the Act of 2nd May 1995 on the obligation to lodge a list of elective offices, functions and professions and a declaration of assets have been implemented and extended by a special act and an act of 26th June 2004.¹¹⁹

Likewise, there is no obligation for other people, family members of a political office-holder, to publish their income.

As stated above as well, political office-holders and ministers must deposit a declaration of assets in a sealed envelope with the Court of Audit. This declaration is strictly confidential and may only be used within the framework of a criminal investigation.

c) **Undue Influence**

There is no special criminal provision of bribery committed by political office-holders. Bribery perpetrated by a political office-holder falls within Title IV, Chapter 4 of the Belgian Criminal Code¹²⁰ and the possible sanctions are heavy fines and/or imprisonment of between 5 and 10 years. Additionally, the loss of the right¹²¹:

- of occupation within the public administration,
- to be elected, political mandate,
- to bear a title of honour or noble title,
- to be juror, expert or testify with other purposes than giving information,
- to act as a guardian, official receiver, legal counsellor,
- to bear arms, serve the army.

Furthermore, there are no other statutes dealing with relevant questions (e.g. prohibiting travel at the expense of companies or individuals, acceptance of gifts, etc., see also above).

118 Article 163 of the rules of procedure of the Belgian House of Representatives.

119 Articles 161 and 162 of the rules of procedure of the Belgian House of Representatives.

120 See point II. for more information.

121 See article 252 of the Criminal Code.

4. Political Parties

a) Legal Position within the National Legislation

According to Article 1 of the law on the financing of political parties of 4th July 1989, the legal status of a political party is an association of individuals, with or without legal capacity.

b) Revenues of Political Parties

Only parties with at least one representative in the Parliament (Senate and Chamber) can benefit from public funding.

This yearly based funding consist of (Article 16 of the law on the financing of political parties of 4th July 1989):

- a fixed sum of € 125,000 (raised or increased in relation to the index);
- a complementary funding based on the number of votes obtained for the election of the federal parliament: € 1.25/vote (raised or increased in relation to the index).

The proportion of donations compared to memberships fee and state aid is difficult to reveal. However, based on an article of 25th January 2007 published in the newspaper L'Echo, the following conclusions can be drawn. In 2005, eleven political parties received in total a subsidy of € 56 million. Additionally, € 3.3 million were derived from member donations.

The proportion of donations and state funding vary from party to party. In general, 4% to 8% of the funding is derived from donations of members.

c) Legislation on Transparency of Political Party Funding

Article 16*bis* of the law on the financing of political parties of 4th July 1989 provides that only natural persons give donations to political formations. Any donation deriving from corporate bodies (legal persons) is forbidden, even in the case where a natural person acts as an in-between.

The identity of the each person who is donating more than € 125 must be registered. Each individual can donate a maximum of € 2.000 each year to a political party. Gifts from political mandate-holders to their party are not defined as party donations. Free services or service rendered below market price for the benefit of a political party are also defined as party donations.¹²²

122 Article 16bis of the law on the financing of political parties of 4th July 1989.

As far as the funding of political parties is concerned, audits are carried out by a parliamentary control committee, which examines the declarations made by the parties. Moreover, an external audit procedure exists and is carried out by an external auditor in accordance with article 23 of the law on the financing of political parties of 1989. In accordance with the Act on political parties, the external auditors are responsible for drafting an annual report on the accounts of political parties, which is sent to the Minister of Finance and the Parliamentary Committee on Control of Electoral Spending.

In the case that the provisions on political party financing are violated when the political party accepts a donation, which is not in accordance with the above-described conditions, the double of the amount of its state funding will be deducted. Persons who give an illegal donation will be punished with a fine.¹²³

In case the financial report of a political party is not approved by the Parliamentary Committee on Control of Electoral Spending, or in the case that a political party does not submit its financial report, or does so late, it will be sanctioned by deprivation of the state funding for a period of a minimum of one and a maximum of four months.¹²⁴

V. General Comments

Recent cases of corruption suggest that the most common and serious cases are found in government procurement, defence contracting, and public works contracting. The disclosure of cases of corruption and the consequent publicity of such issues has led to changes in the Belgian legislation as, for example, in that private company political party donations have been prohibited following the Agusta scandal in the 1980s.

As main reasons for corruption in Belgium, one could consider:

- The decay of moral standards. This counts for public servants working within the federal departments, as well as for politicians.
- The lack of internal audits.
- The centralisation of political powers within certain cities or regions. E.g. in some regions one single party acquired for decades the political regime. This means a risk of blending political responsibility with private interest and private companies.
- The complex state structure.

For example the second GRECO evaluation report on Belgium addressed this problem as follows: *'Belgium's institutional arrangements are extremely complex. The division of powers between the various entities is laid down in the Constitution. Monetary and financial policy,*

123 Article 16bis of the law on the financing of political parties of 4th July 1989.

124 Article 25 of the law on the financing of political parties of 4th July 1989.

defence, police and justice are all exclusively federal domains. In other areas, responsibilities are shared. For example, the federal authorities lay down the general rules governing public procurement or the organisation of the economy, but the regions can then expand on them. Finally, each region decides on the rules governing its staffing arrangements, appoints its own officials and establishes staff regulations. In areas where they have specific powers, the communities may also be involved in this process. Sometimes there is a certain overlap of functions. At the time of the GET visit, the federal authorities acknowledged that the existence of various independent administrative levels of federal government made it impossible to offer a complete picture of the arrangements for preventing and combating corruption in all areas of Belgian administrations. At the sub-federal level, the assessment of guiding principles 9 and 10 has focused on Brussels-Capital Region. The GET has the impression that anti-corruption policy places more emphasis on the federal level than on the Brussels-Capital Region.'

The 'integrity monitoring' department of the Federal Public Department on 'budget and management control authority' is very important. The new department advises and provides operational support to all federal departments and proposes measures to prevent corruption. The prevention of and the detection of problems of corruption in the public departments can be facilitated by this service if there is good coordination between the 'integrity monitoring' department and the bodies carrying out the audits within the different federal departments.

Early in March 2007, the Belgian Federal Government announced the adoption of a new disciplinary statute for the federal public servants supplemented with a genuine deontological code.

The disciplinary statute will comprise measurements to prevent acts of undue influences. All state personal will have to declare that he or she has no other interest that can possibly interfere with the interests of the state or obstruct the his objectivity. The provisions for the cumulation of professional activities will be elucidated.¹²⁵

It is remarkable that the Federal Government took 'preventive en positive' measurements to prevent corruption and to progress to incorruptible civil servants. An unimpeachable service can not be achieved without training the civil servants how to respond to problematic or risky situations peculiar to their profession.

125 See for e.g. Belgian Senate, demande d'explications n° 3-2184 de Mme Jacinta De Roeck à la vice-première ministre et ministre du Budget et de la Protection de la consommation sur «*le champ d'application de la réglementation élaborée pour les travailleurs qui dénoncent des irrégularités, Jeudi 15 Mars 2007 ; Demande d'explications n° 3-1908 de M. Christian Brotcorne à la vice-première ministre et ministre du Budget et de la Protection de la consommation sur «la création d'un Bureau d'éthique et de déontologie administrative».*

Report Cyprus¹²⁶

126 We would like to thank Dr. Tania Charalambidou, Assistant of the Research Center - Intercollege of Cyprus, for answering the questionnaire and supporting the realization of the Report Cyprus, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

The public institute that collects data on corruption is: *The Coordinating Body Against Corruption*. Its members are: the Deputy Attorney General and the Counsel of the Republic, the Ministry of Justice and Public Order, the police, the Auditor General, the Chairman of the Parliamentary Committee on Legal Issues, the Chairman of the Parliamentary Committee on Institutions and Values, the Chairman of the Cyprus Bar Association, the Chairman of the Institute of Certified Public Accountants. The Body is chaired by the Deputy Attorney General and its tasks are to examine the existing measures against corruption, to suggest the adoption of further measures, to raise public awareness on the dangers and risks of corruption and to promote co-operation between public authorities and the private sector in the fight against this phenomenon. Cyprus also belongs to *GRECO – Group of States against Corruption of the Council of Europe*.

The data gathered by the public bodies in Cyprus are not accessible by the wider public.

The private body that also collects such data is Transparency International.¹²⁷ Some of the data is published on the Transparency International website.

II. Legislation dealing with Corruption

The legal system of Cyprus embraces an official definition of corruption. The Civil Law Convention on Corruption and additional provisions¹²⁸ gives such a definition in its Article 2: *corruption means the demand, offer, conferring or acceptance, directly or indirectly, of bribery or any other illegal benefit or expectation of them, that disturbs the smooth performance of any duty or conduct awaited by the acceptor of bribery, or the illegal benefit or expectation of them.*

The Attorney General coordinates all investigations concerning fraud and corruption. He may also appoint an independent criminal investigator upon a written complaint. Should the Attorney General consider that there is no satisfactory evidence, he may suspend the case.

Apart from the Civil Law Convention on Corruption mentioned above, there are other laws also describing corrupt behaviour which fall within the rule of law. This, more specialised legislation dealing with corruption, can be summarized in the following legal texts:

- *Criminal Code, Chapter 154*: contains provisions related to corruption in the public sector, and specifically to extortion, abuse of office and receiving property to show favour (Articles 100-109 and 133-137).

¹²⁷ www.transparency.org.

¹²⁸ Law No. 7 (III) of 2004.

- *The Prevention of Corruption Law, Chapter 161*: deals with acts of corruption by public and private employees both in the public and private sectors and provides for sanctions.
- *The Customs and Excise Code Law, Law No. 94(I) of 2004*: deals with acts of corruption of employees of the Customs and Excise Department (Article 89[3]) and provides for sanctions.
- *Law Number 51(I) of 2004*: provides for the prosecution of persons holding office who ‘acquire property by abuse of power’.
- *Law Number 49(I)/2004 and Law Number 50(I)/2004*: deal with the annual disclosure of personal financial details by the President of the Republic, the parliamentarians, the ministers, and some political public-office-holders, as long as they hold office and for three years thereafter, and provide for sanctions.
- *The Civil Law Convention on Corruption and additional provisions*, Law No. 7(III) of 2004.
- *The Criminal Law Convention on Corruption of the Council of Europe*, Law No. 23(III)/2000.
- *The Election of Members of Parliament Law*, Law No. 72 of 1979: contains provisions on bribery and acts of corruption and provides for sanctions (Articles 39-42, 54-60).
- *The Public Service Law of 1990*: contains special anti-corruption provisions and a corresponding code of conduct allows, among others, for compulsory retirement or dismissal after a disciplinary punishment (Article 69, 71, 73-86).
- *The Ombudsman Laws of 1991 to 2004*: Cyprus introduced the institution of ‘Ombudsman’, who oversees the acts or omissions of the administration.
- *Convention on Combating Bribery of Officials of the European Communities or the Member States of the European Union*: Law No. 2(III) of 2004.
- *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (ratification 1997): Law No. 18(III)/1995.

Finally, the Cypriot Constitution provides that

- the Auditor General controls all disbursements and receipts and has the right to inspect all accounts on behalf of the Republic (Part VI, Chapter II, Article 116) and
- the Attorney General co-ordinates all investigations concerning fraud and corruption (Part VI, Chapter I, Article 113).

III. Control and Sanctions

In Cyprus, the specific administrative bodies on preventing and fighting corruption in the public sector are:

- The Co-ordinating Body Against Corruption,
- the Auditor General,
- the Attorney General,
- the Ombudsman, which plays an important role in the combating of corruption,

- the Committee of Public Service,
- the Investigation Units in the Income Tax and VAT Departments,
- the Unit of Combating Money Laundering ‘MOKAS’,
- the Financial Crime Unit of the Police,
- the Special Investigation Unit at the Department of Customs and Excise,
- the Ministry of Finance (which is partner of the European Anti-Fraud Office - OLAF),
- other committees established within some public services (e.g. the police) to deal with in-house issues of corruption.

Apart from those control bodies, the cases of corruption in the public sector are also subject to parliamentary control mechanisms.

In this context, there can be a parliamentary inquiry for cases of corruption by all relevant committees. These boards are ad hoc bodies. Their authorizations include, among other things, the interrogation of witnesses and the elaboration of reports. In addition to that, a special Committee named ‘Committee on Institutions, Merit and the Commissioner for Administration (Ombudsman)’ also deals with issues of corruption in the public sector. It can proceed to the interrogation of witnesses and give reports to the parliamentary plenary. The parliamentary opposition can also play its role in controlling corruption, as any Member of the House of Representatives may raise an issue and pose relevant questions upon Parliament. They may also ask for the appointment of a board of inquiry. Nevertheless, the conclusions of such parliamentary boards are not binding.

The media also acts as a strong deterrent against corruption in the public service. Cases of corruption, especially by high-ranking officers, can rarely remain hidden from media research. However, most of the time these cases are covered up, one way or another, by the political party concerned.

Society is also very ‘sensitive’ to cases of corruption and is strongly against it, usually following media coverage. However, the phenomenon of nepotism is present to a large extent in Cyprus, mostly due to the small size of the island and the population. This situation results in a lack of meritocracy in many cases and it is a common secret to everyone that, for example when seeking a job, someone must use his or her influence.

Concerning the academic world and NGOs, they possess a mild role and tone in the discussion and perception of corruption that is rarely publicly shown.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Salary-wise, the public sector is divided into scales starting from A1, which is the lowest, and reaching to A16, which is the highest. Scales are normally combined, for example A1-A2-A5, A4-A7, A5-A7-A8, A8-A10-A11 etc. Examples of positions at the different scales: A1 – clerk, A4 – secretaries, A8 – officers (people possessing a university degree), A13 – directors etc. Lower level scales up to A7 have no decision-making power.

Regarding the issue of special legal obligations and the special privileges that public servants have, we can note the following:

All fundamental human and civil rights are included and secured in the Public Service Law of 1990 (e.g. right of expression, right to be members of a political party, right of syndication and therefore strikes are allowed). As far as the exercising of their duties is concerned, they can only disclose information about themselves after permission by the relevant authority.

Public servants are not generally allowed to have a second job apart from that in the public service. Only in certain cases are public servants given the permission to exercise a second job. This permission is granted by the Minister of Finance with the agreement of the Minister of Labour and Social Insurances.¹²⁹

Generally, the public servants in Cyprus are better paid than the employees of the private sector and have better terms of employment. There are certain professions though, such as lawyers and accountants, which earn much more in the private sector than in the public sector. Of course, in the private sector, the economic and laboral position of the employee depends on the relevant experience they possess in the subject and the financial capacity of each company.

The public servants in the lower scales are also much better paid than those in the private sector (e.g. secretaries and technicians) and also have better terms of employment.

Having said this, it is not necessary for a public servant to search for additional income in order to make a living and to lead a normal life.

Public servants are employed on a permanent or temporary basis. The permanent employment of a public servant is protected by law. Only under special circumstances (e.g. corruption, ethical issues) provided in the Public Service Law may employees be dismissed.

¹²⁹ Public Service Law of 1990, Article 65(2).

Regarding additional benefits given to public servants compared to employees of the private sector: Public servants are allowed a pension plus a lump-sum by the government, depending on their salary scale and years of employment. They are also given free health care in the general hospitals of the state.

Finally, regarding the privatization process, public tasks are transferred to private companies after the government opens tenders for different actions. The most important privatization processes can be found in the infrastructure, the military supply and airport administrations.

b) Allocation of Financial Resources

The Auditor General is responsible for controlling the allocation of financial resources. He submits an annual report on the exercise of his/her functions and duties to the President of the Republic, who then presents it to the Parliament. The reports are publicly available.

The Auditor General, assisted by the Deputy Auditor General and acting on behalf of the Republic, controls all disbursements and receipts, audits and inspects all accounts of money and other assets administered, and of liabilities incurred, by or under the authority of the Republic. For this purpose, he/she has the right of access to all books, records and returns relating to such accounts and to places where such assets are kept.¹³⁰

The Auditor General has the authority to request any evidence or information in any form, including electronic form, and any explanations, written or oral, required in discharging his duties, from almost anyone in the country.¹³¹

He or she also has the authority to request from any person or legal entity receiving a grant, a guarantee, or a loan from the Consolidated Fund or any other public fund, to furnish him with any evidence or information necessary to ascertain how the funds were expended.

Finally, the Auditor General has the authority to conduct a value for money audit in any ministry or department, statutory body, municipality, local authority or any other fund or organization audited by him, to ascertain that it operates in an efficient, effective and economically conscientious way.¹³²

130 Cyprus's Constitution, Part 6, Chapter 2 (Articles 115 - 117) – The Auditor General and the Deputy Auditor General.

131 Ministers, civil servants, Chairmen and members of the Board of Statutory Bodies, Mayors and members of the Municipal Councils, Chairmen and members of Local Authority Councils, employees of municipalities and local authorities, officers and employees of government services, authorities, councils established or to be established by law, officers and employees of public funds or other organizations audited by him and any other person possessing or being responsible for any such information.

132 Law No. 113(I)/2002: Provision of Evidence and Information to the Auditor General.

One case of corruption concerning tendering procedures that is worth noting is that of the ex-Minister of Commerce, Industry and Tourism, who was promoting a specific company, named ‘SporTeam’, to undertake the promotion campaign of Cyprus during the Olympic Games 2004 in Athens – an economic agreement reaching the sum of CP one million (€ 1,700,000). It was proved that the basic owner of the company was a relative of the Minister. The Minister had sent letters to different semi-governmental and other organizations urging them to examine the proposal of SporTeam positively, highlighting that he himself hoped that they will support it financially. Then the Ministry of Commerce addressed the President of the Central Council for Tenders, asking him to surpass the tendering procedure, so that ‘SporTeam’ would undertake the ‘job’. The Council answered negatively, and so did the rest of the organizations. During the following months, ‘SporTeam’ submitted a proposal exactly meeting the tendering requirements of the Cyprus Tourism Organization (a semi-governmental organization under the Ministry of Commerce, Industry and Tourism), which accepted the proposal without proceeding to an open call for tenders. Although the Auditor General of the Republic proceeded to an investigation and found a series of irregularities, avoidance of legal procedures and hiding of the actual facts, the Members of Parliament (MPs) of the current governmental party and members of the Committee of Inquiry of the Parliament concluded that there was no issue of undue influence, or any other issue of corruption.

c) Public Services Law and Human Resources in the Public Administration

The political parties influence the staffing in the public sector to a great extent. Especially after the ‘meritocratic procedure’ of opening the call for applications for certain positions, candidates are normally called for exams, but the final stage is an interview. At this interview, there can be no control over undue influence, in hiring people belonging to certain political parties.

On the other hand, the changes of government do not have such influence, as employees in the public sector are hired on a permanent basis and, hence, cannot be removed from duty due to a change in government.

The current and closed operations are subject to internal revision under the power of the Auditor General and other relevant laws.¹³³ There exists either the Internal Audit Unit, which is an independent body appointed by the Council of Ministers, or a special internal audit unit in every government body.

Under the Public Service Law, it is provided that the Committee of Public Service can take disciplinary measures against employees. The possible sanctions are: reproach, strict reproach, disciplinary transfer, suspension of annual increment, postponement of annual increment,

133 i.e. The Internal Auditing Law of 2003 [Law No. 114(I)/2003].

financial penalty that does not exceed the income of three months, lowering in the income scale, compulsory retirement, and dismissal.

Furthermore, undue influence in the public administration (e.g. bribery of public servants) is addressed by several laws, statutes and / or specific provisions of laws:

- *Criminal Code, Chapter 154*: contains provisions related to corruption in the public sector, and specifically to extortion, abuse of office and receiving property to show favour. (Articles 100-109 and 133-137). Sanctions are:
 - For bribery: up to 5 years of imprisonment or up to CP 10,000 (€ 17,000) penalty or both, and property which came into possession as bribery is confiscated according to the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Law (Article 100), or
 - 2 years of imprisonment and monetary penalty (Article 102);
 - For reward: 3 years imprisonment and monetary penalty (Article 101);
 - For officers who have personal interest in a property of special character: 1 year imprisonment (Article 103);
 - For false claims: 3 years of imprisonment and monetary penalty (Article 104);
 - For abuse of power: 3 years of imprisonment (Article 105);
 - For influencing the competent authority: up to 12 months of imprisonment or up to CP 1,000 (€ 1,700) penalty or both (Article 105A[1]);
 - For neglecting to report influence of the competent authority: up to 12 months of imprisonment or up to CP 2,000 (€ 3,400) penalty or both (Article 105A [2]);
 - For criminal impersonation: 3 years imprisonment (Article 109).
- *The Public Service Law of 1990*: contains special anti-corruption provisions, and a corresponding code of conduct allows for compulsory retirement or dismissal after a disciplinary punishment, among other things (Article 69, 71, 73-86). Sanctions that are provided are: reproach, strict reproach, disciplinary transfer, suspension of annual increment, postponement of annual increment, financial penalty that does not exceed the income of 3 months, lowering in the income scale, compulsory retirement and dismissal.
- *The Prevention of Corruption Law, Chapter 161*: deals with acts of corruption by public and private employees both in the public and private sectors and provides for sanctions of up to 2 years of imprisonment, or up to CP 1,500 (€ 2,550) fine, or both.
- *The Customs and Excise Code Law, Law No. 94(1) of 2004*: deals with acts of corruption of employees of the Customs and Excise Department and of any other citizen (Article 89[3]) and provides for sanctions. Sanctions that are provided are up to 3 years of imprisonment or up to CP 5,000 (€ 8,500), or both.
- *Law Number 51(I) of 2004*: provides for the prosecution of persons holding office who ‘acquire property by abuse of power’.

- *The Civil Law Convention on Corruption and additional provisions*, Law No. 7(III) of 2004: The person who has suffered damage as a result of an act of corruption has the right to claim full compensation against any legal or physical person or the Republic. Sanctions against the employer for not protecting the employee are up to 6 months of imprisonment, or up to CP 3,000 (€ 5,100) penalty, or both.
- *The Criminal Law Convention on Corruption of the Council of Europe*, Law No. 23(III)/2000. Sanctions are: 7 years of imprisonment, up to CP 10,000 (€ 17,000) penalty, or both.

A recent case of corruption in the public administration worth noting would be the following: In 1996, the Head of the Immigration Department was found guilty in the charges of bribery (violation of Article 100(a) of the Criminal Code, Cap. 154), additional income as a public servant apart from his salary (violation of Article 101 of the Criminal Code, Cap. 154) and corruption of a person serving the Republic (violation of Article 3(a) of the Prevention of Corruption Law, Cap. 161). At the Immigration Department, a delay in the issue of entry permissions for women working in night clubs was noted. The accused was said to have shown favour towards some agents for bringing forward the examination procedure against financial exchanges. He was sentenced to 20 months of imprisonment.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The legal position of the Members of the Parliament is regulated in the ‘Election of Members of the House of Representatives’ Laws of 1979 until 2003 and the Cypriot Constitution, Articles 62-72.

The procedure of the candidate's nomination for parliamentary election could be briefly described as follows: The nomination of candidates is proposed by the political parties or by persons eligible to vote. In the latter case, they must be proposed by two persons eligible to vote and nominated by other two persons eligible to vote, completing and signing an official document.¹³⁴

The income which Members of Parliament receive for their parliamentary mandate is CP 38,900 annually (€ 66,130) plus the cost of living which is readjusted every 6 months. Specifically:

- Basic salary: CP 19,700;
- Representation allowance: CP 12,000;

¹³⁴ Election of Members of the House of Representatives Laws of 1979 until 2003, Constitution: Art. 62–72.

- Secretary allowance: CP 7,200.

In addition to this income, the MPs get allowances or reimbursement for particular expenses:

- Travel expenses depending on the town they reside, varying from CP 75 to CP 225 monthly (€ 127.50 to € 382.50).
- The President of the Parliament is given an extra allowance for a personal assistant and a car of service with a driver.
- Compared to employees of the private sector, Members of Parliament are also given additional benefits.
- Pension benefits of parliamentarians: Either full pension, or reduced pension plus a one-time payment as soon as the parliamentarian leaves office. The pension is doubled or tripled depending on the number of parliamentary services.
- Benefits as all public servants (see question IV.1.a)).
- Duty-free cars.

The Members of Parliament are also granted the privilege of immunity (Cypriot Constitution Article 83).

The parliamentary mandate is incompatible with the postulate of Minister, Member of Community Assembly, Member of Municipality Council, Mayor. MPs may not either belong to the Military or Security Forces of the Republic, nor to the Public Administration.

Apart from that, it is common practice for Members of Parliament to hold other positions in the private sector. For example, a lawyer can practice law and be a parliamentarian. Finally, there is no sort of regulation of restricting (former) Members of Parliament from particular employment or a field of employment after leaving office.

b) Additional Incomes of Members of the National Parliament

The Members of Parliament have the right to receive additional income when working in the private sector. According to the Law for the Declaration and Control of Property of the President, the ministers and the Members of the Parliament of the Republic¹³⁵, they must file a report every three years to a special parliamentary committee established for this purpose. Such obligation also includes their underage children. These reports are classified and are kept in files in the office of the President of the House of Representatives. Therefore, they are not published and they can only be accessed by members of the special committee. There have not been any recent cases of corruption related to additional income, made public or brought in front of a Court of Justice.

135 Law No. 49(I) of 2004.

c) Undue Influence

Law No. 51 of 2004 provides for the sanction of political public office-holders and Members of the House of Representatives who unlawfully acquire any property benefit.

In addition to that, according to the 'Operation Regulation' of the Parliament, parliamentarians are obliged to withdraw from meetings in which they have private interests. However, it is up to them to report this.

The sanctions that are possible for the violation of the above provisions, according to Law No. 51 of 2004, sum up to 7 years of imprisonment or up to CP 25,000 (€ 42,500) penalty or both, or in some cases up to 12 months of imprisonment or up to CP 750 (€ 1275) or both. The court may also decide on the appropriation of any such a property benefit. Additionally, in some cases of corruption, parliamentary immunity is raised and the parliamentarians are subject to the Criminal Code provisions (see above).

Nevertheless, there are no statutes dealing with other questions concerning corruption, as for example statutes prohibiting travel at the expense of companies or individuals, or acceptance of gifts. This kind of conduct is condemned only on an ethical basis.

A very prominent case of undue influence that has led a single Member of Parliament to be excluded by the parliamentary groups or political parties is that of Georghios A. Georghiou, a Member of the House of Representatives belonging to the Democratic Rally party. He was accused in 1983 on two counts of uttering and two counts of forgery committed in his professional capacity as an advocate. In August 1982, with intent to defraud, he made a document purporting to be a photocopy of a deposit by him to the Popular Bank Ltd. to the amount of CP 3,454 to the benefit of a certain client. In fact, no such deposit was made and the document in question was false because such document was never issued by or signed on behalf of said bank. Between 30th August 1982 and 12th October 1982, with intent to defraud, the respondent made a document purporting to be a photocopy of a letter of the Central Bank of Cyprus, dated 30th August 1982, addressed to the Popular Bank Ltd. and communicating to it the permission of the Central Bank to remit abroad, to Birmingham in the United Kingdom, the amount of CP 3,705 to said client, whereas in fact such letter was also false. He was sentenced to 1 year of imprisonment and was dismissed from the Parliament and excluded from the political party.

A more recent case of corruption related to undue influence is that of an ex-Member of Parliament, who was accused of accepting money for a favourable conclusion during his service as parliamentarian, acting in his own profession as a coroner. The case is still under investigation.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The status of political office-holders is regulated by the Cypriot Constitution.¹³⁶

The annual income that political office-holders receive is equal to CP 37,946 (€ 64,510), plus the cost of living, which is readjusted every six months, plus representation allowance equal to CP 12,000 (€ 20,400).

Political office-holders are also given all the additional benefits of the public servants (see above), as well as:

- Pension at the salary scale of a minister;
- Private use of official cars with a driver;
- A duty-free car after the end of service.

A political office-holder may hold another public office position, e.g. minister and government spokesman. This happens in very rare cases. He cannot, however, be simultaneously employed in the private sector. In cases where the political office-holder owns a company, he may be president of the administrative board of the company, but cannot practice his profession. Political office-holders may also be members of public supervisory boards. Finally, there is no restriction for a (former) political office-holder to be employed in any particular employment or fields of employment after leaving office (cooling-off periods).

b) Additional Incomes of Political Office-holders

Political office-holders do have the right to receive additional income, but they are also obliged to publish their income. According to the Law for the Declaration and Control of Property of the President, the ministers and the Members of the Parliament of the Republic¹³⁷, the above-mentioned have the same reporting obligations as the MPs (see above). These reports (as already mentioned above) are classified and are kept in files in the office of the President of the House of Representatives. Therefore they are not published and they can only be accessed by members of the Special Committee. No cases of corruption related to additional income were ever brought in front of a Court of Justice.

c) Undue Influence

The criminal statute regarding bribery of political office-holders is the Law No. 51 of 2004, which provides for the sanction of political public office-holders who unlawfully acquire any

¹³⁶ Part 3, Articles 36-60 and Part 6, Articles 112-114, 118-121.

¹³⁷ Law No. 49(I) of 2004.

property benefit. The same law provides for sanctions of up to 7 years of imprisonment or up to CP 25,000 (€ 42,500) of penalty, or both; in some cases, up to 12 months of imprisonment or up to CP 750 (€ 1,275) or both. In both cases the court may also decide on the appropriation of any such a property benefit.

As already stated above, there are no statutes dealing with other questions concerning corruption, as for example statutes prohibiting travel at the expense of companies or individuals, or acceptance of gifts. This kind of conduct is condemned only on an ethical basis.

There have been a number of cases related to state land and the dealing with it by the cadastre. One of them is described below:

The ex-Deputy Chief of Police ('S.Ch.') owned a piece of land in a village in the District of Paphos. He applied to the cadastre, asking for the exchange of his land with another one that belonged to the state, which is in the District of Larnaca. This second piece of land was adjacent to another piece of land that he owned. The reason he gave in his application was that he wanted to create an area with different kinds of plants. His land in Paphos was evaluated at CP 80,000 whereas the land he was asking for in Larnaca was evaluated at CP 25,000. He decided then to keep a piece of his land in Paphos, and exchange only one piece at the value of CP 25,000, the same value as the one in Larnaca. The Director of the Cadastre approved the application. The application was then submitted to the Council of Ministers for approval. It has to be mentioned here that the usual practice is exchanging private lands with state lands that are found in the same area. Therefore 'S.Ch' changed his initial application, offering for exchange a piece of land in the District of Larnaca, in addition to the one in Paphos. The land he offered in Larnaca was bought on the day of the resubmission of his application. All pieces of land that 'S.Ch' was offering were evaluated at the same value of the state land in Larnaca. The new application was approved by the Council of Ministers, after taking into consideration the new report of the Director of the Cadastre, which by the way made no mention to the previous decision of the Council. 'S.Ch' managed thus to exchange a cheaper piece of land with a much more expensive and favourable one, without paying anything. The Audit Unit of the Republic, however, pointed out in its report that the exchange was irregular, since the final report of the Director of the Cadastre, on which the Council of Ministers was based to take its decision, made no mention to the previous facts and to the alteration of the initial application. Moreover, the reason for requesting the exchange stated in the report of the Director was completely different from the one given by 'S.Ch'. The Director made up a reason that was more convincing. In its report, the Audit Unit stressed that the exchange favoured 'S.Ch' and harmed the state and accused the Director of the Cadastre of undue influence. The whole case was revealed by a local newspaper. In the days which followed, 'S.Ch' agreed to the cancellation of the exchange.

4. Political Parties

a) Legal Position within the National Legislation

There is an ongoing discussion within the House of Representatives on the issue of the legal status of political parties, because there has been no such provision (legal or other) until now.

b) Revenues of Political Parties

Political parties obtain state funding through the annual state budget according to their share percentage in the electorate and the Parliament. They also receive an additional income whenever elections are held to cover part of the campaign expenses. There is no obligation to disclose their financial statements so the public does not know to what extent each kind of financial source contributes to the total.

The proportion of donations is very low compared to state funding and membership fees. Additionally, there is no law specifying in which cases the party donation can be considered illegal.

c) Legislation on Transparency of Political Party Funding

Political parties are required to render account of their total revenues and expenses under Law No. 199 of 1989, which provides for the acquisition, possession and disposal of movable and immovable property. According to this law, the political parties are obliged to register their immovable property – and inform of any changes thereafter-- to the District Cadastre.

The only sanction existing for relevant violations is for political advertisement in election periods. There is a ceiling on expenses for parties and candidates, but in general it is exceeded and no measures are taken in order to enforce the legal provisions (e.g. each candidate is allowed to spend only CP 850).

There are no other laws concerning rendering of account of revenues and expenses.

V. General Comments

The Republic of Cyprus is a very small country, both in territorial size and population. In Cyprus, the phenomena of nepotism appear frequently. Also, due to the small size of the population, most of the people know each other, and in cases of corruption, people tend not to speak about it publicly; it is therefore more similar to an unwritten custom practice to do ‘favours’ for friends. Even if a public servant does not receive money or accept presents as a form of corruption, he/she might act illegally in some way in order to serve a friend. For

example, during the tendering procedure of positions in the public sector, it is more like an unwritten rule that one needs to have someone to 'help' him/her gain access to a position.

Another field where corruption often occurs is that of the cadastre. A number of such cases were brought in front of the courts.

About 4 years ago, a huge issue was raised by the media concerning the assets of the parliamentarians and the political public-office-holders. Until then, there had been no obligation to disclose their financial details and there had been rumours about acquisition of property by the abusing of power. After that, the Parliament approved three bills which became laws, namely:

Law Number 51(I) of 2004, which provides for the prosecution of persons holding office who 'acquire property by abuse of power'.

Law Number 49(I)/2004 and *Law Number 50(I)/2004*, which deal with the disclosure by the President of the Republic, the parliamentarians, the ministers, and some political public-office-holders, of personal financial details every year as long as they hold office and for 3 years thereafter, and provide for sanctions.

In any public agency, efforts need to be made to establish an organizational structure that increases the opportunities for transparency. A strong political commitment at the highest level is important as well as development and improvement of investigative tools and allocation of more specialised staff in the fight against corruption.

Report Czechia¹³⁸

138 We would like to thank Dr. Tomas Grivna, Law Faculty, Charles University, Prague, for answering the questionnaire and supporting the realization of the Report Czechia, written by Alessandra Di Martino.

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I. Sources of Data-collection on Corruption in the Public Sector

The Ministry of Justice (www.justice.cz) collects data on people who were accused, prosecuted and convicted of bribery. The Ministry of Interior (www.mvcr.cz) collects data on crimes recorded by the police, crimes already cleared up and numbers of investigated and prosecuted persons for bribery.

Private data on corruption in the public sector are collected by *Transparency International* (www.transparency.cz).

As soon as they are published, anyone may access all above-mentioned data.

II. Legislation dealing with Corruption

At present, no legislation deals specifically with the fight against corruption, as it falls under the Penal Code's provisions on the crime of bribery (accepting bribes, offering bribes, indirect bribery) in Articles 160, 161 and 162.

The Czech criminal procedure is based on the principle of legality (Sec. 2 par. 2 of the CCP), according to which prosecution of an offence is mandatory for the public prosecutor. There are, however, some statutes giving the public prosecutor permission not to prosecute a crime (discretionary power of the public prosecutor). These statutes in general deal with 'soft crime' (see e.g. Sec. 179g, Sec. 172 par. 2, Sec. 307, Sec. 309 of the CCP).

The Czech legal system provides a right of access to administrative files for individuals who are not concerned in a particular case according to The Act for the Freedom of Access to Information (Act. No. 106/1999 Coll., coming into effect 1st January 2000). However, there are several restrictions for giving the information (see e.g. Sec. 7-11).

III. Control and Sanctions

The following bodies have the competence to prevent and fight corruption in the public sector: Internal auditing, persons in charge of preventing and fighting corruption in some administration agencies, the Ombudsman, The Supreme Audit Office, the subdivision of the police for detecting corruption and serious economic criminality.

Cases of corruption are also subject to parliamentary scrutiny through a parliamentary inquiry by investigating commissions of the Chamber of Deputies. These are ad hoc bodies for investigations on matters of public interest which have e.g. the right to examine witnesses and also to make a report on that inquiry.

Among the possibilities which the parliamentary opposition have to control corruption, albeit indirectly, are the right to establish an investigative committee according to Article 30 par. 1 of the Constitution¹³⁹; the right to determine a special session of the Chamber of Deputies or the Senate according to Article 34 par. 3 of the Constitution¹⁴⁰; the right of the Chamber of Deputies to adopt a resolution of no confidence in the government according to Article 72 of the Constitution¹⁴¹; the right of each deputy to interpellate the government or its members concerning matters within their competence according to Article 53 of the Constitution. Interpellated members of government shall respond to an interpellation within thirty days from its submission.

As for the role of the media, the academic world and NGOs in the discussion and perception of corruption, it should be noted that the role of the media is significant, especially in the detection of bribery. The police has indeed investigated in some cases on grounds of TV reportages. Highly important is also the stress of media on the regular response of state authorities on the need to investigate bribery.

The academic world is discussing the problem of corruption throughout conferences and scientific articles. Scientists focus on explaining the influence of bribery on economics and politics and suggest related solutions (legal, administrative and economical precautions). Among the NGOs, Transparency International is very active, especially in the field of fighting against corruption. E.g. Transparency pursued for the enactment of an effective and enforceable new law governing the conflict of interest. Finally, the Parliament adopted the new Act on 25th January 2006 (No. 159/2006 Coll). During the third reading, not even one MP of those present voted against the proposal. The Act was subsequently adopted by the senate and signed by the President. It will come into effect on 1st January 2007.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

In general, public administration can be divided into state administration and self-administration. State bodies and subjects with delegated power are provided with executive competences on the following levels: Government - ministries - other central or local (i.e. delegated powers of regions and communities) administrative bodies - natural or legal persons with state power. The

139 If at least one-fifth of the deputies so propose.

140 If at least one-fifth of that chamber's members request so.

141 The Chamber of Deputies may debate a proposed resolution of no confidence in the government only if it has been submitted in writing by at least fifty deputies. To adopt the resolution, an absolute majority of all deputies must give their consent.

decision-making power of lower levels is dependent on the conditions of specific acts. Self-administration relates to territorial self-government (regions and communities with separate powers) and self-governance of an interest group (e.g. the Czech Bar Chamber). Additionally, some public tasks (e.g. waste management, public transport, telecommunication and hospitals) have been transferred to private companies.

Some restrictions are placed on the exercise of the right to strike for special category public officers. A general right to strike is guaranteed under the conditions provided for by the law; however, this right does not appertain to judges, prosecutors, or members of the armed forces or security corps.¹⁴² Restrictions may be placed upon the exercise of the right to strike by employees in the state administration and local self-government, holding the positions specified therein.¹⁴³

Public servants are not fundamentally given additional benefits compared to employees of the private sector. As for the income, this can be quite higher in some areas of the private sector than in the public sector. A lawyer working in a company/group, for instance, earns more money than a lawyer in the public sector. But it is not necessary for public servants to obtain an additional income in order to make a (standard level of) living.

b) Allocation of Financial Resources

The following bodies have the competence to control the allocation of financial resources in Czechia: The Supreme Audit Office¹⁴⁴, which shall perform audits on the management of state property and the implementation of the state budget (the Office is not charged with fighting corruption but should report the suspicion of committing a crime to police or prosecutor) and parliamentary committees (budgetary, supervising committee) of the Chamber of Deputies.

The President of the Office shall publish all approved audit conclusions of the Supreme Audit Office in the Office Bulletin and he shall send them without delay to the Chamber of Deputies, the senate, the government and, upon request, to the ministries. Upon request, the Office shall supply the Chamber of Deputies, the senate and the government with the audit protocols and other background material for the approved audit conclusions (Sec. 30 of the Act No. 166/1993 Coll.).

142 Art. 27 par. 4 of the Charter of Fundamental Rights and Basic Freedoms.

143 Art. 44 of the Charter of Fundamental Rights and Basic Freedoms. The Civil Service Act (No. 218/2002 Coll. forbidding the right to strike or restricting other rights or giving special privileges to public servants is in abeyance.

144 The legal status, powers, and organizational structure of the Office, as well as more detailed provisions, shall be set down in a statute (Art. 97 of the Constitution, Act No. 166/1993 Coll. concerning the Supreme Audit Office).

c) Human Resources and Additional Income in the Public Administration

Political parties hardly have influence on staffing in the public sector on national level, since (personal) qualification is more important than party membership (but see below). However, political parties may have some influence on staffing in the public sector especially at managerial posts of central administrative bodies (e.g. the ministers, after being appointed, often change the deputies and division heads of the ministries similarly to a spoils system).

In general, public servants may also work on a secondary job. These jobs are subject to previous written approval if the job is of the same kind, whereas some restrictions arise from the Conflicts of Interest Act (No. 159/2006 Coll.).

Current and closed operations are subject to internal revision. The legal basis for internal audit can be found in the Financial Control Act (No. 320/2001 Coll.). Inside each administrative body, a division or an appointed employee, independent from the managing executing structure, has the task of checking up and analysing current and closed operations according to the law (see Sec. 28 par. 2 of the Act). On the bases of the findings, recommendations are submitted to the managing head of the authority.

Undue influence in public administration is addressed by The Penal Code: Sec. 160 (Accepting bribes), Sec. 161 (Offering bribes), Sec. 162 (Indirect bribery), which provide the sanctions of imprisonment up to 8 years, fines and the prohibition on undertaking professional activities.

The Civil Service Act (No. 218/2002 Coll., not yet in force) forbids the acceptance of any gift or other privileges in connection with a service. Moreover, the Government of Czechia has adopted a Code of Ethics for the employees in the public administration and imposed an obligation to issue the code for subordinated bodies (a decree of the Government No. 270/2001). Some administrative authorities incorporated a Code of Ethics as a part of working regulations (e.g. the Ministry of Environment, the Ministry of Finance).

At the moment, no legal obligation exists to set up internal bodies to prevent and fight corruption.

d) Privatization

Amongst the recent scandals on corruption, one should be mentioned which deals with privatization. The Czech government sold a 63 percent state share in Unipetrol to the Polish PKN Orlen company for CZK 13.05 billion last year. It is one of the biggest privatizations in the country's history. Suspicions of a fishy deal in the Unipetrol privatization occurred after PKN Orlen's new management filed a criminal complaint with the prosecutor's office in Krakow, Poland, citing the lucrative Agrofert contracts signed by the company's management. It charged that the contracts were payoffs for Agrofert's garnering Czech political support to win the

Unipetrol deal. The Chamber of Deputies established an investigative commission on the case of the privatization of the Unipetrol company. The scandal around Unipetrol privatization was stirred up by a report on Nova commercial television, showing a meeting, shot by a hidden camera, between Spyra and Zdenek Dolezel, former head of Prime Minister Jiri Paroubek's office, where Dolezel asked for a CZK 5,000,000 bribe. A parliamentary investigation has turned up no evidence of corruption. The investigation concluded that the Dolezel incident was not directly related to the Unipetrol privatization. The parallel investigation by police is still ongoing.

2. Members of the National Parliament

a) Legal Position within the National Legislation

According to the Constitution, the Parliament consists of two chambers, the Chamber of Deputies and the Senate.¹⁴⁵ As for the election procedure of the Chamber of Deputies¹⁴⁶, the registered parties or coalitions submit a list of candidates for the Chamber of Deputies election. In order to enter the Chamber of Deputies, a party must win at least 5% of votes – parties with the least amount of votes cannot enter. The mandates reach as many candidates from each ticket as their political party (or coalition of parties) deserves according to the percentage of votes won. Candidates from the upper positions as well as those who succeeded with preferential votes attain the seats. As for the senate¹⁴⁷, the constituents elect senators within candidates nominated by various political parties, coalitions as well as independent candidates. Candidates acquiring more than 50% of the cast votes shall be elected senator. If none of the candidates gets this quorum, a second round of elections is held between the two candidates with the highest numbers of votes. The second round goes to that candidate who gets the simple majority of the votes. In accordance with Act No. 150/2002 Coll. Code of Administrative Justice, administrative courts are competent to hear disputes relating to the keeping of the electoral register, the registration of a candidate list for the election, the removal of a candidate from the candidate list or challenges to the registration of a candidate list. Administrative courts may furthermore hear actions concerning the validity of elections and the validity of individual ballots.

145 In the Chamber of Deputies, there shall be 200 deputies, who are elected for a term of four years. Act No. 90/1995 Coll. on the Rules of Procedure of Chamber of Deputies also regulates the position of deputies. In the senate, there shall be 81 senators, who are elected for a term of six years. One third of senators shall be elected every two years. The position of senators is also regulated in Act. No. 107/1999 Coll. on the Rules of Procedure of Senate.

146 Every citizen of Czechia who has the right to vote and who has attained the age of 21 years may be elected to the Chamber of Deputies (Art. 19 (1) of the Constitution). Other conditions on the organization of elections shall be set by Act No. 247/1995 Coll. on the Election to the Parliament of Czechia

147 Every citizen of Czechia who has the right to vote and who has attained the age of 40 years may be elected to the senate (Art. 19 (2) of the Constitution). Other conditions on the organization of elections shall be set by Act No. 247/1995 Coll. on the Election to the Parliament of Czechia.

MPs enjoy the privilege of immunity.¹⁴⁸

The income of MPs is governed by Act No. 236/1995 Coll. on Pay and Other Requisites connected with the Function of Representatives of State Authority and Certain State Bodies and Judges. Their salary is composed of the base amount (base pay) and pay coefficient. The salary for all MPs is CZK 57,546 (approx. € 2055) per month per year (the salary is increased for deputies with certain functions e. g. for the President and the Vice-President of the chamber). In addition to this income, MPs are given reimbursement of cash expenses, e.g. travelling expenses, accommodation expenses, boarding fees, office expense allowance (Sec. 5 of the Act No. 236/1995 Coll.). Moreover, MPs are given some additional benefits in comparison to employees of the private sector, which consist in some non-monetary performance – performance in rem, services (Sec. 6 of the Act No. 236/1995 Coll.) e.g. free public transport (except for air traffic), housing and telephone facilities.

Regarding incompatibilities, the office of deputy or senator is incompatible with holding the office of the President of the Republic, the office of judge, and with other offices to be designated by statute (Art. 22 of the Constitution). At the statute level, a general regulation is provided by Act No. 238/1992 Coll. on Certain Measures Related to the Protection of the Public Interest and on the Incompatibility of Certain Offices (the Conflict of Interest Act). On January 2006, the Parliament adopted the new Act (Act No. 159/2006 Coll.) on the Conflict of Interests. It will come into force on 1st January 2007. The legal content of this new act is basically the same as that in the current valid act. Regarding the private sector, a total incompatibility between a parliamentary mandate and a private position is rare. In accordance with the Conflict of Interest Act, MPs are obligated to declare whether they are currently engaging in any entrepreneurial activity or other independent gainful employment, whether they hold any position in the private sector (e.g. membership in managerial, supervisory or controlling body of a legal entity established for the purpose of engaging in entrepreneurial activities), and whether they are engaged in profit-making activities in an employed position, service or similar relationship.

148 There shall be no legal recourse against deputies or senators for their votes in the Chamber of Deputies or senate respectively, or in the bodies thereof. Deputies and senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the senate respectively, or in the bodies thereof. Deputies and senators are subject only to the disciplinary authority of the chamber of which they are member. In respect of administrative offences, deputies and senators are subject only to the disciplinary authority of the chamber of which they are member, unless a statute provides otherwise. Deputies and senators may not be criminally prosecuted except with the consent of the chamber of which they are member. If that chamber withholds its consent, such criminal prosecution shall be forever foreclosed. Deputies and senators may be arrested only if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the chairperson of the chamber of which the detainee is a member; if, within twenty-four hours of the arrest, the chairperson of the chamber does not give her consent to hand the detainee over to a court, the arresting authority is obliged to release him. At the very next meeting of that chamber, it shall make the definitive decision as to whether he may be prosecuted (Art. 27 of the Constitution).

It is therefore common practice for MPs to hold other positions, e.g. they are members of a managerial, supervisory or controlling body of a legal entity established for the purpose of engaging in entrepreneurial activities. At the moment, no cooling-off period is provided.

b) Additional Incomes of Members of the National Parliament

Thus MPs have the right to receive additional incomes, which are to be disclosed. MPs are obliged to report all incomes gained in the relevant calendar year, during the period in which they held the public office, if they exceed the base pay of duties per month (CZK 53,283 in 2006) in one calendar year (Sec. 6 of the Act No. 238/1992 Coll.). As of 1st January 2007, MPs will be obligated to declare incomes from CZK 100,000 (approx. € 3570) per year. No other person is also obligated to publish his/her income.

Moreover, MPs are obligated to submit, in the form of a statutory declaration, information concerning his/her personal benefits, activities, incomes, gifts and property. MPs also have to provide information on whether, during the preceding year, he/she or his/her spouse has acquired ownership over any immovable assets or other property rights. When the new Act on the Conflict of Interests (Act No. 159/2006 Coll.) will enter into force on 1st January 2007, MPs will have an obligation to submit, in the form of a statutory declaration, an announcement on their personal interests, on property acquired during performance of function, and on incomes, gifts and liabilities, respectively.

At present, income and property announcement are kept in the Mandate and Immunity Committee of the Parliament's relevant chamber. The information in these announcement may be obtained, upon written request, from the Mandate and Immunity Committee of the Parliament's relevant chamber, which is charged with keeping the records on these announcements (Art. 8 of the Act No. 238/1992 Coll.).

Act No. 159/2006 Coll. introduces the new form of registration of the announcement. All announcements will be registered in the Register of the announcement. This register will be accessible to the public even via the internet.

There haven't been any recent cases of corruption related to additional income that are worth noting. However, practically every year, when public officials have handed in the announcement concerning their incomes, gifts and property received in the previous year, it has been criticised that some of them ignore this obligation or only fill the announcement on a purely formal basis. The current law does not contain any sanction and is therefore ineffective. According to the new Act No. 159/2006 Coll. on the Conflict of Interests, an administrative court will adjudicate on the violation of obligations resulting from this Act and will be entitled to impose a fine. The court is obligated to send the judgment to a registration authority or a public body to be published, along with the reasoning, on its electronic address.

c) Undue Influence

MPs are not subject to special criminal provisions on bribery. It should be recalled in this connection that MPs are public officers (Sec. 89 (9) of the Penal Code). If an MP commits some offence (e.g. the criminal offence of accepting a bribe) in his position as a public officer, he may be sentenced to higher imprisonment. Related sanctions would be imprisonment, the prohibition of professional activities and a fine.

Sec. 162a of the Criminal Code defines a bribe as an unjustified gain consisting in a direct enrichment of assets or in some other type of unlawful reward being provided, or intended to be provided, to the individual being bribed or, with that individual's consent, to a third party. Apart from money, a bribe may involve some other type of benefit such as a reciprocal service. Amongst recent cases on undue influence, the Koristka affair in 2004 should be mentioned. The Freedom Union Member of Parliament Zdenek Koristka has maintained that two men (Marek Dalik – an assistant to Civic Democrat leader Mirek Topolaneck, and Jan Vecerek – the other lobbyist) offered him CZK 10 million and a diplomatic posting in Bulgaria to vote against the government in a motion of no confidence (to help bring down Stanislav Gross' government). These two men were prosecuted but not convicted for allegedly bribing a Member of Parliament.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

Art. 67–79 of the Constitution dealing with the status of political office-holders.¹⁴⁹

According to Act No. 236/1995 Coll. on Pay and Other Requisites Connected with the Function of Representatives of State Authority and Certain State Bodies and Judges, members of government receive a basic salary and reimbursements of cash expenses. They are also given some non-monetary performance – performance in rem, services (Sec. 6 of Act No. 236/1995 Coll.) e. g. free public transport (except for air transport).

Members of government may not engage in activities which are by their nature incompatible with the performance of a minister's duties. Detailed provisions shall be set down in a statute (Art. 70 of the Constitution). So, members of government may not perform any gainful activity, hold the position as members of a managerial, supervisory or controlling body of a legal entity established for the purpose of engaging in entrepreneurial activities or be in some other labour relationship (Sec. 2 (2) of Act No. 238/1992 Coll.). A similar regulation is also contained in the new Act No. 159/2006 Coll.

149 The government consists of the Prime Minister, deputy prime ministers, and ministers. The President of the Republic shall appoint the Prime Minister and, on the basis of his/her proposal, the other members of government and entrust them with the management of the ministries or other offices.

Generally, members of government are also members of the Chamber of Deputies.

Under the current valid law, no cooling-off period is provided. However, the new Act No. 159/2006 Coll. on the Conflict of Interests contains provisions of ‘post-function limitations’. A member of government who is directly responsible for a specific sector of economy or makes decisions about specific companies (e.g. privatization, issuing public tenders) should not be allowed to work in this sector or hold a position in these companies for a minimum of a year after leaving public office.

b) Additional Incomes of Political Office-holders

Members of the government have the right to receive additional income only from the management of their private property and activities of a scientific, educational, publishing, literary or artistic nature. As for other profit-making activities, an incompatibility is provided with the position of member of government.

As for publishing duties, reports and access, see above 2.b).

c) Undue Influence

Political office-holders are subject to general criminal provisions on bribery. The substantive basics of criminal offences regarding bribery (the criminal offence of bribe-accepting, the criminal offence of bribery, the criminal offences of indirect bribery) are set forth in Sec. 160–162 of the Penal Code. Apart from bribery, the Czech legal system acknowledges various other substantive basics of criminal offences entailing corrupt behaviour. These include conspiring during the process of bankruptcy and settlement proceedings, conspiring during the course of public tenders and auction sales, abuse of information in commercial transactions, and the breach of regulations on the disposal of goods and technologies subject to control. Related sanctions are imprisonment, the prohibition of professional activities and fines.

There has recently been one relevant case of corruption related to undue influence that is worth noting. Former Prime Minister Stanislav Gross was suspected that he could not have earned the CZK 2.5 million (approx. € 89,250) used to purchase a private luxury flat in 1999. He could not clearly explain from whom he got the money for his flat or to whom he owed the money. Stanislav Gross was not prosecuted because no clear evidence existed.

4. Political Parties

a) Legal Position within the National Legislation and Revenues

Political parties are legal bodies with legal capacity (Sec. 3 par. 1 of the Act No. 424/1991 Coll. on Association in Political Parties and Movements). The parties’ funding is mainly based on

state subsidies, members' financial contributions and other sources set by law. State funding depends on the success of the party in the elections (municipal or parliamentary) and consists of two kinds of support (permanent supply and supply for mandate). Permanent supply is granted if the party achieved at least 3% of the votes in the last elections to the Chamber of Deputies. The exact sum results from the total percentage of votes for the party. It entails from CZK 6,000,000 (approx. € 214,000) up to CZK 10,000,000 (app. € 357,000 – maximum limit) per year. The rate of supply for a mandate (seat) per year is CZK 250,000 (approx. € 8,900) for one mandate in the regional council or CZK 900,000 (approx. € 32,000) for one mandate in the Parliament.

Some party donations are prohibited by actual legislation. Indeed, political parties and movements shall not accept donations and other gratuitous benefits from the state, any allowance organization, municipalities and regions with exception of non-residential lease, public ownerships or legal bodies with capital participation of the state, legal bodies with capital participation of municipalities and regions, benevolent corporations, other legal bodies if the special law determines so, foreign legal bodies, individuals who are not citizens of Czechia except foreigners having permanent residency in the territory of Czechia. (Sec. 19 of the Act No. 424/1991 Coll. on Association in Political Parties and Movements).

b) Legislation on Transparency of Political Party Funding

Political parties are obligated to submit an annual financial report to the Chamber of Deputies. The annual financial statement (a part of the report) must be scrutinized by a certified auditor or auditing company. The deadline for submitting is April 1st every year (Sec. 18 of Act No. 424/1991 Coll. on Association in Political Parties and Movements). Annual financial reports are published (anybody can read them and make copies).

In the case where a party receives an illegal donation, the party must return it to the donator by April 1st of the following year or, if this is unfeasible, to the state budget. If the party misses this deadline, it must pay twice as much as the illegally obtained amount of money (Sec. 19a of Act No. 424/1991 Coll. on Association in Political Parties and Movements). Furthermore, a party which fails to submit a complete annual report shall not be a recipient of state subsidies until the complete report is submitted (Sec. 20 par. 3, Sec. 20a par. 3 of Act No. 424/1991 Coll. on Association in Political Parties and Movements.)

A single case of political party financing-related corruption is worth mentioning. In 1997 the government (the coalition of three parties – ODS, KDU-ČSL, ODA) decided to sell the controlling shares of the country's third large steel works (Trinecke zelezarny) to the Moravia Steel Corporation. In the same year, the political party of ODS received a gift of CZK 3,750,000 from Mr. Lajos Bacs and a gift of CZK 3,750,000 from Mr. Radjiv M. Sinka. But later it turned out that real donator of the gifts was Milan Srejbr, co-owner of Moravia Steel Corporation.

V. General Comments

In a more general sense, the occurrence of corruption is affected by many cultural, economic, political and legal factors. Major social changes in the 1990s have been accompanied by manifestations of corrupted behaviour (favourable conditions for corruption were created e.g. during the transfer of ownership in the process of privatization and restitution). A similar effect has also been caused by tradition (earlier, it was common to give someone a small gift, such as flowers, a bottle of alcohol). Furthermore, the absence of effective control mechanisms and imminent sanctions as well as the vagueness of legislation (e.g. it is a problem of valid Act on Conflict Interest) have also been decisive. Main fields of corruption in Czechia have been privatization and public tenders. Some scandals have had an immediate effect on legislation. As already mentioned, in January 2006 the Parliament adopted the new Act on the Conflict of Interests (it will come into force on 1st January 2007). Its main goal was to reduce the risk of corruption in a potentially dangerous situation, e.g. when a personal interest or a group interest of public officials comes into conflict with the public interest in their decision-making process.

Report Denmark¹⁵⁰

150 We would like to thank Morten Ebbe Juul Nielsen, post. doc, Ph.D. BA (psych.), for answering the questionnaire and supporting the realization of the Report Denmark. Also we would like to thank Michael Philip Schmidt (law student), Philip and Partners, as well as Dr. Ib Martin Jarvad to endorse Morten Ebbe Juul Nielsen. The Report Denmark is written by Alessandra Di Martino.

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I Sources of Data-collection on Corruption in the Public Sector

Data on corruption in the public sector are collected by *Transparency International – Denmark*, a private organization. Related information is accessible at www.transparency.dk and www.transparency.org.

II. Legislation dealing with Corruption

The following laws deal specifically with corruption:

- §§ Lov 2006-02-27 nr. 117 om forebyggende foranstaltninger mod hvidvask af udbytte og finansiering af terrorisme (Law nr. 117 of 27th February 2006 on the prevention of laundering and the financing of terrorism).
- §§ LBKG 2005-09-27 nr 909 Straffeloven (Promulgation Act no. 909 of 27th September 2005, Criminal Code) § 117, § 122 and § 144. Rules in the criminal code have been amended to fulfil the obligations resulting from the European Legislation against corruption.

The legal definition of corruption is very broad. In the English translation, it would read:

‘Anyone who unjustifiably gives, promises or offers offices, positions, presents or other kinds of advantages to anyone working in the Danish, foreign, or international public service, in order to persuade the official (etc.) to do or fail to do something in service, is fined or incarcerated up to three years.’ (§ 122)

As well as:

‘Anyone who is in Danish, foreign or international public service, and who unjustifiably receives, demands, or lets themselves be promised a present or other advantage, is fined or incarcerated up to six years.’ (§ 144)

As with all rules in the Danish penal system, the decision whether to prosecute or not is left with the Crown Prosecution Service, and ultimately the Minister of Justice. However, there are quite narrow expectations affiliated with these institutions. Not to prosecute obvious or commonly known instances of corruption would strongly delegitimise not just these institutions, but government as such. It is probably a moot point whether or not this web of institutions and legitimising expectations provide a formal obligation or not.

A general right of access to administrative files for individuals who in a particular case are not concerned is lacking. However, in some cases, court files and evidence are open to the public after a case has been definitively closed; if a particular case is identified as being apt for legal prosecution, public access is possible.

III. Control and Sanctions

No specific administrative body is competent for preventing and fighting corruption; however, cases of corruption in the public administration can be brought before the Danish Ombudsman (<http://www.ombudsmanden.dk>). Also, neither a special parliamentary control mechanism is provided for corruption in the public sector nor does the parliamentary opposition enjoy particular rights (such as that of appointing a board of inquiry, or access to information), apart from initiating legislation concerning corruption.

The issue of corruption does not play any major role in either academic, legal, or the public media circles in this country. When cases of corruption involving public officials or institutions do emerge, they are seen as anomalies that must be rooted out.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Regarding specific obligations of public servants (most of them within the police or the military, judges and people in leading positions within the administration), they cannot go on strike. Public servants as such do not enjoy any protection from dismissal, since they can be dismissed at discretion. An exception is of course provided for judges, who can only be dismissed under special circumstances and by an independent board.

Public servants are not given additional benefits compared to employees of the private sector. Benefits such as health care, pensions and debentures are, however, reasonably ample.

Income of public servants is basically the same as income for employees of the private sector, except for perhaps the best-paid quarter of people working in the private sector that earn considerably more – public servants are able to live solely from their state job.

The Danish public sector is hierarchically structured. Lower levels do have decision-making power, although this varies greatly from one specific part of the public sector to another. Decisions of public authority are, in general, subject to scrutiny and appeal, especially those concerning (alleged) infringements of legal rights and concerning budgetary matters.

Public tasks such as transport, energy, waste management, childcare and the caring of elders have been transferred to private companies, but mostly as joint ventures rather than 100% privatizations.

b) Allocation of Financial Resources

As for bodies controlling the allocation of financial resources, it should be noted that public funding is allocated by the Ministry of Finance, and further by the respective ministries and their sub-divisions. They are not specifically charged with fighting corruption, but are subject to punishment, should they come in conflict with the rules against corruption or other laws and regulations. Reports on public spending are available at www.fm.dk. An independent body (*Rigsrevisionen*) is partially similar to a Court of Auditors. The auditors are 6 members of Parliament appointed by their peers. They control financial records of the state and have the competence to supervise public spending and control financial records of the state. The ‘Rigsrevisionen’ submit a yearly report to the Parliament on whether the money of the state is spent according to how it was ordered by Parliament. The Parliament may then take actions accordingly.

Amongst cases concerning tendering procedures, the cases of Electric Power Cartel, 2001, and the Plumbing Cartel, 2005, should be mentioned. These cases consisted of private parties arranging offers and enforcing artificially inflated minimum prices and resulted in economic sanctions – but were not criminally corruption-relevant.

c) Public Services Law and Human Resources in the Public Administration

As whether political parties have influence on staffing in the public sector, it is necessary to distinguish between different echelons of the political and public system. Regarding the highest levels (government, Parliament), their obvious influence can be traced back to their political and legal responsibility. Regarding the direct appointment of staff (nepotism), undue influence from the political elite is negligible, perhaps with the cultural sector (including, to some small degree, some branches of public media) as an occasional exception. Changes of government may influence the amount of jobs in the public sector, although a general trend towards the expansion of the public sector during the present centre-right government has been observed.

That being said, lower levels of the political system (the municipal level) probably have a very ‘hands-on’ approach to some of the staffing process, especially in smaller municipalities, giving rise to possible cases of corruption. This is probably countered somewhat by a recent reform in which most of the smallest municipalities have been merged into larger units. However, cases of nepotism are not unknown in large municipalities as well.

Public servants are generally allowed to work in a secondary job and no specific approval is required.

Regarding financial revisions, the *Rigsrevisionen* takes care of budgetary matters, whereas for each part of the public sector, relevant ministries monitor the correspondent branches.

Bribery of public servants is punished under § 122 of the Danish Penal Code and can be sanctioned with imprisonment of up to 3 years. Acceptance of presents by public servants is regulated in § 144 of the Danish Penal Code. Public authorities also have internal guidelines concerning the subject.

Amongst recent cases of corruption in the public administration, the Danish Emigration Service should be mentioned. In 2005, a Danish public servant had in roughly 50 cases accepted bribes from Chinese immigrants for granting green cards. No scandal in the field of privatization has occurred which is worth noting.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The status of MPs is dealt with in the Danish Constitution. Candidates are nominated for parliamentary elections according to LBKG 2004-06-27 nr 704 Folketingsvalgloven (Parliamentary electoral law). To stand for election, one has to be put on the election list, which is filed by the municipal council. Any (non-criminal) Danish citizen over 18 years and living in Denmark can be registered. Anyone who obstructs an election can be punished with up to 6 years of imprisonment – the Danish Penal Code § 166 and § 167.

MPs earn a basic income of Dkr. 532,507 per year. In addition, they receive a housing subsidy (depending on distance from Copenhagen) of up to Dkr. 83,599 per year and an expense subsidy (up to Dkr. 68,265). MPs are not given additional benefits, such as health care and pensions, in comparison to employees of the private sector.

MPs enjoy the privilege of immunity according to § 57 of the Danish Constitution. No incompatibility is provided between parliamentary mandates and other public offices or private positions, so that it is not uncommon for MPs to hold any other type of positions, e.g. doctor, lawyer or priest. MPs may also be members of municipal councils. A cooling-off period is also not provided which would restrict (former) Members of Parliament from particular employment or employment field after leaving office.

b) Additional Incomes of Members of the National Parliament

As previously outlined, MPs do have the right to receive additional income, which they are not required to publish. An obligation for family members and spouses of MPs to publish their income is also lacking. However, MPs who are also ministers, as well as their spouses, are obligated under the current government to do so by internal regulations (the husband of the Minister of the Environment has refused to do so). Assets of those MPs who are also ministers are subject to reports, which are available at the Prime Ministry (<http://www.statsministeriet.dk/Index/mainstart.asp?o=156&n=1&h=4&s=1>).

c) **Undue Influence**

MPs are not subject to special criminal provisions concerning bribery; applicable sanctions are those found in the Danish Penal Code. Up to now, no single MP has ever been excluded by the parliamentary groups or political parties in a case of undue influence. However, Members of Parliament can be deemed unsuited to hold their position.

3. **Political Public Office-holders on the National Level**

a) **Legal Position within the National Legislation**

The status of political office-holders is partially regulated in § 15 of the Danish Constitution: Stk. 1. ‘No minister can stay in office after a vote of no confidence issues by Parliament’, Stk. 2. ‘If Parliament expresses a vote of no confidence to the prime minister, the latter must declare the dismissal of ministry, unless a national referendum is issued. A ministry receiving a vote of no confidence, or who has asked for dismissal, stays in function until the time a new ministry is in place. Ministers in such an intermediary function may only institute such works as is necessary for the continued work of the administration.’

Political office-holders earn a basic income of Dkr. 924,850 per year, as disciplined in *Lovbekendtgørelse 2004-04-20 nr. 273 om vederlag og pension mv. for ministre*. (Promulgation Act no. 273 of 20th April 2004, regarding compensation and pension for ministers of the Danish government). They also receive very favourable pensions, something which also occurs in the private sector.

According to § 8 *Lovbekendtgørelse 2004-04-20 nr. 273*, a total incompatibility is provided for a political office-holder from holding any other public office position or employment in the private sector. No cooling-off period is provided for. Under the current government, additional economic sources have to be published (see above).

b) **Undue Influence**

As for criminal provisions regarding bribery, political office-holders are subject to the general provision of the Danish Penal Code (§ 144, see above).

4. **Political Parties**

Under Danish law, political parties are independent legal subjects which can e.g. be sued in court. They obtain state funding according to §§ *Lovbekendtgørelse 2003-04-11 nr. 269 om økonomisk støtte til politiske partier mv* (Promulgation Act no. 269 of 11th April 2003 regarding economic support to political parties): if the party has reached at least a thousand votes in the last election, it receives Dkr. 5.50 per vote per year.

§§Lov 1990-06-13 nr. 404 om private bidrag til politiske partier og offentliggørelse af politiske partiers regnskaber (Law no. 202 of 13th June 1990, regarding private contributions to political parties and the publications of the financial records of political parties) provides that party donations shall not be anonymous and that political parties must keep account over subsidiaries received (§ 3). In case of violation of this discipline, economic sanctions in the form of fines for the party shall apply (§ 6).

No relevant case of corruption linked to party financing has recently occurred, although the question of public funding to political parties based on the number of party members frequently pops up with the suspicion that parties inflate their member's lists to gain more public funding. This is especially true of the parties' youth organisations.

V. General Comments

'Classic' corruption in the form of direct bribery in the public sector is probably relatively uncommon in Denmark. When it does occur, it is based on the usual driving mechanism, namely personal greed. On the interface between the public and the private sector, there is bound to be some amount of shady business going on; however, it again seems that the problem is relatively uncommon.

Probably the most acute, corruption-related problem lies in private cartels, enforcing inflated minimum prices for goods and services. This problem is rooted in a lack of market competition and the existence of near-monopolies (oligopolies), e.g., in consumer wares.

The relative absence of corruption in Denmark probably has the following sources: structurally and administratively, there is a tradition and practice of relative transparency and widespread democratic checks and balances, making it hard(-er) for anonymous public officials to make personal profit from corruption. Economically, the marginal incitement is low, firstly because of relative high levels of wage in the public as well as in the private sector, and secondly because leverage for budgetary deviances is narrow, due to strict economical scrutiny. It is simply very difficult for officials to fiddle around with budgets – or returning services – although there will never be a perfect system. Culturally, practices of corruption will have a hard(er) time of taking roots because corruption and nepotism is frowned upon and not taken as a basic fact of public administration or the political ideal.

That being said, liberalisation of global capital movements, creation of new financial instruments, flow of capital and investments, and privatization of former publicly-owned services create new dangers for corruption (in the sense of the word as used by Aristotle, Polybius *et al*) by bridging the separation between private and public interest. Existing legal remedies are generally inadequate.

One much discussed example is the involvement of a former Minister of Finance as chairman of the board of directors of a formerly public telecommunications company. He was granted a huge remuneration for facilitating the sale of the company – with its large internal capital reserves – to a group of international hedge funds that have the declared strategy of skimming the reserves of the company to direct it towards other more profitable investments, inevitably leaving the company at risk of (even a mild) recession. Similar takeovers, friendly or unfriendly, were practiced some 30 to 40 years ago in Denmark. They were found to be criminal offences as it could be proven that the companies in question were bought and paid for by their own reserves. In the global capital market, this *onus probandi* cannot be lifted. Such capital transactions create dangers for consumers as well as employees in even slight recessions. Privatization may be practiced for other public goods, not only public space for telecommunication, but also water, transport etc.

It should also be mentioned that there is some debate over the alleged strategy of the bourgeois/liberal parties to gain control of the television and radio media by appointments of boards or directors and managers. However, it remains an open question whether this is not part of a continuing cycle, countering previous centre-left governments' symmetrical tactics.

Report Estonia¹⁵¹

151 We would like to thank Ülle Madise, Director of Audit (Audit Department II), National Audit Office of Estonia, and Member of the Estonian National Electoral Committee, for answering the questionnaire and supporting the realization of the Report Estonia, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

There is no special database on corruption in Estonia. There is, however, a database (register) of court decisions kept by the Ministry of Justice, which is open to the public. The Prosecutor's Office and the investigative bodies of the Ministry of Interior also have their own electronic databases, as well as a punishment register kept by the Ministry of Justice, but these data are not open to the public.

Besides that, there is the Register of Criminal Procedures which contains relevant data on criminal procedures, including offences of corruption, keeping track of ongoing criminal proceedings and collecting statistical data. By 2008 a new comprehensive database will be created (E-File), which will include more comprehensive data on offences of corruption.

There is a collection of data on corruption cases and survey results dedicated to corruption on the Ministry of Justice's website, which is only available in Estonian.¹⁵²

Finally, the Centre of Ethics of Tartu University has occasionally published results of corruption perception surveys on their homepage.¹⁵³

2. Private Sources of Data-collection on Corruption in the Public Sector

One of the most active NGOs in this area is the Jaan Tõnissoni Instituut¹⁵⁴ with its Corruption Analysis Centre. The institution collects data on corruption and grants access to it, but the statistics and other information on the public website are partially out of date.

Public data can be accessed by everybody.

II. Legislation dealing with Corruption

There exists an Anti-corruption Act of 27th January 1999. The subject of this Act is the corruption of public officials. There is no general definition of corruption in this Act, nor in any other law. But it does contain three definitions of corrupt practices: act of corruption, relationship involving risk of corruption and income derived from corrupt practices.

152 <http://www.korruptsioon.ee>.

153 <http://www.ut.ee/eetikakeskus>.

154 <http://www.jti.ee>.

These definitions are:

- (1) An act of corruption is the use of an official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts, or fails to make lawful decisions or perform such acts.
- (2) A relationship involving the risk of corruption is a relationship of an official with another person which is created or may be created if the official violates the restrictions on employment and activities or the procedural restrictions provided for in chapters 3 or 4 of this Act.
- (3) Income derived from corrupt practices is of economic or of other benefit which an official directly or indirectly receives from another person for committing an act of corruption or on the condition that an act of corruption will be committed in the future:
 - 1) as a monetary payment;
 - 2) as a gift;
 - 3) as remuneration in kind, a useful favour or advantage;
 - 4) by way of transfer without charge, or sale below the market price of shares, share certificates and other securities and shares of private limited companies to him or her; (05.06.2002 entered into force 01.07.2002 - RT I 2002, 53, 336)
 - 5) by way of accepting an offer to become a co-owner of an immovable, a partner or shareholder of a public limited company or other company;
 - 6) as economic or other benefit not set out in clauses 1)-5) of this subsection.¹⁵⁵

There is no explanation in the Act whether these three phenomena cover everything considered as corruption or not, but we should conclude that even in the Act, corruption has been considered in a broader sense than of the three concepts defined there.

There is no right of discretion. Investigative bodies have an obligation to investigate and Prosecutor's Office to prosecute whenever they receive enough information about possible criminal offences or misdemeanours.

Everyone has a right to ask for public information and is entitled to receive it.¹⁵⁶

III. Control and Sanctions

There are two independent high officials - the Auditor General (head of State Audit Office) and the Chancellor of Justice (whose obligations are in substance that of an ombudsman) – whose activities and role have considerable impact towards prevention of corruption. There also exists a permanent Select Committee of the Parliament on the Application of the Anti-Corruption Act.

155 The translation of the legal text is cited as published in the web page of the Estonian Legal Language Centre, www.legaltext.ee/en/andmebaas/ava.asp?m=022.

156 Public Information Act, 15th November 2000.

The objective of the activities of the Select Committee on the Application of Anti-Corruption Act is to discharge duties arising from the Anti-Corruption Act and to promote the universal implementation of measures for preventing corruption. The authority of the Committee members ends upon termination of the authority of the present membership of the *Riigikogu*.

There are police officials and prosecutors specialized in investigation of corruption. The Ministry of Justice is responsible for the coordination of the anti-corruption policies.

There are also ad hoc parliamentary investigation committees that can be formed. Such a committee has power to summon witnesses, request documents and publish reports. There have been a number of former investigation committees (e.g. investigating some privatization cases, etc.).

In practise, the obligations and rights of the Select Committee on the Application of Anti-Corruption Act are rather narrow. The Select Committee serves as a depository of declarations of economic interests of Members of Parliament and also of all higher officials, including the President of the Republic. Those declarations are renewed twice a year. The Select Committee has some rights of control over the content of these declarations, and organizes the publication of the declarations.

The opposition can also put forward proposals to start investigations or form some committee, but in order to carry out such proposals they have to receive enough support. However, if a committee is created, opposition has a right to send a number of representatives corresponding to its proportion in Parliament to the committee.

The opposition, as well as any Member of Parliament, has the right to submit written questions demanding information. These demands of information should be answered in ten days.

There is a right of interpellation and members of government can be called before the Parliament and asked questions.

The procedures described above are qualified for not only regarding members of government but also other high officials: the Chairman of the Board of the Bank of Estonia, the President of the Bank of Estonia, the Auditor General, the Legal Chancellor, the Commander or Commander-in-Chief of the Defence Forces.

The State Chancellery plays an important role in promoting ethics in the public sector.

The role of media is very important. Its role is not limited to providing information but also in raising awareness and eliminating tolerance towards corruption.

The academic world and NGOs also play a positive role. The Centre of Ethics at Tartu University is quite active in this respect. The Estonian Institute of Economic Research¹⁵⁷ has also conducted several relevant surveys.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

There is no general ban on strikes of public servants. However, for some categories of public servants there is a prohibition to strike, e.g. police officers, prison officers.

There are a few professions where special state pensions are paid: judges, legal chancellor, auditor general, police officers, state prosecutors etc. Other public servants can receive increased old-age pension according to the number of years in the public service.¹⁵⁸

Public servants receive their pensions from different sources: a (smaller) part of their pension from a pension fund and a (larger) part from the state budget. But there are also some professions where special state pensions are paid: police officers, state prosecutors, prison officers etc.

An additional benefit provided to public servants is that the state repays the study loans of public officials.

Another (indirect) benefit of the public servants is that they are entitled to longer (paid) holidays compared to those of the employees in the private sector.

The income of lower level public servants is considerably higher than their counterparts in the private sector. On the other hand, the income of high ranked public servants is lower than the income of top officers in the private sector.

In the public opinion, it is generally considered that the majority of the public servants are paid enough to make a living without any need to seek additional income. However, there is also a widespread opinion in the media that there are some categories of public servants whose income is too low and thus it is necessary for them to seek additional resources. Police officers, board members and prison guards are usually mentioned as examples of that.

The Estonian public sector has two levels: national level and local government level. The central government consists of ministries, boards, inspectorates and county governments.

157 <http://www.ki.ee/en/index.html>.

158 Public Service Act from 25th January 1995, article 57.

The local government is an autonomous level of self-governance. There are 227 local government units, including 194 rural municipalities and 33 cities. Their size varies from the capital city of Tallinn, with over 400,000 inhabitants, to the small island of Ruhnu with only 103 inhabitants. However, the functions of all municipalities are the same, by law, and they are primarily responsible for education, public works, housing, local road maintenance and primary level health care.

Local government units dependent financially heavily on the central government, as only 22 of them manage without any central government subsidies. The size of the grants from central government to local government equals one third of income earned by the municipalities themselves.

There is also regional level cooperation between municipalities, which is undertaken in the form of local government associations.

Beside the central and local level, a range of public functions in Estonia are carried out at the regional level. Administrative division at the regional level includes 15 counties with administrations supporting the County Governors. They represent the central government in the regions and are appointed by the government, but are subordinate to the Minister of Regional Affairs.¹⁵⁹

b) Allocation of Financial Resources

The State Audit Office¹⁶⁰ is responsible for the control of allocation of financial resources. However, fighting corruption is not explicitly listed among the competencies of the State Audit Office; nevertheless, its activities have a considerable impact towards prevention of corruption.

The Auditor General submits an annual report from its office to the Parliament. Findings and conclusions of the Estonian National Audit Office are presented to the audited office and to the Parliament. There is a Parliamentary Select Committee on the Control of the State Budget. The objective of the Committee is to ensure economical, efficient, effective and lawful use of the state assets and budget funds by the government. The audit reports of the National Audit Office are discussed in the Select Committee on the Control of State Budget. All audit reports are publicly available, also on the Internet.

All ministries have built up an internal control system, which also has a certain role in corruption prevention.

159 The data is provided in the web page of the State Chancellery Of The Republic Of Estonia, www.riigikantselei.ee/index.php.

160 State Audit Office Act from 29th January 2002.

c) **Public Services Law and Human Resources in the Public Administration**

The Public Service Code of Ethics (Annex 1 to the Public Service Act) contains some provisions aimed at preventing corruption. In fact, it is related to the usual selection of disciplinary punishments as listed in the Public Service Act. Some special branches of public service provide their own disciplinary codes.

Estonian law does not provide sanctions related to corruption as such. The sanctions are related to concrete misdemeanours listed in the Anti Corruption Act or criminal offences described in the Penal Code.¹⁶¹

The following articles of the Penal Code (from 6th June 2001) embrace corruption-related provisions: § 289 Misuse of official positions, § 289 Influence peddling, § 300 Violation of regulation for public procurement, § 293 Accepting of gratuities, § 294 Accepting of bribes, § 295 Arranging gratuities, § 296 Arranging bribes¹⁶², § 297 Granting of gratuities, § 298 Giving bribes (when the public official has acted unlawfully, the appropriate offence is giving a bribe, and when the public official has acted lawfully, the offence is giving a gratuity). Both imprisonment and pecuniary punishment are possible.

The Anti-corruption Act contains the following statutes of sanctions:

§ 26¹. Failure to submit declaration of economic interests in compliance with requirements and presentation of false information

(1) Failure to submit a declaration of economic interests not subject to disclosure on time without good reason, or the knowing submission of incomplete or false information in such declaration is punishable by a fine of up to 200 fine units.

(2) Failure to submit a declaration of economic interests subject to disclosure on time without good reason, or the knowing submission of incomplete or false information in such declaration is punishable by a fine of up to 300 fine units.

§ 26². Submission of false information to person, agency or committee verifying declarations of economic interests

Submission of incomplete or false information to a person or agency conducting lawful verification of declarations of economic interests or to a committee specified in this Act is punishable by a fine of up to 300 fine units.

161 Available in English: <http://www.legaltext.ee/et/andmebaas/ava.asp?m=022>.

162 The translation of Estonian term 'alkäemaksu vahendus' into English 'arranging bribes' is somewhat confusing. More exact and better to understand would be 'intermediation'.

§ 26³. Violation of restrictions on employment or activities or of procedural restrictions established by law

Violation of the restrictions on employment or activities or of the procedural restrictions established by law is punishable by a fine of up to 300 fine units.

§ 26⁴. Failure to give notification of relationship involving risk of corruption

Failure to give notification of a relationship involving a risk of corruption is punishable by a fine of up to 300 fine units.

§ 26⁵. Act of corruption

(1) An act of corruption which involves the receipt of income or gains derived from corrupt or illegal practices is punishable by a fine of up to 300 fine units.

(2) A court may confiscate that which was received unlawfully for an act of corruption pursuant to § 83 of the Penal Code (RT I 2001, 61, 364; 2002, 86, 504; 82, 480; 105, 612; 2003, 4, 22).

§ 26⁶. Failure to perform duties related to collection, depositing or verification of declarations of economic interests

Failure by the head of an agency or other person responsible for the collection, depositing or verification of declarations of economic interests to perform, or his or her unsatisfactory performance of, the duties relating to the collection, depositing or verification of such declarations is punishable by a fine of up to 300 fine units.

§ 26⁷. Unlawful disclosure of content of declaration of economic interests

Unlawful disclosure of the content of a declaration of economic interests is punishable by a fine of up to 200 fine units.

Article 27 provides liability for violation of the Anti-corruption Act as follows:

(1) An official who commits an act of corruption or unlawfully accepts remuneration or has relationships involving a risk of corruption or violates the restrictions on employment and activities or procedural restrictions or fails to submit a declaration of economic interests by the due date or submits incomplete or false information in the declaration shall be brought to justice pursuant to the procedure provided by law.

(2) The head of an agency and an official who is assigned the duties of a depositary of declaration shall bear liability imposed for a misdemeanour related to office provided for in this Act for failure to perform or unsatisfactory performance of duties and for unlawful disclosure of the contents of declarations.

(3) Acts listed in subsection (1) of this section shall constitute the basis for the release of an official from service or office, except in the cases provided for in specific Acts.

The political parties do not have considerable influence concerning the staffing of the public sector at the national level. At the local level, the influence is higher, especially in areas where

employment is marginal and there is fierce competition for public sector posts. According to this, a change of government does not generally have influence on the staffing of the public sector.

Furthermore, there are no special internal bodies exclusively charged with preventing or fighting corruption, but all public officials have supervisory controlling bodies. Internal audit (and controlling) bodies have been formed in government ministries and departments. The obligations of these bodies include the assessment of corruption risks and the prevention of corruption.

With a few exceptions, public servants may take up a secondary job. A secondary job is subject to superior's approval.¹⁶³

The following cases have recently occurred:

A group of 21 traffic police officers in Tallinn were caught for accepting bribes in 2005. There have been cases of custom officers and border guards accepting bribes for passing smugglers or for fiscal evasion.

d) Privatization

Recently, there have been no considerable scandals concerning privatization in Estonia. There are some minor cases, as the example mentioned below.

In 2004, a complex of summer residences (which was formerly of public ownership) at Keila-Joa was privatized. Later that year, one of these summer residences was bought by a company that belonged to a prominent local businessman and resold to a company connected with one party leader, who also held the position of member of government. The resell was announced at a lower price than it was bought originally, approximately 5 times cheaper than the market price. There is an assumption that the reason for showing such price was tax evasion. None of the participants was found guilty of an offence.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The legal position of the Members of the National Parliament is defined by the Constitution of the Republic of Estonia (articles 61-64, 67) and the *Riigikogu* Internal Rules Act (from 9th November 1992).

The electoral system of Estonia is distinguished by proportional representation. Candidates are presented in lists although individual candidatures are also possible. Only political parties are

163 Public Service Act articles 72–73.

authorised to nominate candidates by a list. (The Constitution of the Republic of Estonia article 60, *Riigikogu* Election Act (from 12th June 2002, article 26 – 30).

The Election Act does not provide any sanctions if a provision is violated. However, the candidate will not be registered and thus cannot participate (*Riigikogu* Election Act).

The income of Members of Parliament is four times higher than the national average wage. Furthermore, the heads and vice-heads of the committees and the president and vice-presidents of the Parliament receive an amount that is 6 times higher than the national average wage.¹⁶⁴ In addition to this income, Members of Parliament receive a reimbursement for particular expenses (e.g. travel expenses, costs for telecommunication, etc). Expenses can be reimbursed up to 30% of the sum of their daily allowance. The terms concerning this reimbursement are regulated by a resolution of the Board of the *Riigikogu* (since 2005). In practice, the main items in these expenses are transport costs and car expenses, as well as car leasing fees.

Moreover, people who were Members of Parliament up to March 2003 are entitled to receive a special pension which is three times higher than the national average wage (75% of the wage of the MP); this pension depends on the duration of their parliamentary mandate.

Members of Parliament do have the privilege of immunity, stipulated in the Constitution of the Republic of Estonia (article 76). Lifting of the immunity (bringing of criminal actions against a member of the *Riigikogu*) is possible only following the proposal of the Legal Chancellor and a decision of the Parliament.

Regarding incompatibilities between parliamentary mandates and other public offices or private positions, the Constitution (article 63) stipulates that a member of the *Riigikogu* shall not hold any other state office. Posts in local government, including membership in local representative bodies are also prohibited. Positions in the private sector are prohibited. Nevertheless, it is a rather rare practice that Members of Parliament hold other positions. In practice, some scientists and people of artistic professions keep their professional activities. Members of Parliament may continue their activities within their own companies.

There are no regulations restricting (former) Members of Parliament from particular employment or an occupational area after their parliamentary career (cooling-off periods).

b) Additional Incomes of Members of the National Parliament

Members of Parliament do have the right to receive additional income; however, all regular income debts and obligations are to be published (if these are more than EEK 50,000

164 Members of the *Riigikogu* Official Wages, Pension and Other Social Guarantees Act, 18th June 1992.

approx.€ 3000) in the declaration of economic interests. Furthermore, their assets are subject to reports. The declarations are published in the *Riigi Teataja Lisa* (Appendix to the State Gazette) and can also be seen on the internet.

Apart from the Members of Parliament, no other persons (e.g. husband or wife, other members of the family) are obliged to disclose their income.

Recently, in 2004, the *Riigikogu* Select Committee on the Application of the Anti-Corruption Act established that Member of Parliament Tiit Mae had reported incorrect and incomplete data in his declarations of economic interests. Mr. Mae dropped out of Parliament for other reasons and the police investigation of his economic activities has not yet been completed.

c) Undue Influence

There are no special regulations regarding cases of corruption or bribery concerning Members of Parliament. The possible sanctions include both imprisonment and fine; the loss of the political mandate is also possible.

So far, no Member of Parliament has ever been excluded by parliamentary groups or political parties due to a case of undue influence.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The status of political office-holders is regulated by the Constitution of the Republic of Estonia (article 99) and the Government of the Republic Act (from 13th December 1995).

The salaries of government ministers are stipulated in the Salaries of State Public Servants Act (from 13th November 1996). Salaries of other political office-holders are determined according to their positions in the government. All these salaries are public and can be found on the Internet, at least in theory. Furthermore, political office-holders are not given additional benefits in comparison to employees of the private sector.

Government ministers, with very few exceptions, cannot hold other positions (article 99 of the Basic Law; ‘Members of the Government of the Republic shall not hold any other state office, nor belong to the management board or supervisory board of a commercial enterprise’) and article 4 (3) of the Government of the Republic Act (‘A member of the Government of the Republic shall not hold any other state or local government office, or belong to the management board or supervisory board of a commercial enterprise, operate as a trader or work in any other remunerative position, except research or teaching’). Other political office-holders can hold other employment or positions as described above.

In general, it is unusual that political office-holders hold other positions.

According to article 74 of Public Service Act, public servants are subject to a certain cooling-off period: they may not work in the fields where they exercised regular supervision within the last three years.

This does not apply to government ministers, whose service is regulated by the Government of the Republic Act and Anti-Corruption Act and only partially by the Public Service Act. The only article important in this context, which applies to the ministers, is article 76 ‘Restrictions on conclusion of transaction’.¹⁶⁵

b) Additional Incomes of Political Office-holders

Political office-holders have the right to receive additional income. They also have the obligation to disclose their income such as Members of Parliament are obliged to. These declarations of government ministers are also published in the *Riigi Teataja Lisa* (Appendix to the State Gazette) and can also be seen on the Internet. These declarations are kept in the declarations’ archives of relevant ministries and can be accessed. No other persons of the family of the political office-holders have the obligation to disclose their income.

There haven't been any cases of corruption related to additional income that are worth noting.

c) Undue Influence

There are no special regulations for political office-holders regarding bribery and corruption.

165 § 76. Restrictions on conclusion of transaction

(1) A public servant is prohibited from:

- 1) acquiring assets which are entrusted to him or her for concluding a transaction and belong to a person with whom he or she is in employment or service relationship;
- 2) concluding, as a person entitled to represent a state agency in transactions, transactions with the state through the administrative agency concerned, or concluding, as a person entitled to represent a local government agency in transactions, transactions with a local government through the administrative agency concerned;
- 3) concluding, as a representative of the state or a local government, property transactions with legal persons specified in subsection 19 (2) of the Anti-corruption Act;
- 4) concluding, as a representative of the state or a local government, property transactions with a non-profit association or political party of which he or she is a member;
- 5) concluding, as a representative of the state or a local government, property transactions with an employer, company, non-profit association or political party, over the activities of which he or she exercises supervision;
- 6) concluding, as a representative of the state or a local government, property transactions with his or her close relatives, close relatives by marriage, or himself or herself.

(2) Transactions concluded in violation of the prohibitions provided for in subsection (1) of this section are void. (27th January 1999 entered into force 28th February 1999 - RT I 1999, 16, 276).

Estonian Legal Language Centre, www.legaltext.ee/en/andmebaas/ava.asp?m=022.

One recent case of corruption related to undue influence is the case of Mr. Tõnis Palts, a successful businessman, who has also been a generous donator to a political party. He had been demanded by the Tax and Customs Board to pay higher taxes than he believed he was required to. In 2003, Mr. Palts became Minister of Finance and, in this capacity, he continued his disagreements with the Tax and Customs board's demands. He also dismissed the chairman of the Tax and Customs Board, as he was his subordinate in the Ministry. Because of this, Mr. Palts had to resign from his mandate in 2004. In court, he lost the case and had to pay an additional and considerable sum of taxes.

4. Political Parties

a) Legal Position within the National Legislation

Political parties are non-profit associations (Non-profit Associations Act from 6th June 1996 and Political Parties Act from 11th May 1994).

b) Revenues of Political Parties

Political parties receive state funding based on the party's results at the parliamentary election. Parties are funded proportionally to the number of their seats in Parliament. Parties that did not exceed the 5% vote barrier and therefore did not obtain any seats in Parliament but gathered at least 1% of votes given, also receive some state funding (Political Parties Act article 12).

c) Legislation on Transparency of Political Party Funding

Donations from legal entities, either profit or non-profit, are prohibited, as well as anonymous donations, or any form of concealed donations (Political Parties Act article 12). Therefore only donations of natural persons are allowed.

Each political party has to provide an audit by an independent auditor once a year. These audit reports are published in the *Riigi Teataja Lisa*, an Appendix to the State Gazette (Political Parties Act article 12²).

Political parties (as well as independent candidates) have to submit a detailed report on the expenditures relating to its election campaign and the sources of the funds used to the *Riigikogu* Select Committee on the Application of Anti-Corruption Act. The committee publishes the reports (*Riigikogu* Election Act from 12th June 2002, articles 65–67).

Each political party has to depose a complete list of donators and donations on their (internet) home page (Political Parties Act article 12³).

There are some special provisions in Estonian law regarding political party financing; the Political Parties Act contains two relevant articles containing fines to both natural and legal

entities: Article 12¹⁴, which attends regulations in cases of violation of procedure for registration and disclosure of donations to political parties, and article 12¹⁵, which attends regulations in cases of violation of procedure for disclosure of annual economic activity report, quarterly statement of funds and financing of electoral campaigns of political parties.

Recently, some suspicions in the media have occurred about the financing of parties. Nevertheless, so far it has never resulted in any judicial procedures or other consequences.

V. General Comments

Since there are no reliable results of respective research available, the reasons of corruption can be based only on subjective estimation.

Possible reasons for corruption in Estonia could be the heritage of the Soviet Union era on the personal and cultural levels. Much of what is considered corruption nowadays, was considered quite normal behaviour by the ruling elite of the Soviet Union. Another possible reason of corruption is the fact that Estonian population is small: public officials know each other, have studied together, have family ties etc.

The main fields where corruption occurs in Estonia are:

- Corruption of custom officers and border guards to make them accept smuggling or facilitate tax evasion.
- Bribe taken by police officers, especially traffic police. The pressure on them to accept bribes is quite strong, as fines for traffic misdemeanours are extremely high. It is also important in this context that the salaries of police officers are relatively low, making them more vulnerable to the offering of a bribe.
- Pressure by business interests to bribe public officials who make licensing and other similar decisions.
- Donations which are made to political parties by the private sector, especially at the local government level.

The occurrence of scandals indeed affected the legislation on corruption and / or motivated amendments of existing relevant laws. Furthermore, there has been a constant trend to widen the concept of corruption, in order to include acts that may have been considered legal, or at least acceptable.

There has also been some confrontation between the media and some groups of the legal community who preferred to consider corruption in a rather narrow and legalistic way. Many attempts of prosecution of corruption failed, for it has been almost impossible to prove in court that the accused had a wish of gaining undue profit. Some such court cases became scandalous and thus helped toward a change of legislation. For example the Prime Minister was forced to

resign in 1997 for obtaining a former state owned apartment. In 1997, this act was considered morally unacceptable and fell within the broader concept of corruption.

A few years later after Estonia regained independence in 1991, a conscious political decision was made that the state should try to avoid creation of special anti-corruption departments or bodies in the government and also of special posts created with the obligation to fight corruption. Preventing and fighting corruption has been considered as everybody's obligation, certainly every public official's. This made sense at the time also because of the poverty levels of the Republic of Estonia. Such a solution has been successful, something that is underlined by the fact that Estonia has been suggested by some international development advisers as a possible example for some other post-communist countries outside the European Union, e.g. Georgia.

In my opinion, the concept of corruption is very much culturally determined and is in constant change. The concept of corruption in Estonia has changed rapidly and has been influenced by the concept prevailing in the neighbouring countries Finland and Sweden.

Report Finland¹⁶⁶

¹⁶⁶ We would like to thank Lauri Tarasti, judge of the Supreme Administrative Court of Finland, for answering the questionnaire and supporting the realization of the Report Finland, written by LS Ridola.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

Statistics Finland (www.stat.fi). The Act on the Openness of Government Activities affirms the general right of access to official documents. As the data is published, everybody has access to this data.

2. Private Sources of Data-collection on Corruption in the Public Sector

Transparency Finland (registered association) (www.transparency.fi), a member of the organisation 'Transparency International'.

II. Legislation dealing with Corruption

As a result of the absence of corruption in Finland there is no special legislation on corruption. Crimes in connection of corruption have been determined by Penal Code 563/1998, especially Chapters 16, 30 and 40.

Bribery (in public administration) has been defined in Chapter 16, Article 13 of the Penal Code and bribery (in business activities) in Chapter 30, Article 7 and 8 of the Penal Code. There is no exact definition of corruption given by law.

Concerning the obligation to prosecute crimes, the exercise of public powers shall be based on law according to the Constitution of Finland. In all public activities, the law shall be strictly observed. This means that the prosecution of an offence is the obligation of the public prosecutor. In minor offences, however, he can abstain from prosecuting, if public interest does not require it.

In accordance with the Act on Openness of Government Activities, the Finnish legal system provides the right of access to administrative files also for individuals not concerned in the particular legal case about which the information is to be obtained.

III. Control and Sanctions

There is no administrative body responsible solely for corruption, but many bodies whose duties deal with the prevention of corruption, like the State Audit Office, the state auditors, the Parliamentary Ombudsman and the Chancellor of Justice. Most administrative agencies also have a special internal inspection. There is an unofficial network and working group against doping as well, consisting of representatives from ministries and other public authorities as well as from the business world.

There are parliamentary control mechanisms for the control of political corruption: five state auditors elected by the parliament to supervise the financial management of the state and the compliance with the state budget. They have the right to receive all necessary information from public authorities. They submit an annual report to the parliament and may also submit special reports. They have no right to prosecute or impose sanctions but they can refer matters to the public prosecutor. The Parliamentary Ombudsman has the same rights but in addition s/he can order the prosecution to be raised.

The parliamentary opposition usually has representation amongst the state auditors.

The media has an important role in preventing corruption by detecting and publishing scandals of public administration and politics. The academic world and NGOs have not been interested in corruption, as corruption is not a problem in Finland (see also V.).

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Normally, public servants have neither special legal obligations to nor special legal rights over the state body. The public sector has both public servants and private employees. There are some minor differences between them, for example in pensions or in dismissal from office etc. Public servants are under official responsibility according to the chapter 40 of the Penal Act when using public power.

The comparison between the public and private sectors shows that the agreements on wages and conditions of employment are virtually the same in both sectors. As mentioned above, minor differences do exist.

As to the specific topic of the comparison of salaries, the salary in leading positions is much higher in the private sector than in the public sector, while the differences in intermediary positions are small; in contrast, the public sector pays better salaries in lower jobs than the private sector. Public servants do not necessarily need an additional income.

The public sector is divided into state authorities and widely autonomous local municipalities. The state level is divided into central administration and regional administration, and in addition there are some local state authorities for special tasks.

Public tasks have been transferred to private companies in the last years. Examples are car inspection and municipal electrical plants. The state has commissioned private companies to carry out some mainly economical services in sectors such as road building or icebreakers.

b) Allocation of Financial Resources

According to the Constitution (Section 90), the State Audit Office and the state auditors also control the allocation of financial resources. The parliament supervises the allocation of state financial resources via these authorities. The state auditors are elected by the parliament, while the State Audit Office is an independent body affiliated with the parliament, regulated by the Act on the State Audit Office (676/2000). A reform of the state audit system is presently under debate in the parliament.

Both these authorities present their reports annually to the parliament. After an inspection, the State Audit Office gives a report to the body inspected and to the ministry under which authority the body works. As a rule, the reports are public but may include confidential sections, for example business secrets.

There is nothing worth mentioning on corruption in tendering procedures.

c) Public Services Law and Human Resources in the Public Administration

Political parties in the government and in municipal boards have influence in filling vacancies in the public sector, especially in leading positions. In Finland, the government and municipal boards are composed of representatives from many parties, which makes it difficult to estimate the influence of a specific political party. The influence also varies in different administrations and sectors. Personal qualifications, however, always carry heavy weight.

The tradition in Finland is a coalition government with many political parties. This is the reason why a change of government usually has only a minor influence regarding staffing in the public sector. As a rule, public servants cannot also have a secondary job, but they can apply for a special permit in order to derogate to this principle.

Each major public body has its own internal revision, i.e. usually one or more specialized officials or a unit in the major bodies.

Laws addressing undue influence in the public administration can be found in the Penal Code, Chapter 16, Articles 13, 14 and 14 a, concerning bribery, gross bribery and making a bribe to a Member of Parliament. Sanctions are fines or a prison term of a maximum of four years. The same norms also deal with relevant questions about corruption. There are internal regulations in some authorities, but not generally. It is possible to impose a sanction for crimes in office according to Chapter 40 of the Penal Code, while there are no special internal bodies solely for the prevention of corruption.

Examining the relevant cases of political corruption in this area, in 2005 the Helsinki Court of Appeals made a ruling in a trial against the Division Chief of the General Staff. Hospitality in

connection to a golf tournament including a banquet at the company's expense was seen as allowed; however, it was seen as inadmissible and a bribe when he took part in an opera trip including flight tickets to a rustic city, accommodation and dinner free of charge organised by the same company.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The Constitution of Finland and the Parliament's Rules of Procedure. According to Article 29 of the Constitution, a Member of Parliament is obliged to follow justice and truth in exercising his or her office. He or she shall abide by the Constitution and no other orders are binding him or her. In parliamentary elections, candidates may be nominated 1) by parties which have been registered into the party register kept by the Ministry of Justice and 2) by constituency associations, each established by at least 100 people entitled to vote in the electoral district. Parties may form electoral alliances with each other and with constituency associations joint lists. The Election Act from 1998 deals with all general elections. There is no sanction if these provisions are violated, but the procedural mistakes of the authorities can result in the election in an electoral district having to be repeated.

MPs have a monthly salary of between € 5,400 to € 5,800 plus compensation for special costs (€ 1,000 to € 2,000) in accordance with the Act on the Reward of the Members of Parliament. According to the above-mentioned Act, the MPs travel mainly free of charge or receive reimbursement of travelling expenses; they can also count on daily allowance and reimbursement of hotel expenses during official trips, as well as free of charge telecommunication. As a rule, they do not have other additional benefits, except slightly better health care and shorter periods to be eligible for pension.

MPs enjoy a general immunity for their activity, according to article 30 of the Constitution of Finland on parliamentary immunity. A person holding military office, the Chancellor of Justice, the Parliamentary Ombudsman, a Justice of the Supreme Court or the Supreme Administrative Court and the Prosecutor General cannot serve as Members of Parliament. There is also a voluntary system to inform the Parliament of involvement in private companies.

Regarding the possibility for MPs to hold other positions, this is not allowed for full-time jobs, while it can be done for other positions. For example, MPs can hold duties as a member of a board of management both in the public and the private sector or act as consultants. There are no regulations of restricting (former) Members of Parliament from particular employment or an employment field after leaving office.

b) Additional Incomes of Members of the National Parliaments

MPs do have the right to receive additional income and they use it. As a rule, the tax total of private persons is public in Finland: this allows the calculation of the additional income of Members of Parliament because their monthly salary is public. Members of the MP's family are not obliged to publish their income, nor do they have to give information about their assets. There are no special reports on this data: the final results of taxation are public documents in tax authorities.

c) Undue Influence

Chapter 16, Article 14 a and Chapter 40, Article 4 of the Penal Code. The former article concerns the giving of a bribe to a Member of Parliament and the latter article the taking of a bribe as a Member of Parliament. These crimes presuppose that it is a question of a concrete matter in Parliament and of voting therein in some desired way.

The possible sanctions are fines and/or a maximum of four years imprisonment. Under some strict conditions, Parliament can declare the office of the Member terminated by a decision supported by at least two thirds of the votes cast.

There are no special statutes dealing with relevant questions concerning corruption, it is a question of the interpretation of the above-mentioned Penal Code articles.

In cases of undue influence, no Member of Parliament has ever been excluded by the parliamentary groups or political parties so far.

Regarding cases of corruption in this area, in 1993 one minister who was also a Member of Parliament was given a conditional sentence of one year for taking a bribe (which was not granted) and was later dismissed from the Parliament.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The legal position of political public office-holders is described in articles 60-69 of the Constitution of Finland, the Act on the Government from 2003 as well as by the Law on the Government of 2003.

The monthly salary of ministers is about € 8,100.

Political office-holders cannot have additional full-time jobs, but can have part-time duties. They can be members of a board of management, take care of consultative tasks etc. Normally they need a permit to keep additional positions in the public or private sector. However, according to

Article 63 of the Constitution, while holding the office of a minister, a member of the government shall not hold any other public office or undertake any other task which may obstruct the performance of his or her actions as minister. Ministers are normally also Members of Parliament.

Ministers usually do not hold other positions. Other political office-holders do, especially as members of a board of management or a supervisory board.

b) Additional Incomes of Political Office-holders

Political office-holders have the right to receive additional income. All salaries in the public sector are public. According to Article 63 of the Constitution, a minister shall present to the Parliament an account of his or her economical activities, shareholdings and other significant assets, as well as of any duties outside the official duties of a minister and of other interests which may be of relevance when his or her performance as a member of the government is being evaluated. Family members are not obliged to publish their income or assets.

As the above-mentioned ministers' report to the parliament is a public document, the public has access to it.

c) Undue Influence

The criminal statutes regarding bribery of political office-holders are the same statutes as in public administration as a rule (Chapter 16, Articles 13-14 of the Penal Code: Bribery and gross bribery; fines and/or imprisonment can amount to a maximum of four years).

Cases of corruption related to political office-holders are the same as mentioned in Part IV.1. and 2.

4. Political Parties

Political parties are private registered associations. This concerns the central organisations, district organisations and local organisations as well as youth, women, student and other party organisations. The central organisations are normally also registered parties in accordance with the Party Act. The party register is kept by the Ministry of Justice.

Political parties are entitled to obtain public funds. In 2005, the total sum of these direct subsidies was about € 12 million. According to the Party Act, the state subsidies shall be distributed in relation to the number of seats gained in the last held parliamentary elections. The proportion of donations compared with membership fees and state aid depends on the level of party organisation. Normally, donations have a great proportion in elections but not otherwise. Any kind of donation is allowed, without exception.

According to the Party Act, all registered parties are obliged to submit copies of their accounting documents (including central, district and women organisations) with attachments to the Ministry of Justice and specification of the income from and costs of the election activities. All these documents are publicly accessible in the Ministry. Book-keeping must be organized according to the Book-keeping Act and auditing according to the Audit Act.

The possible sanctions for violation of provisions on political party financing is the termination of the state subsidies.

No relevant cases of corruption regarding political parties is known in the last decade.

V. General Comments

In the case of Finland, the question of the main reasons for political corruption is not relevant. In international ratings of corruption, Finland has enjoyed high esteem for a number of years. The corruption index by Transparency International has given Finland the number 1 or 2 status over several years. Finns do not come across corruption in their daily lives. According to the Finnish crime statistics there were 3 bribery sentences in 2004, one in 2003, zero in 2002 and one in 2001.

The main reasons for non-corruption in Finland are: equal access to education for all, a civil service system based on meritocracy, openness in public administration, flat hierarchical structures, but above all the strive to defend the values of an open society. Historical reasons and traditions are also important. The political culture in Finland does not favour corruption. The political situation has had a great influence on it. One hundred years ago when Finland was a part of Russia, the national political leaders and state officials strictly resorted to national legislation which the Tsar had promised that Finland could keep and refused to apply any imperial order which was against national law in their opinion.

There are no main fields as mentioned above. Most doubts have concentrated on the building sector.

As a result of the absence of corruption in Finland, there has actually never been a specific corruption law or special bodies solely for controlling corruption. Corruption is seen on one hand as criminality and as part of bad governance and/or politics. The prevention of corruption also involves creating and observing ethical norms of behaviour, increasing transparency and preventing procedures.

Report France¹⁶⁷

167 We would like to thank Dr. Yves-Marie Doublet, Directeur-adjoint, chef de division du contrôle et des études juridiques, Assemblée nationale (Department Head of the French National Assembly), for answering the questionnaire and supporting the realization of the Report France, written by Christian Schmidt.

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I. Sources of Data-collection on Corruption in the Public Sector

Public criminal statistics are maintained at the ‘Direction des affaires criminelles et des grâces’ and at the ‘Service central de prévention de la corruption’ in the Ministry of Justice. They can be found and accessed with some difficulty at the following website: <http://www.justice.gouv.fr>. As a private and/or nongovernmental organization, Transparency International gathers data on corruption; they can be found at <http://www.transparency-france.org> for France. Furthermore, information from the Council of Europe is available at the website: <http://www.coe.int>.

II. Legislation dealing with Corruption

Article 433-1 of the Penal Code (*Code pénal*) penalizes corruption and contains a legal definition of the term corruption. Moreover, Articles 435-1, 435-2, 435-3 and 435-4 of the Penal Code deal with offences in the area of public administration of the EU, its member states, offences abroad and in international organizations.

According to the legal definition in art. 433-1 of the Penal Code, the offence of corruption includes direct and indirect offers of any kind, promises, gifts, or the granting of even the slightest benefit, in order to receive a decision, an abstention or influence with public authorities from a person who exercises a public office or holds an elected office. For prosecution, the French legal system follows the *expediency principle* (principle allowing the public prosecutor to judge whether legal proceedings are appropriate in certain cases).¹⁶⁸

The legal system recognises the right to freedom of information ever since a law from 1978, which guarantees access to files of the administration. Information which concerns foreign affairs or defence, as well as expert opinions of the State Council and internal documents of the Court of Auditors are excluded from this access, however. This law has been amended many times. A commission (*Commission d'accès aux documents administratifs*) supervises the implementation of the regulations.

III. Control and Sanctions

The central office at the Ministry of Justice is a special administrative institution for the prevention of and fight against corruption in the public sector and gathers information on bribery (*Service central de prévention de la corruption*). Located at the Ministry of the Interior, the *Brigade centrale de lutte contre la corruption – division nationale des investigations financières de la direction centrale de la police judiciaire* carries out investigations within the framework of the fight against corruption. Other offices of this type are regional and Supreme Courts of

¹⁶⁸ Penal Code, article 40, section 1.

Auditors, public prosecutors and courts. Also to be mentioned is the Ombudsman (*Médiateur de la République*); there have not yet been any complaints regarding bribery of civil servants since the founding of this institution in 1973.

Until now, parliamentary control committees have not dealt with corruption. The parliamentary opposition can exercise its supervisory function by a motion of no confidence. However, this cannot destabilize the government, as it usually lacks the majority.

Furthermore, the opposition has the right to deploy an investigating committee in order to shed light on certain factual situations and in order to examine the administration or the management of state businesses.¹⁶⁹ The National Assembly deploys the committee after accepting the motion to set it up. In the end, the deployment is dependent on the governmental majority.

Every faction has the right to pose verbal questions, respectively in the sessions on Tuesday and Wednesday. The questions and answers, which are not longer than five minutes, are televised. The Prime Minister can himself answer questions of interest to him. Additionally, one morning per week is set aside for verbal questions on the budget. During the period of 2005-2006, 674 verbal questions were posed in the sessions on Tuesday and Wednesday afternoons alone.

The role of the media in the fight against corruption can be assessed as relatively small. This seems understandable when taken into consideration that the construction industry has 43% of the shares of the first television channel at its disposal. Moreover, the circulation of the national newspapers is relatively low. Many journalists have a high dependence on and/or involvement with the political sphere.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Members of the public service have special rights and duties. It is therefore forbidden for them to strike. However, this only applies to judges, police, air traffic controllers and prison guards. Civil servants are not required to pay into unemployment insurance; premiums for the pension fund are lower than those in the private sector. The time in which pension payments have to be made is shorter for civil servants. In addition there are family benefits. On the other hand, the private sector clearly offers better earnings for executives. Low-level employees, on the other hand, are better off in public service than in the private sector. Thus it appears that low-level employees of

¹⁶⁹ Regulation on the manner of operation of the Parliamentary Chamber from 17th November 1958, art. 6, § 1, section 2.

the public administration are not essentially dependent secondary employment. Secondary employment is nevertheless allowed in certain fields. Work in the fields of science, art, literature and teaching is allowed. However, every civil servant who withdraws from state service to work in the private sector must obtain permission from his or her administration.

The public administration is structured into the following areas: municipalities, districts, regions and state. The municipalities are autonomous. Some areas of the administration are already outsourced, e.g. the water supply and waste management.

b) Allocation of Financial Resources

The Supreme Court of Auditors monitors the public management of financial resources. This is legally regulated. It monitors the state, the state and/or public facilities, the state enterprises and the health insurance companies. Furthermore, the Supreme Court of Auditors can deal with private-law institutions, in which the state holds the majority of the capital and/or the votes and with private facilities which receive public financial help or help from the European Union. Legally speaking, the Supreme Court of Auditors is not assigned the task of fighting corruption; however, in the scope of its general supervisory function, the Supreme Court of Auditors contributes to the fight against corruption by disclosing questionable management of financial resources. Thus the Supreme Court of Auditors can operate as an instrument in the fight against corruption.

The Supreme Court of Auditors provides an annual report to the Parliament. The reports are passed on to the State President and published. Moreover, the First President of the Supreme Court of Auditors can at any time give information on his or her results to the finance committees of both chambers. The parliamentary committees, finance committees and investigating committees can make a request to the Supreme Court of Auditors to implement special investigations on the management of the departments or offices which it monitors.

One scandal concerning public procurement was that of the renovations of elevators in Parisian public housing. However, the investigations, which began in 1994, have never proven a direct responsibility to Jacques Chirac, who was Mayor of Paris at the time. A more recent example is the affair concerning the contracting of city cleaning in a Parisian suburb. In 2006, the Mayor received an 18-month suspended sentence and lost his right to be elected to (public) office for six years.

c) Public Services Law and Human Resources in the Public Administration

Political parties can have an influence on staffing in the public service, as each government relies on trustworthy higher-ranking civil servants. They may name 700 of them according to the regulation of 24th July 1985 (article 13 of the Constitution). These are e.g. directors of central

administrations, State Councils, chief councillors in the Supreme Court of Auditors, the presidents of the academies, directors of the central administrations (art. 13 of the Constitution) etc.

A change in government mainly has immediate effects at the level of Ministers, State Secretaries, Heads of ministerial offices, State Secretaries and directors of the central administrations. The lower levels are less affected; here, qualifications play a more decisive role. As a rule, employees of the public administration are not allowed to have secondary employment. Exceptions are: literary, artistic, scientific and teaching activities.

In France, there is no special internal revision. The facility was recommended by GRECO in France, 2003. Every administrative authority is subject to supervision by the administration or the Supreme Court of Auditors. The revisions are implemented by interministerial inspections.

The following regulations of undue influence on employees of the public administration exist and/or are applicable: art. 432-11 of the Penal Code, accepting of bribes; art. 435-1 of the Penal Code, accepting of bribes of civil servants of the European Communities, as well as civil servants of the European Union member states; art. 435-2 giving of bribes connected to civil servants of the European Communities, their member states as well as the facilities of the EU. Art. 435-3 and Art 435-4 of the Penal Code relate to the giving of bribes concerning civil servants outside the EU and in other international organisations outside of the EU. Up to ten years prison sentence and fines of up to € 150,000 are set as sanctions, disciplinary measures are possible as well. Also penalised: acceptance of a bribe (article 435-12 of the Penal Code) and any activity in a private company the former civil servant has concluded contracts with (article 435-13 of the Penal Code). Every civil servant who wants to leave the civil service in order to work in the private sector must obtain approval from his or her administration.

Violations can be sanctioned both by prosecution and disciplinary measure. There were e.g. 48 disciplinary sanctions within the police in reference to accusations of bribery between 1995 and 2004. There were 16 cases of bribery among customs officials between 2001 and 2004.

In addition, there are no generally valid administrative regulations for the prevention of corruption. There are only sporadic internal guidelines, for example in the police or in the tax administration. Up to now, no obligation existed for establishing internal facilities for the fight against corruption, though in the meantime there are ethical committees present in a few public authorities.

Overall, there are few scandals within the administration. A former leader of the 'Délégation générale de l'armement' (DGA), the arms production division of the Defence Minister, who was thereafter active with Thales, was charged in December 2006 with the acceptance of a bribe. There were no significant scandals concerning the privatization of public duties.

2. Members of the National Parliament

a) Legal Position within the National Legislation

According to article 3 of the Constitution, sovereignty lies with the people, who exercise it via referendum and the Members of Parliament. Article 27 states that the imperative mandate is void and the voting power of the Members of Parliament is to be personally exercised. There are no legal provisions for the nominating of candidates. This is regulated by the individual party statutes.

The remuneration of the Members of Parliament is set by regulation 58-1210 from 13th December 1958. The Members of Parliament receive a remuneration to the amount of the earnings of a State Councillor, who has been in office for one year, which is, € 5,392.97 per month plus a residential allowance of 3% of this sum. A so-called position-related allowance is supplemented to the amount of € 1,378.59. A contribution to the pension fund, a special solidarity contribution, a contribution to social insurance debt as well as a contribution to the income maintenance fund are deducted. Basic remuneration and the residential allowance are to be taxed, but not the ‘position-related allowance’. Members of Parliament can ride trains for free in first class. In addition, a certain number of flights are reimbursed. Personnel allowance up to € 6,233 for e.g. several secretaries can be reimbursed, if duties connected to the mandate must be performed which are not covered by the National Assembly. In addition, each Member of Parliament has a budget of € 8,859 for a staff of 1–5 persons available to them. The Members of Parliament are especially insured through the social insurance fund of the National Assembly (established 1948), a special system of social insurance. This fund yields payment for sickness and maternity and pays death benefits and support in cases of fatality. Furthermore, there are services from a pension fund (established 1904); the services increase with the number of years paid in. The pension fund resources consist of the above-mentioned contributions from the Members of Parliament.

The Members of Parliament enjoy immunity. They cannot be prosecuted for expression of opinion or voting. No Member of Parliament may be restricted in their freedom because of an offence without permission of the board, unless he or she is caught in the act or a final sentence has been passed on him or her. The respective chamber can request the suspension of the measures restricting freedoms for the length of the parliamentary session (compare Art. 26 of the Constitution). The immunity does only apply to activities in connection with the mandate.

The parliamentary mandate is incompatible with a governmental office as well as with the office of a member of the Constitutional Council and a member of the Economic and Social Council. Secondary employment for Members of Parliament in the private sector, on the other hand, is generally permitted. Accumulation of executive positions in associations and enterprises which maintain financial relations to organizations under public law as well as for associations which

deal in real estate is not permitted. Secondary employment is quite usual, e.g. on a board of directors, as a lawyer or consultant. A lawyer is not allowed to advise e.g. the above-mentioned associations or represent them e.g. in a criminal trial against the state. However, there are no waiting periods after the mandate.

b) Additional Incomes of Members of the National Parliament

No duty of disclosure exists regarding the income which Members of Parliament obtain from their activities. Assets and economic investments are to be disclosed to the Commission for Financial Transparency of Political Life (Law No. 88-227 from 11th March 1988) only at the beginning and at the end of the mandate. These declarations are not published. Further family members are excepted from the declaration. The commission is made up of the Vice-President of the State Council, the First President of the Court of Appeals and the First President of the Supreme Court of Auditors. If the commission determines an abnormal development of the assets of the Members of Parliament, it can bring the matter before the criminal judge. However, as an ‘unexplainable increase in wealth’ is not a criminal offence in itself, no criminal sentencing can result.

Proceedings initiated against Jacques Chirac concerning high cash payments he received from the city of Paris during his office-period as mayor were suspended after a final judgment by the Court of Appeals on 22nd September 2005.

c) Undue Influence

The bribing of an MP is not specifically regulated by standards, as it is covered by the general provisions on bribery etc. (see above). The sanctioning measures can also be found there. Besides the possibility of imposing fines or prison sentences, a conviction can still additionally result in the loss of the political mandate. If a Member of Parliament is sentenced to the loss of civil rights for 5 years, it automatically means that he or she may not hold public office for 10 years (art. L 7 and L.O. 130 of electoral law). Up to now there has been no known case of undue influence concerning Members of Parliament. There are no significant scandals, as Members of Parliament are much less exposed to the risk of corruption than Mayors or the presidents of the districts.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

It is established in art. 23 of the Constitution that: the office of a government member is incompatible with the exercise of a parliamentary mandate, an occupation in professional associations on the national level, a public office as well as every other professional activity.

The members of government receive twice the average amount of the salary bracket, which is calculated from the lowest (€ 3,962.99) and highest salary (€ 6,751.94), supplemented by residential allowance and position-related allowance (3% and/or 25% of the salary). Salary and allowances of the Prime Minister are again raised by 50%. Social insurance is calculated in a similar way as with the employees of the public sector (see corresponding section).

b) Additional Incomes of Political Office-holders

Since secondary jobs are principally not permitted, there are no concrete regulations on supplementary incomes. Waiting periods do not exist for the taking of other occupations after ending the term of office. As with the Members of Parliament, political officials must submit a declaration of assets including economical investments at the beginning and the end of their term of office to the Commission for Financial Transparency. In two cases, the commission had brought matters concerning questionable declaration of assets before the criminal judge, but the judge declared that this was outside of his jurisdiction.

c) Undue Influence

Regulations and sanctions for undue influence are the same as for members of the public service from general criminal law (see above). Likewise, there are no special regulations relevant to corruption for this area pertaining to e.g. trips using company costs, restrictions on gifts etc.

The following scandal should be mentioned in this area: Alain Juppé, Mayor of Bordeaux and Chairman of the Non-Socialist Party (UMP) was found guilty of having financed seven fictitious employees of the neo-Gaullist Party via the payroll of the city of Paris. He was given an 18 month suspended sentence and a loss of his right to be voted into a public office for a period of ten years; however, in 2004 this sentence was reduced to one year in the second instance.

4. Political Parties

Parties can be organised into registered and unregistered associations. There is no political parties act, there is only a law on their financing. The parties in France annually receive direct state grants. These consist of two components; on the one hand they are dependent on the election results (€ 33 million total), and on the other hand independent of the number of seats of Parliament (€ 40 million total). Donations from legal bodies and organizations under public law, cash donations over € 150 and foreign donations are forbidden. Donations by individuals are allowed only up to an amount of € 7,500. For the purpose of fund raising, the parties found financial associations or commission a financial plenipotentiary.

The parties' statements for all of its accounts are checked by two certified accountants from two different chanceries. They do not check the effectiveness of the expenditures. They must report irregularities to the management of the party, the national commission of campaign accounts and

political financing, as well as the public prosecutor's office. The statements of account must be submitted before 30th June of that year. The statement of account is published in a condensed form in the French law gazette by the commission to which it was presented. The accounts consist of the parties' own accounts, those of the financial associations or the financial plenipotentiaries as well as remaining accounts from their activities in the economy, press, education and publishing.

In the case of violations, the following sanctions are provided for: If the party does not meet the obligations to account for actions or receives donations not through the financial associations or plenipotentiaries, the party loses the state financing for the corresponding following year. The intensity of the sanction is relative – one must consider that 70% of the parties do not receive public contributions.

Apart from that, the acceptance of unlawful donations, cash donations over € 150 and foreign donations is a punishable offence. Legal bodies who have made unlawful donations are to be excluded from the tendering of public orders. A financial associations which disregards the legal regulations can have its approval revoked by the commission. There are no significant scandals in the area of political parties.

V. General Comments

The main causes of corruption in France can be found in the good possibilities to profit through public duties, as well as in the lack of countervailing powers on the local level, the difficulty in proving bribery as well as in the internationalization of corruption – thanks to the offshore financial centres. The main areas where corruption occurs are weapons export and the construction sector. The last legal changes can be traced back to the OECD Convention 2000.

The statute of limitations for offences of corruption is too short. In addition, corruption is difficult to prove, a good example being the *Elf Scandal*. It was easier in this case to prove the abuse of public property, credit fraud and document forgery, instead of proving political corruption.

A much more promising step is that in eight regions economical and financial facilities have been established at the Courts of Appeals, which deal with different forms of financial criminality. They consist of disciplines which are supported by customs officials and tax officials.

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¹⁷⁰ We would like to thank Prof. Dr. Mark Deiters, Director of the Institute for Criminological Science (Institut für Kriminalwissenschaften) and Professor for Criminal Law and Criminal Procedural Law (Strafrecht und Strafprozessrecht) of the 'Westfälische Wilhelms-Universität Münster', for answering the questionnaire and supporting the realization of the Report Germany, written by Alexandra Bäcker, Florian Eckert, Christian Schmidt und Florence Tadros Morgane.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

Police criminal statistics belong to the relevant public offices in Germany with respect to the evaluation of data on corruption. On the federal level, the Federal Bureau of Criminal Investigation¹⁷¹ publishes publicly accessible situation briefings on the corruption in Germany. Besides the federal level, there are the state bureaus of criminal investigation - analogous to the federal structure of the Federal Republic of Germany - on the state level. The North Rhine-Westphalia State Bureau of Criminal Investigation is exemplary; it too has been publishing an annual report on corruption since 2001 which is also open to the general public.¹⁷² The respective situation briefing is based on the data of the Criminal Investigation Registration Service. On the state level, all conducted preliminary proceedings which have been assessed in the area of corruption crime are reported by the individual district police authorities in North Rhine-Westphalia to the state bureau of criminal investigation in accordance with the guidelines of information exchange. The annual report solely contains data on corruption proceedings which were recorded for the respective year, thus it exclusively encompasses reported cases.

2. Private Sources of Data-collection on Corruption in the Public Sector

In connection with the private offices which assess corruption-relevant data, 'Transparency International'¹⁷³ is to be mentioned. The international headquarters and the seat of the German 'Chapters' is located in Berlin. Furthermore, the 'Pro Honore e.V.' association based in Hamburg can be mentioned.¹⁷⁴ They cooperate closely with local enterprises and the Hamburg Chamber of Trade in order to develop prevention measures against corruption in the economic field. Additionally, 'LobbyControl' needs to be mentioned.¹⁷⁵ This non-profit association mainly focuses on lobbying and combines current research, scientific background analyses and campaign work. This association reports on business-oriented campaigns, networks and coordinated lobbying and would like to disclose information as well as the sources of the targeted influence. In such cases, 'LobbyControl' takes up exceptional contexts and grievances with the aim of ending these directly or implementing new protection measures against one-sided influence (for example stricter rules for supplementary incomes of members or registration and report duties for lobbyists).

171 www.bka.de; 5th July 2006.

172 http://www1.polizei-nrw.de/lka/Zahlen_und_Fakten/lagebilder/Lagebilderarchiv; 5th July 2006.

173 www.transparency.de; 5th July 2006.

174 Information under: www.prohonore.de; 5th July 2006.

175 Information under: www.lobbycontrol.de; 4th July 2006.

Finally, the 'Business Crime Control' association, founded in 1991, can be mentioned.¹⁷⁶ This association's goal is to promote the scientific exploration of the causes, structures, social, political, ecological, and also the immaterial consequential damages of economic crime.

II. Legislation dealing with CorruptionThe Anti-Corruption Law of 13th August 1997 undertook efforts for corruption prevention in the public sector on the national level. The range of punishment for crimes in office (art. 331, 333 Penal Code, *StGB*) has been extended by the law. Since then, all variations of preferential treatment have been made a punishable offence - for official actions already carried out as well as future ones (art. 333 par. 2 *StGB*). In addition to that, the prohibition of accepting rewards or presents by civil servants has been changed for clarification purposes by the law (art. 70 Civil Servant Law, *BGG*). Apart from the public sector, the sentence was increased in the private sector as well through the Anti-Corruption Law; a new section on 'Crimes Against Competition' was incorporated into the Penal Code (art. 298-302 *StGB*). So a fine or an imprisonment of up to three years is planned from this point on for bribery and corruptibility in the commercial traffic of private enterprises (art. 299 *StGB*). By shifting the penal regulations to the *StGB*, awareness should have been created that corruption within private-law businesses does not only affect the interests of the economy, but also represents a wrong to be disapproved of socially.

The German legal system is based on the principle of legality.¹⁷⁷ The prosecution must take action in suspicious cases. The principle of legality is complemented by several provisions according to which prosecution of an offence is discretionary.

In addition to the federal level, the North Rhine-Westphalian Anti-Corruption law of 1st March 2005 can be named at the state level; among other things it provides the establishment and management of a tendering register. So the state authorities¹⁷⁸ have to indicate the tendering of orders to the investigating agencies responsible for them if their contract value exceeds € 200,000; the same applies to asset divestitures. At the same time, a list of the offers of all bidders and applicants with names and prices as well as the final selection including the respective justification are to be added. Furthermore the law provides a compulsory disclosure for the members of the state government as well as the city councils and the district representations. These members must inform the Prime Minister and/or the respective head office (Mayor) in writing about the profession they currently practice, their consultant contracts, their memberships on supervisory boards and control committees, affiliation to private enterprises as well as their function in associations. This information is published annually.

176 Information under: www.wirtschaftsverbrechen.de; 4th September 2006.

177 This means that it is the duty of the members of the public sector, in particular of the prosecution authorities, to act on any suspicion.

178 As such, the State Court of Auditors, the municipalities and enterprises in which the absolute majority of shares is owned by the public authority are to be named.

In spite of the laws mentioned, no generally valid legal definition of the term *corruption* exists in Germany. Thus certain behaviours which are to be regarded as corrupt are subject to legal regulations in Germany.

Since the 1st January 2006, the Freedom of Information Act has taken effect on the federal level and states that every citizen has the right of access to the official information present at the public offices, without having to prove a legal or justified interest. Narrowly defined restrictions of this right are explicitly regulated in a catalogue of exceptions.

III. Control and Sanctions

There are special administrative institutions in Germany which deal with the prevention of and battle against corruption in the public sector. However, the situation is rather unclear in view of the varying regulations in the individual states. Within the administration institutions, the internal revision and the anti-corruption agents or the ombudsmen can be mentioned. The federal and state audit offices as well as the federal and state bureaus of criminal investigation are also important institutions in the fight against corruption (cf. I.1.).

In order to be able to perform supervisory functions appropriately, the German Basic Law (*GG*) and the procedural rules of the German *Bundestag*¹⁷⁹ (*GOBT*) grant the members several rights of procedure and control which are organized as minority rights. The investigating committee represents the most meaningful control body in parliamentarianism.¹⁸⁰ Such a committee is to be summoned on demand by at least a quarter of all members. The meaning of this parliamentary control committee consists in its right of the reporting and witness examination. There are ad hoc parliamentary control committees which are requested in most cases by the opposition and normally examine complaints of public interest in government and administration. The investigation committee can not impose, however, any sanctions, its importance lies in the public and the accompanying possibility to scandalize proceedings. Besides the investigating committee, the members are granted further rights of control.¹⁸¹

Beyond parliamentary supervision, the media and the non-governmental organizations must be mentioned in connection with the perception and documenting of corruption.

179 German Federal Parliament.

180 In the Federal Republic of Germany, set-up and procedure of an investigating committee are regulated in art. 44 and 45a *GG*.

181 To be named: the right to summon a special session of the *Bundestag* (quorum: one third of the members of the German *Bundestag*) (art. 39 par. 3 sent. 3 *GG* in connection with § 21 par. 2 *GOBT*); the right to submit a motion of no confidence against the German Chancellor (quorum: a quarter of the members of the German *Bundestag*) (§ 97 *GOBT*); the right to direct large requests at the Federal Government and the right to have them considered in the *Bundestag* (§§ 75 par. 1 lit. f, 76, 101, 102 *GOBT*) as well as the right to request a debate in connection with the guidelines for speaking out on topics of general current interest (quorum: five percent of the members of the German *Bundestag*) (§ 106 *GOBT*).

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

The administration through state authorities is carried out according to the federal structure of the Federal Republic of Germany. The Federation itself has at its disposal its own executive offices in only a few areas of responsibility.¹⁸² Generally, federal laws are explained through the administrations of the federal states; accordingly, the federal system does not know any vertical separation of the spheres between central state and the individual member states. Germany possesses a three-stage political administrative structure on the federal, state, and municipal levels.¹⁸³ The municipalities are entitled to the right to autonomously regulate all matters of the local community (art. 28 par. 2 *GG*). This guarantee of autonomy of the lowest stage of the administration organization assures the municipalities their own areas of authorities as well as their own financial administration.

In 2003, there were approx. 4.78 million people active in the public service in Germany; the majority being on the state and municipality level while only one tenth is active in the federal service. The employees of the public administration itself are subdivided into civil servants, employees and workers.¹⁸⁴ The civil service status is subject to public law, further regulated by the civil service laws. However, the employees and workers in the public service are employed by the public authority according to private law and thus are subject to statutory labour law, whereas similar duties of loyalty exist in the civil servant status towards to the employer.

Differences between civil servants on the one hand and employees/workers on the other exist in employment, termination of employment, payment, and in the right to strike which does not exist for civil servants due to the special duty relationship and fiduciary relationship.

182 The Foreign Service, the German Federal Armed Forces, the Federal Border Police as well as the Federal Waterways Administration and Air Traffic Administration are to be named; furthermore, Supreme Federal Authorities such as the Federal Cartel Office or the Federal Bureau of Criminal Investigation count as such. The latter, however, cooperates with the respective state authorities and the state bureaus of criminal investigation. Next to the Supreme Federal Authorities, there are also the middle level Federal Authorities and the lower authorities, who are normally responsible for a spatially restricted area. Furthermore, the public corporations are to be named, the employment agency being one such example.

183 If one takes, however, the state-level intermediate administrative stages into consideration (except for the three city states of Berlin, Bremen and Hamburg), even a five stage construction can be spoken of. In this case, the Federal Government, the federal states, district governments, rural districts and municipalities are to be named.

184 In employment, the number of workers and employees predominates. So on 3rd June 2004, a total of 1,696,900, civil servants and judges, 2,216,200 employees and 569,000 workers were employed in the public service (Federal Statistical Office, <http://destatis.de/print.php>; 25th July 2006).

Compared to the employees in the private sector, employees of the public administration are socially protected in a special way. In this case, social security privileges are valid for civil servants; however, they receive smaller salaries than employees.

The civil servant salary complies with pay regulations and the category of civil servant group and is in addition dependent on age and marital status. For employees and workers, the wage agreement for public service, valid since September 2005, provides experience-oriented and performance-oriented compensation.

With regard to income possibilities in public administration, it is to be generally stated that higher revenues can be achieved in the private sector - respectively dependent on the economic development; public administration employees are not, however, dependent on additional income possibilities in order to make a living.

In Germany, more and more public tasks are becoming detached from the administrative structure. Among these are such sections as waste disposal, telecommunications or also hospitals.

b) Allocation of Financial Resources

The Federal Court of Auditors is an autonomous control body not subject to directives, and is responsible for both the supervision of the budget and economic management of all authorities and offices of the Federal Government. Correspondingly, the control of the entire public central management on a federal level falls into its range of duties. Its position and tasks are stipulated in article 114 GG as well as in the Act on the Federal Court of Audit and in the Federal Budget Code, although by rights it has not been explicitly delegated the task of corruption abatement. Nevertheless, the Court of Auditors does contribute to corruption abatement especially within the framework of its general supervisory function through the exposure of doubtful management of financial resources. The Court of Auditors Supervisory Board checks both records and bills as well as the effectiveness of the administration (for example appropriate organization and place structure). In this, not only is the expense control considered, but also even more so the income side. The objective is not only minimization of the costs but also maximization of the benefit.

The Federal Court of Auditors has to report to the Federal Government, the *Bundestag* and the *Bundesrat* on the result of the auditing and the budgetary control independent from bills. A passing on of the results to third parties not participating in the examination procedures is generally not possible. Special reports and examination results which are sent to the German *Bundestag* in comment form on the occasion of the discharge proceeding can be published, however. The Federal Court of Auditors publicly reports on the results of the parliamentary deliberations and the implementation of its reports in administrative practice. Special reports which are then generally accessible to the public can be created on matters of special importance.

Respective regulatory bodies are arranged correspondingly with the government structure of the Federal Republic of Germany on the state level - the State Court of Auditors. In addition to the Federal Court of Auditors, parliamentary committees (audit committee, budget and finance committee) also deal with the control of budgetary and economic management; their controlling function is, however, restricted compared to that of the Federal Court of Auditors .

In 1998, immediately after the change of government, the former government under Chancellor Kohl (CDU), was suspected of not having acted correctly concerning public procurement in the sale of all former apartments owned by the German Railway (then in state possession). All apartments were sold in 1998 to the Hamburg billionaire Karl Ehlerding. Shortly thereafter, he and his wife donated five million German marks (approx. € 2,500,000) to the CDU in the election campaign of 1998 - the largest single donation in the history of all German political parties up to that point. Accordingly, the question arose as to whether the sale of the apartments to Ehlerding was a punishable accepting of a bribe (art. 331 *StGB*). A letter from the former Minister of Transport to the former Minister of Finance dated the 15th June 1998 found in the Ministry of Transport confirmed a specially arranged meeting with Helmut Kohl in the chancellor's office, which contained the modalities of the agreement with Karl Ehlerding. Ultimately a bribe acceptance could not be proven. It was striking, however, that during research on these events, some gaps or subsequent changes were found. One therefore assumed that corresponding data and files were purposefully destroyed in order to conceal certain proceedings by the Kohl government from the successor Schröder government (SPD). This, however, could also not be proven.

c) Public Services Law and Human Resources in the Public Administration

It can be stated within the framework of the personnel management that political parties on the nation-state level hardly have influence on public service staffing in Germany. More importance here is put on qualifications and not the party political affiliation.

With regards to public service staffing, a change of government primarily affects the immediate political level of the ministers and the state secretaries as well as the political civil servants, for example the heads of department. Positions subordinate to those, as for example those of the section managers, are not necessarily subject to a position change. In general it is regarded that the qualification is the decisive factor for the staffing.

Generally, employees of the public administration may carry out other activities. However, these are regularly subject to notification and/or authorization and also restricted regarding temporal frame.

An undue influence on office-holders of the public administration carries a penalty. So, the passive side includes the acceptance of a bribe (art. 331 *StGB*) and corruptibility (art. 332 *StGB*).

The active undue influence, or rather the granting of an undue benefit (art. 333 *StGB*) and bribery (art. 334 *StGB*) also carry legal penalties. The respective sanctions include imprisonment and/or fines. If the office-holders which committed the offence are civil servants, the loss of the civil servant rights according to art. 24 Federal Civil Service Framework Act (*BRRG*) is also possible.

To avoid bias or even corruptibility of civil servants, they are generally not allowed to accept presents or rewards (art. 70 *BBG*); economical or non-economical benefits of any kind are classified as such. Through this prohibition, an unselfish and impartial conduct of office should be guaranteed. In the interest of a functioning public service, the prohibition is valid also for the unofficial behaviour of civil servants and prohibits the acceptance of presents for family members as well. In the same way they are forbidden to accept third party presents or rewards on completion of their employment. Any violation is a malfeasance and will be prosecuted. Only an approval by the highest authority can suspend the ban on the acceptance of presents.

In the public administration, the ‘Guidelines of the Federal Government for the prevention of corruption in the federal administration’ on the fight against corruption is to be mentioned. A behaviour codex against corruption has been integrated in index 1. Violations of this guideline can be sanctioned under disciplinary law.

The monitoring of ongoing and finished administrative processes is primarily carried out by internal audit. Such an organisational unit usually exists in every authority. These can be in the form of examination offices established by the Federal Court of Auditors within the authority which are then subject to the supervisory power/supervision of public authority of the Federal Court of Auditors and must report to it.¹⁸⁵ In addition to this, the authorities themselves can set up such auditing departments autonomously and/or commission a private auditing company with the internal revision. They are free to present the final respective examination results to the Federal Court of Auditors for inspection.

At this time no legal obligation exists in Germany for the creation of authority-internal institutions which are used for the prevention and abatement of corruption. Meanwhile, however, anti-corruption agents and ombudsmen are entrusted with these tasks in some administration authorities.

In April 2006, the Bonn district attorney's office arrested a department head of the German Federal Financial Supervisory Authority (*BaFin*) for embezzlement and taking a bribe. According to information from the prosecution, the *BaFin* leading official who was responsible for the public authority's IT awarded amounts about € 7.6 Million to the company of an

185 § 20a Act on Federal Court of Auditors, § 100 Federal Budget Code.

accomplice. The public authority did not, however, receive any return services for at least € 2.6 Million. Apparently the official had succeeded in eliminating the internal monitoring systems to a large extent. His secretary was allowed to countersign the fictitious contracts and bills made with his accomplice's company without having had knowledge, however, of their true nature. The leading public prosecutor criticized 'Vier-Augen-Prinzip' (the dual control principle) practised there, which in this case was lacking the necessary same 'eye level' of the control person. The process was uncovered by external auditors who already two years before had referred to weak points in the internal monitoring system, for which also the head of the public authority is being criticized. Due to this, the members of the administrative board have so far refused the release of the business year 2005.

2. Members of the National Parliament

a) Legal Position within the National Legislation

There are 598 members which regularly belong to the German *Bundestag* since the German Reunification in 1990. They are representatives of the whole nation and are bound neither to orders nor to instructions, but are subjected and responsible only to their conscience. The status of the members is primarily regulated by article 38 *GG* and furthermore by the constitution-concretizing *GOBT* as well as the Federal Members' Law (*AbgG*). In order to do justice to the complexity of parliamentary work, the *Bundestag* and the factions developed work-sharing structures. Respective to each portfolio of the Federal Government, there is a technical committee respectively a work group on the faction level. The *Bundestag* is a working parliament which is shaped by the factions.

The members are elected for a legislative period of four years in a general, immediate, free, equal and secret vote. There are two possibilities for the nomination of the candidates for the election to the German *Bundestag*: the first affects that of party candidates. In Germany, parties effectively have a monopoly on the delegation of parliamentarians.¹⁸⁶ Independent candidates form the exception in Germany. Here, the nomination of the candidates takes place by election during a general meeting of members of the respective parties; the details are regulated by the individual party statutes.¹⁸⁷ In addition to the party candidates, independent candidates can also be nominated for the election to the *Bundestag*; they need a nomination and at least 200 signatures from eligible voters from the electoral district in which the candidates run (art. 20 par. 3 Federal Electoral Act (*BWahlG*)).

186 As an example of this, even the independent members Monika Knoche and Harald Terpe won their seats in the *Bundestag* via the state party list of the 'Linkspartei' (left-wing party) and via 'Die Grünen' (the green party) 2005, respectively.

187 § 21 par. 5 Federal Electoral Act, § 17 Political Parties Act.

In accordance with art. 11 par. 1 *AbgG*, the members draw a monthly basic salary of € 7,009 from the national budget for their parliamentary work. In addition to that, a tax-free cost lump sum to the amount of € 3,647 (art. 12 par. 2 *AbgG*). On top of their salary, members are also granted additional appropriated privileges. So, according to art. 12 *AbgG*, they receive remunerations for their office equipment, free public transportation, reimbursement of travel expenses (art. 16 *AbgG*) and daily and overnight allowance money for official trips (art. 17 *AbgG*).

In comparison to employees in the private sector, the members are socially protected in a special way. For example, they draw an interim allowance when they withdraw from the *Bundestag* (art. 18 *AbgG*), are eligible for old age pension (art. 19 *AbgG*) and receive a provisional settlement (art. 23 *AbgG*). In addition, they are granted cost benefits towards cases of illness, nursing care, and birth (art. 27 *AbgG*).

The members of the German *Bundestag* have immunity according to art. 46 par. 2 and par. 3 *GG*. A member who has committed inspected an act subject to criminal penalty may only be prosecuted or arrested with authorization by the parliament. Without such authorization, the member must not be subjected to any kinds of restriction of freedom (punitive custody, police custody and coercive custody). It is usual, however, for the German *Bundestag* to lift the immunity in cases of suspicion. This legal impediment to prosecution ends with the member's term of office.

b) Additional Incomes of Members of the National Parliament

Members generally carry out their job full-time, nevertheless they may hold additional positions next to their mandate if they don't hold a government office. The work of a member (for example as a member of an executive board, supervisory board or other committee) must be reported to the President of the *Bundestag*.¹⁸⁸ Secondary work of members is not uncustomary by any means in Germany. So it is absolutely usual that members hold positions on supervisory boards or carry out their initial profession in addition to their parliamentary mandate.

Consequently, members have the possibility to receive several incomes from different sources. Here, members must make their additional income public as of a value of € 1,000 monthly respectively € 10,000 annually.¹⁸⁹ Relatives of members (for example spouses, family members etc.) are not, however, subject to this duty of disclosure. Generally, property and investments do not have to be disclosed. The information which must be made public is published in both the

¹⁸⁸ § 1 of annex 1 of *GOBT*.

¹⁸⁹ This is regulated in the code of conduct for members according to *AbgG*, annex 1 of *GOBT*.

official manual and on the internet pages of the German *Bundestag*.¹⁹⁰ In case of a violation of the duty to disclosure the President of the *Bundestag* is able to impose a monetary fine.

After their withdrawal from office, the members are free to start a new occupation. There is currently no regulation which puts off representatives starting a new occupation on completion of their mandate, a so-called cooling-off period; it is, however, being publicly discussed.¹⁹¹ There is a regulation for civil servants according to art. 69a *BBG* which provides for cooling-off periods.

This obliges civil servants who have withdrawn from civil service to notify the last highest authority of any occupation which has a connection to their work prior to withdrawal for a period of three years.¹⁹² In this way, the private usage of office-related knowledge should be avoided.

There was a scandal at the end of 2004 in connection with supplementary incomes concerning CDU Secretary-General Laurenz Meyer. He obtained energy at the reduced employee rate from the energy enterprise of RWE although he had withdrawn from the enterprise in 1999. In addition, he is supposed to have received funds from RWE without rendering a return service. Under the pressure of the public and internal party critics, Meyer announced his resignation from the office of the CDU Secretary General in December 2004. After that, RWE imparted the result of an internal investigation on the payments to Meyer. According to this, 160,000 of a total of 250.000 DM (approx. € 80.000 of € 125,000) paid had been accidentally transferred to Meyer due to a 'communication error'. With this affair, the lobbying practices of the RWE Group came under fire in general. Thus it became known that by the end of 2004, RWE had about 200 fulltime and (more so) part-time mandate holders in their employment and so over decades tried to influence politics in this way.

But not only RWE paid active mandate holders: Volkswagen, another large-scale enterprise, generously paid political representatives. According to own information, the automotive group had up to 100 politicians on its payroll. One of the beneficiaries, the East Frisian SPD *Bundestag* member Jan-Peter Janssen, drew the consequences and laid down his mandate.

190 § 3 of annex 1 of *GOBT*.

191 The background of the demand for the introduction of cooling-off periods is that especially the change from the retirement from a political office to a lucrative position in the economy represents a moment prone to corruption. For example it is quite customary for former members to change to enterprises that profited from their decisions as a member just before. This way, a member's political decisions which were made in favor of their future employer during their term of office can be financially rewarded ex post by the taking over of new work.

192 In the case of early retirement from the regular civil servant status, the period of time is five years.

c) **Undue Influence**¹⁹³

In Germany, federal and state Members of Parliament are not legally regarded as being political office-holders, hence they are not subject to the various malpractices-in-office of the Penal Code (*StGB*). Solely art. 108e *StGB*, which makes the buying respectively selling of votes a punishable offence, can be applied to Members of Parliament. Its scope of application refers only to the voter habits or voting habits during plenary sessions; it comes into effect when a third party bribes a Member of Parliament with the intention of voting in favour of the third party's interests during a vote. The facts of the case also cover votings in committees and panels of the parliament, yet not within factions. In the case of an already carried out buying of votes, custodial sentences of up to five years, monetary penalty, loss of political mandate, loss of passive and/or active voting rights are possible sanctions. There has been no sentence in Germany under the validity of this criminal provisions/statutes.

To avoid undue influence on Members of Parliament, all members of the *Bundestag* must keep separate accounts of monetary donations and non-cash benefits of all kinds which are provided to them for their political use. A donation to a Member of Parliament, the value of which cumulatively exceeds € 5,000 over the span of one legal year, is to be indicated to the President of the German *Bundestag*, stating the name and the address of the donator as well as the total amount. Donations are to be published with their amount and their origin by the President of the German *Bundestag*.¹⁹⁴

After the political fall of communism in the DDR, it became known that the East German Ministry of State Security (the Secret Service) - in connection with the failed motion of no-confidence against the then chancellor Willy Brandt (SPD) in 1972 - had bribed the CDU Member of Parliament Julius Steiner to vote in favour of Brandt. Steiner succeeded in getting other CDU Members of Parliaments to also vote against Rainer Barzel, the CDU candidate for the office of the chancellor. No criminal offence comparable to art. 108e *StGB* existed at that time.

193 If not otherwise indicated, the legal basis hereafter refers to §4 of annex 1 of *GOBT*.

194 In agreement with presiding council, the President of the *Bundestag* generally decides on the use of reported gifts of hospitality as well as illegally accepted donations. Non-cash benefits do not count as donations on the occasion of exercising interparliamentary or international relationships during events representing the viewpoint of the *Bundestag* or of the factions; they do need to be reported, however. Cash benefits received by a member of the *Bundestag* as a gift of hospitality in connection with his mandate must be reported to the President and handed over; the member can apply to keep gifts of hospitality in exchange for payment of counter value to the Federal Treasury. A notification is not necessary if the material value of the hospitality gift does not exceed a certain amount which is set in the implementing regulations of the President (§ 4 par. 5b *GOBT*; in the implementing regulation no. 12, sentence 2, a monetary amount of € 200 is set).

3. Political Public Office-holders¹⁹⁵ on the National Level

The German government consists of the chancellor and the individual ministers (art. 62 *GG*). In addition, the parliamentary secretaries that were introduced in 1967 are also to be counted as part of the government. It is their task to reduce the chancellor's and ministers' workload by taking on individual areas of responsibility. Unlike the ministers, the parliamentary secretaries do not have to be members of the *Bundestag*.¹⁹⁶

a) Legal Position within the National Legislation

Additionally to the German Basic Law (art. 62–69) the Federal Ministers Act (*BMinG*) as well as the Parliamentary under Secretaries Act (*ParlStG*) also deal with the legal position of political office-holders.

The salary amount for political office-holders corresponds to the respectively held office.¹⁹⁷ The chancellor draws a monthly basic salary of about € 17,255 plus bonuses.¹⁹⁸ A federal minister receives a salary of about € 13,804.75 per month plus bonuses.¹⁹⁹ And finally parliamentary state secretaries are paid with a monthly basic salary that amounts to 75% of a federal minister's salary and their payments as a member of the *Bundestag* (art. 5 *ParlStG*); they are also allowed bonuses. Neither political office-holders nor other persons from their environment (i.e. spouses, children) have to publish their income, their assets or their investments.

In comparison with employees of the private sector, political office-holders are socially secured in a special way. Members of the federal government and parliamentary state secretaries receive interim payments on their retirement from the federal government. (art. 14 *BMinG*, art. 6 *ParlStG*), they are entitled to retirement pension (art. 15 *BMinG*, art. 6 *ParlStG*) and are additionally secured by accident compensation (art. 17 *BMinG*, art. 6 *ParlStG*).

b) Additional Incomes of Political Office-holders

Political office-holders in Germany are not allowed to carry a secondary employment or profession additionally to their office and they are not permitted to be a member of the administration or – without the agreement of the *Bundestag* – the supervisory board of an acquisitive enterprise (art. 66 *GG*). In addition to those standardized in art. 66 *GG*, art. 5 *BMinG*

195 Hereafter, those valid as political office-holders are: they who receive a public office dependant on the respective government constellation and thus only hold it for the duration of the electoral period.

196 Considering that since the end of 1998, an exemption has been valid for parliamentary state secretaries in the Office of the Federal Chancellor.

197 The earnings of the political office-holders – not including the parliamentary state secretaries – are regulated by law in § 11 *BMinG*.

198 His salary bracket is equivalent to 1 2/3 of the pay group B 11.

199 His salary bracket is equivalent to 1 1/3 of pay group B 11.

regulates further incompatibilities; for example, that political office-holders may not give out-of-court expert opinions. The same incompatibilities apply to parliamentary state secretaries (art. 7 *ParlStG*). Having a seat in the *Bundestag* is an exception to the prohibition of secondary employment for political office-holders.

Regulations that restrict the profession of political office-holders for the time after mandate termination do neither exist for members of the federal government nor for parliamentary state secretaries. However, there is ongoing discussion on introducing such a regulation which would comply with art. 69a *BBG* and would allot waiting times for public servants.

Just before the parliamentary elections in 2005, the former Federal Chancellor Gerhard Schröder together with the Russian President Vladimir Putin signed a contract on the construction of a gas-pipeline through the Baltic Sea. The Russian Gazprom Group as well as German enterprises are involved in the construction. After the change of the government it became known that Schröder was going to assume the office of the chairman of the board with the operator of the Baltic Sea pipeline. Critics now accuse the former chancellor of professionally profiting from a decision which he himself had driven considerably during his term of office. As a result, a code of honour for politicians or the introduction of cooling-off periods is now being called for in Germany.

c) **Undue Influence**

The bribing of political office-holders is also covered by the facts of the case of the art. 331 ff. *StGB*. The culpability of the bribee is covered by art. 331 and 332 *StGB* and – vice versa– the culpability of the briber by art. 333 and 334 *StGB*. The benefit for a third person is covered here as well.

In the case of accepting and/or giving a bribe, monetary penalties or prison sentences of up to three years are allotted as possible sanctions. Extremely serious cases of bribery and corruption are listed in art. 335 *StGB* with examples and offences, the implementation of which carries an increasing of punishment.

In 1991, Ludwig-Holger Pfahls, former CDU politician and state secretary to the Department of Defence of the Kohl government (CDU), is said to have accepted but not declared a bribe of 3.8 million DM (about € 2,000,000) from the lobbyist Karl-Heinz Schreiber, in order to advance a tank deal with Saudi-Arabia. According to the findings of the investigators, Schreiber had opened a secret account for Pfahls in September 1991 and transferred the sum to this account. By the end of February 1992, Pfahls had withdrawn from the office of the state secretary. After having been on the run for years, he was arrested in Paris in 2004 and consequently sentenced to prison for two years and three months for corruption and tax evasion.

4. Political Parties

a) Legal Position within the National Legislation

Political parties in Germany are constitutionally recognized. According to art. 21 *GG* they shall participate in ‘the formation of the political will of the people’ and therefore explicitly perform a ‘public function’ (art. 1 *PartG*). In its currently valid form after several reforms, the *PartG* of 1967 regulates in detail the legal position and the social relevance of parties. The major tasks of the parties are the compilation and formulation of agendas, the aggregation of opinions and interests as well as the recruitment of political personnel. The formation of parties occurs freely, parties are not part of the organized statehood, yet to be classed with it insofar as one of their most relevant tasks (and goals) consists in the formation of a government. Parties are intermedial instances that mediate between the citizens and the organs of the state. Their political objectives must comply with the free democratic basic order of the Federal Republic of Germany; if that is not the case, the Federal Constitutional Court shall rule on the question of unconstitutionality. Political parties in Germany are organized as registered associations or as associations lacking legal capacity. The associations lacking legal capacity prevail as the form of association.

b) Revenues of Political Parties

Parties play a central role in the context of formation of the political will. They need money for the fulfilment of their tasks. The financing of parties has been legally changed several times in Germany. Parties finance themselves via membership fees and donations. Beyond that they can receive direct state funds. Criteria for the allocation of these state funds consist of the success the party achieves with the voters in elections for the European Parliament, the *Bundestag* or the State Parliament, the sum of their membership and deputy fees, as well as the amount of money it obtains from donations (art. 18 par. 1 *PartG*). The amount of the funding of all parties may not exceed the maximum total volume of € 133 million. The amount of state funds must not exceed the annual income gained by a party (relative upper limit). Generally, the quantitative ratio of self-earned income (party donations and membership fees) and government funds varies between the individual parties.

Independent of the government financing of parties, party donations form an important source of income for political parties. Party donations are generally allowed in Germany.²⁰⁰

The amount of donations is completely unlimited in Germany. Parties may accept donations from individuals as well as from legal bodies. Both these points are publicly controversial.

200 Donations to the party can be illegal for different reasons: on the one hand because of the amount (i.e. cash donations), on the other due to its origin (i.e. donations from businesses which are wholly or partly property of the public authorities) or because they are granted as a return service for the granting of a certain economical or political advantage.

c) **Legislation on Transparency of Political Party Funding**²⁰¹

Parties must publicly account for their assets²⁰² and for the sources and the use of their funds²⁰³ as well as their assets²⁰⁴ by the end of the calendar year (accounting year), to the best of their knowledge and belief in a statement of account. The parties have to announce the donors by name²⁰⁵ exceeding a total of € 10,000 in donation money. Donations of a sum of up to € 1,000 can take place in cash; they are to be forwarded without delay to a member of the board who is responsible for financial matters.²⁰⁶ The account report must be controlled by an auditor or an auditing company. After that, the President of the Federal Parliament examines the account report for its formal and content-related correctness. Finally, the account reports are published in the Federal Law Gazette. If the individual parties receive donations during the current calendar year exceeding € 50,000, these are also published in ad hoc reports between the regular publications. Violations against prohibitions or rules in connection with the party financing procedure can result in the reclaiming of government financing at different levels.²⁰⁷ Additionally, the possibility to inflict freedom or money penalties exists in explicitly regulated cases.

In the 1980's and 1990's the 'Christlich Demokratische Union' (CDU) had attempted to conceal illegal donations in the millions with the aid of numerous shadow accounts in Switzerland and Liechtenstein. In the account reports these amounts never emerged. Indeed the pathways of some of these millions to the CDU cash boxes could be reconstructed. However, many things remained in the dark. In 1999 the *Bundestag* appointed the investigation committee on the CDU

201 The reporting of the parties is regulated in § 23 *PartG*.

202 According to § 24 par. 4 *PartG*, the revenue statement consists of membership-fee, mandate holder contributions and similar regular fees, donations from individuals, donations from legal bodies, income from entrepreneurship and investments, income from other assets, income from events, distribution of pamphlets and publications as well as other activities which provide an income, government funds, other income and contributions from subdivisions.

203 According to § 24 par. 5 *PartG*, the expenses statement consists of personnel expenses, material costs of ongoing business operations as well as duties for general political work, for election campaigns, for asset management including interest resulting from this and other interest and expenses. Also contributions to subdivisions.

204 According to § 24 par. 6 *PartG*, the asset and liability statement consists of fixed assets (tangible assets, buildings and properties, office equipment), financial assets/investments (stake in a business and other financial investments), current assets (accounts receivable from subdivisions, accounts receivable from partial government funding, monetary holdings and other assets), accounts payable, reserves (pension provisions), commitments (to subdivisions, redemption commitments of partial government funding, commitments to credit institutes and to other lenders).

205 § 27 par. 2 *PartG*.

206 § 25 par. 1 *PartG*.

207 In the case of inaccuracies in the account statement, it is possible for the clawback to be up to double the amount of the corresponding false amount. On the other hand, if the donations have been illegally attained, the clawbacks can then be a maximum of triple the amount of the illegally attained amounts. If donations are not published, clawbacks can occur up to double the amount of the unpublished amounts. These sanctions are regulated in more detail in § 31a *PartG*.

‘party donation affair’. In the course of the CDU donation scandal the *Bundestag* intensified the Political Parties Act.

V. General Comments

Corruption has multifarious reasons and can not be explained monocausally. The main reasons lie in human nature, in the greed for money and power. All institutions in which loosely controlled access to money and power can be found are therefore especially susceptible for corruption. Anywhere the federal government is responsible for the allocation of orders, licences and positions, areas extremely prone to corruption do exist. Susceptibility to corruption increases when the legal position is vague, discretions are large, inspections are few, sanctions are low and the probability of disclosure is minimal.

Corruption occurs in almost all areas. One used to think that only few areas – like armaments contracts or building proposals in the local governments – were involved with corruption; meanwhile, however, corruption researchers agreed upon that corruption-susceptible areas exist everywhere from the local administration to the state and federal administration. Justice, education as well as science are to be mentioned as areas with a low susceptibility in which a comparably small amount of corruption exists. Taken together, the local administration on the one hand and the grey area of political lobbyism on the other are to be regarded as those areas most susceptible.

Improper party donation practice has repeatedly led to intensification of the party law. Different local corruption scandals have led to an anti-corruption law, for example in North Rhine-Westphalia. The sharpening of the nationwide anti-corruption rules in the second half of 1990 was only indirectly caused by corruption scandals but more so by specifications of international conventions.

To identify best practises, first of all, one must differentiate the individual levels - on the one hand local civil servant bribery and on the other the extensive nationwide corruption through illegal party donations. In the case of local corruption, several administration reforms are of importance – ‘das Vier-Augen-Prinzip’ (the dual control principle), the rotation of office, the strengthening of internal revision, and the precept of transparency are to be named. On the higher political levels it is important to intensify the transparency again and again. It is essential everywhere to increase the detection rate by generally assuming the occurrence of corruption in the corruption-relevant areas. Apart from that, the public and published opinion and scandalizing of corrupt behaviour helps.

Report Greece²⁰⁸

208 The Report Greece is written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

The data on corruption in the public sector is collected by a number of public and private institutes on more or less regular basis.

1. Public Sources of Data-collection on Corruption in the Public Sector

Regarding the public institutions, the first to be noted would be the *Ombudsman*.²⁰⁹ The Greek Ombudsman collects data based on the reports made to the institution and the cases that are handled. The Ombudsman's authority is limited to the submission of an annual report to the Parliament and a report on specific cases to the competent minister and public officials. If the research proves any penal or disciplinary infraction, the Ombudsman's services transfer the report to the competent authority since they are legally obliged to inform the relevant authorities, as well as the judicial ones (prosecutors' offices) on having knowledge of any incident of corruption. Although there is no general data collection on the issues of corruption, nor any assessment of the general levels of corruption in the country, the reports elaborated by the Ombudsman could be considered as an important source of information.

Another source of data on corruption is the office of the *General Inspector of Public Administration* (G.I.P.A).²¹⁰ The General Inspector's mission includes, on one hand, the conduct of controls over the public officials and bodies on the proper execution of their duties – including the cases of corruption – and, on the other hand, the coordination and high supervision of the *Inspectors–Controllers' Body for Public Administration* (I.C.B.P.A.)²¹¹ and *Other Inspectors' Bodies* (specific for other Ministries or sectors of the Public Administration). These controlling bodies are hierarchically below the G.I.P.A and are also charged with the mission of controlling the lawful and proper functioning of the public sector.

2. Private Sources of Data-collection on Corruption in the Public Sector

Regarding the private bodies collecting data on corruption, the main one would be the Hellenic Chapter of *Transparency International*.²¹² The aim of *Transparency International Greece*, as stated in the organization's web page is 'to fight against corruption and against the apathy that enables it'.

209 www.synigoros.gr.

210 www.gedd.gr.

211 www.seedd.gr.

212 www.transparency.gr.

II. Legislation dealing with Corruption

There is no instrument in Greek legislation specifically oriented to a ‘global’ confrontation of corruption. Nevertheless, there are a number of laws adopted and / or amended during the last 10 years that try to address the issue, in a somehow indirect manner. We should note that the Law No. 2957/2001 is considered to be the first official Greek legal text that contains a definition of corruption. In reality this law is the ratification of the *Civil Convention on Corruption of the Council of Europe*²¹³ OJ/C of 15.8.1997 N 251/1. It aims at the integration and thus the harmonisation of the internal (Greek) legal order with the aforementioned Convention. This legal text defines ‘corruption’ as ‘*requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.*’ Furthermore, Law No. 2957/2001 establishes the right of indemnification to those damaged by an action of corruption. Additionally, the penal code distinguishes between active and passive bribing of the civil officers, judges and members of the regional councils (articles 159, 235, 236, and 237) and thus sanctions both of them. Besides, related provisions are contained in the articles 2 of Law 2802/2000, 12 of Law 5227/1931, 2 and 3 of Law 2803/2000, 2 and 3 of Law 2656/200 and finally in the articles 11 and 12 of Law 2429/1996.

The laws establishing the Ombudsman, the General Inspector of Public Administration (G.I.P.A), the *Inspectors–Controllers’ Body for Public Administration* (I.C.B.P.A.) and the other Inspectors’ Bodies, can be assessed, in this context, as anti – corruption laws (among other issues they deal with as, for example, the optimisation of the operation of the public administration).

In detail:

Since 2005, there has been an intense debate on the law 3310/2005 governing the measures to ensure the transparency and prevent infringements of the procedure for concluding public contracts, and its amendment by law 3414/2005.

Following the revision of Constitution in 2001, a new law that was aiming to combat corruption was introduced. Law 3310/2005 was implementing Article 14(9) of the Greek Constitution preventing companies interconnected with Greek mass media businesses from participating in public procurement proceedings. The reasoning for adopting this law was to combat corruption. Moreover to the reactions this law caused in the Greek public opinion and the media, the European Commission took action on this legislation which excludes certain companies from public contracts. The Commission considered that this law was contrary to secondary community law in specific to the directives on public procurement, in that it was laying down exclusion criteria that were not provided for in the directives, and were not respecting the equal treatment

213 Strasbourg 4/11/1999; European Treaty Series n°174.

provisions. More specifically, the Commission's reaction aimed at the revision of articles 3 and 4 of the Law No 3310/2005 that contained the exclusion criteria.

After this notice, Greece amended Law No 3310/2005 by Law No 3414/2005. That law provides that both participants and other so-called 'interconnected' persons operating in the media market must systematically submit a series of 'extracts from the judicial record' as well as other certificates and statements to the *Greek National Council for Radio and Television*, otherwise they will be disqualified. The fulfilment of these procedural exigencies will automatically attribute the *transparency certificate* to the participant. However, the Commission considered these necessary requirements contrary to European law, since the *transparency certificate* should be attributed to those not convicted for bribery by the highest court of law, thus with a final judgment which has the force of *res judicata*; that means that simply the relevant extract of the judicial record should be the only condition.

Still, the opinion of the Commission was that this specific decision introduced grounds for exclusion from public procurement in Greece, incompatible with the Community directives (Article 51 of Directive 2004/17 and Article 44 of Directive 2004/18). Additionally, the Community declared that it was hindering the exercise of fundamental freedoms; therefore this decision was contrary to the Community law – both the directives and the EC Treaty – specifying public procurement as a Commission Press Release noted.²¹⁴

After the Commission's letter of formal notice, dated 18.10.2006 and its consequent reasoned opinion on the 15.12.2006, the Greek Parliament proclaimed, on the 31.01.2007, the revision of the disputed sections of the Article 14(9) of the Constitution for the next parliamentary mandate. Still, this action was not satisfactory enough for the European Commission, which therefore decided to take legal action against Greece before the European Court of Justice concerning the compatibility of *Joint Ministerial Decision* No. 24014/2005 on the evidence required for the application of Law No 3310/2005, as amended by Law No 3414/2005.

Further legislation related to corruption includes Law 2477/1997 on the Ombudsman. The function and internal organisation of this institution is regulated by the Presidential Decree 273/1999. With the same Law (2477/1997), the *Inspectors–Controllers Body for Public Administration* (I.C.B.P.A.) was established.

Laws 3074/2002 & 3094/2003, are the ones defining the position of the General Inspector of the Public Administration in the hierarchy of the public sector and its functions and also contain other regulations regarding other aforementioned Control Bodies and the Ombudsman.

214 Source available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/353&format=HTML&aged=0&language=EN&guiLanguage=en>.

Law 3320/2005 contains regulations on public servants and other bodies of the wider public sector. In the same context, Law 3213/2003 is worth mentioning. It stipulates the obligation of political parties, politicians, public servants, mass media owners and other categories of people to publicize disclosed information on their income.

Laws 2331/1995, 2479/1997 and 2655/1998, provide sanction for money laundering and, generally, for any kind of legalization of illicit profits. These laws do not specifically regard the public sector, but can also apply to public servants and other persons of the public sector and the political system.

The presidential Decree 218/1996, which was amended and completed by the presidential Decree 152/1997 establishes a special investigative body of the Greek Ministry of Economy (*SDOE* in Greek), charged with investigating and persecuting any kind of crime of economic nature. However, this body does not take action in the public sector; in relation with the subject at hand, the *SDOE* investigates any kind of transgression of the Greek state's financial interests, or of those of the European Union.

Law 2343/1995 is the one regulating the possibility of establishment of Economic Commissions in the Ministry of Financial Affairs, with the authority to conduct preliminary investigations on all civil servants' illegal acts, based on relevant information and indication.

The Civil Servants' code, Law 2683/1999, in its Chapter on Disciplinary Infractions and their Punishment, includes the provisions on bribery and other misconducts of the public servants. Furthermore, this legal text includes the frequent control (almost every two years) of civil servants' financial situation (article 28). In addition, the article 107 characterizes as a disciplinary infraction any action of corruption. Besides, the new and rather recent Civil Servants' Code of 2007 (Law 3528/2007) confirms the aforementioned provisions.

Regarding the issue of the prosecution of cases of corruption, the public authority is obliged to prosecute when the evidence is considered substantial, as in every other penal infraction. Public servants are also legally obliged to inform their supervising authorities, as well as the judicial ones (prosecutor's office) upon having knowledge of any incident of corruption.

In the private sphere, the articles 11 and 12 of Law 5227/1931 sanction bribery. In the same context, Laws 2190/1920 (article 59) and 3190/1955 (article 60 paragraphs 9 and 10) provide for the sanction of both active and passive bribery in the cadre of the procedure of voting in the general assembly of an SA and of an LTD.

In addition to that, according to the Common Position of the European Union of the 22.12.1998 against bribery in the private sphere, all member-states have to take the adequate measures against both types (passive and active) of bribery. Unfortunately Greece has not yet complied

with these obligations; neither has the country yet ratified the Penal Convention of the Council of Europe on corruption²¹⁵, or the *United Nations Convention on Corruption* of 31.12.2003.

III. Control and Sanctions

The administrative bodies charged with the duty to prevent – fight corruption in the public sector are the ones mentioned before; namely:

- The *General Inspector of Public Administration*,
- *Inspectors–Controllers’ Body for Public Administration* (I.C.B.P.A.),
- Other Inspectors’ Bodies (specific for other ministries or sectors of the public administration),
- the Ombudsman.

Apart from the above-mentioned control bodies, there are also parliamentary mechanisms for the control of presumed acts of corruption.

First of all there is the *Special Permanent Committee on Institutions and Transparency*²¹⁶, established upon the Parliament's decision, following a proposal of the government or the Presidents of the Parliamentary Groups. This committee has the duty to control the legality of the acts of MPs and members of the government. Any Member of Parliament can address an issue to this committee, following the procedure that is described in the next paragraphs. Another special form of parliamentary supervision appointed to this committee is also *the control over the independent authorities*.²¹⁷ Every October, every Independent Authority (hence, the Ombudsman for what interests here) submits to the President of the Parliament a report with its proceedings. The *Special Permanent Committee on Institutions and Transparency* examines the report and publishes its findings, thus approving it.²¹⁸

Furthermore, other means of parliamentary control over corruption are the following:

- Questions and current questions
Parliamentarians have the right to submit written questions to the ministers regarding any public issue, including informalities in the management of public issues. The ministers are required to reply in writing within twenty five days.²¹⁹ For questions concerning current issues, every parliamentarian has the right to submit a question addressed to the Prime

215 The Penal Convention has come into force since 1st July 2002.

216 The committee's title is stated as translated in the web page of the Greek Parliament.

217 Art. 101A Const.

218 Although the Committee has the right to disapprove the report, there has been no such case until now.

219 Art. 126 to 128 of the Parliamentary Standing Orders.

Minister or the ministers, who answer orally. Current questions are debated by the plenary session in three sittings every week, as well as during the recess period.²²⁰

- Interpellations and current interpellations

Interpellations aim at the monitoring of the government for its actions and omissions. parliamentarians who have submitted questions can alter them to interpellations if they deem that the reply of the minister was not sufficient. The interpellations are debated by the plenary session. If there are more interpellations for the same issue, the Parliament can decide their simultaneous discussion, or even the generalization of the discussion. For matters regarding current issues, every parliamentarian has the right to submit a current interpellation. The current interpellations are debated every Monday in plenary session as well as in some sittings of the recess period. As a general rule, the procedures dictated by the Standing Orders also apply to the current interpellations.²²¹

- Applications to submit documents

Parliamentarians have the right to request in writing from ministers to submit documents related to a public issue. The minister is required to submit the requested documents within a month. No documents relating to diplomatic, military or pertinent to national security documents can be submitted.²²²

- The establishment of investigation committees

Investigation committees are instituted for the assessment of an issue, following the proposal of one fifth of the total number of parliamentarians (60 parliamentarians) and the vote of the plenary session, which is determined by the absolute majority of the present Parliamentarians and cannot be smaller than two fifths of the total number of parliamentarians (120 votes). Assessment committees possess all the responsibilities of any other examining authorities and of the public prosecutor.

- Ad hoc Parliamentary Committees for the conduct of preliminary examinations.

For the expulsion of a person who is or was a member of the government or an undersecretary, an indictment proposal and a judgment of the Parliament are necessary. The proposal is submitted by at least thirty (30) parliamentarians and outlines the punishable actions or omissions, in accordance with the law, on the responsibility of ministers. The proposal is registered on the agenda of the plenary session and the debate is limited to the taking of a decision, which is determined by the absolute majority of the total number of parliamentarians (151 parliamentarians), on whether or not to institute an *ad hoc* parliamentary committee for the conduct of a preliminary examination. Once established, this committee has all the responsibilities of the public prosecutor, when he conducts a preliminary examination.

220 Art. 129 to 132 of the Parliamentary Standing Orders.

221 Art. 134 to 137 of the Parliamentary Standing Orders.

222 Art. 133 of the Parliamentary Standing Orders.

The media has a very active role in the disclosure of irregularities (scandals) and the subsequent raise of public awareness. Especially in a country like Greece, where the issues of clientelism, corruption, etc. are almost always in the ‘first line’ of public interest and debate, the media are always alert to any kind of information that could be presented as a scandal (or be one of course). In the same context, the public opinion is always sensitive in such cases and ready to maintain a public debate for weeks after its disclosure.²²³ Nevertheless, there is rarely any ‘striking’ outcome in the cases that are made public, as in most of the cases the whole issue is consumed in political ‘battles’ and public discourses.²²⁴

The academia does participate in the public debate on corruption issues, especially when legal measures are concerned, but do not have the political power (or the will) to play a more active role. As for the NGOs, their social visibility is lower, despite their effort to be active participants in the debates and the actions against corruption.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

The status and the organisation of the public administration are stipulated in various legal texts. The general framework is included in the Greek Constitution.²²⁵ Another important legal text is the Public Servants' Code²²⁶, where the detailed structure and function of the public administration is described.

Under the provisions of the Greek Constitution, the public servants are the ‘... *the executors of the will of the State and shall serve the people, owing allegiance to the Constitution and devotion to the Fatherland*’.²²⁷ The public servants have all the civil rights of any other citizen²²⁸, including the right to strike which, as in any other liberal European Constitution, is safeguarded in the Constitution and the Public Servants' code. Nevertheless, the Constitution also permits that the right to strike is limited by law in the case of public servants and employees of local

223 For a more detailed comment on the general public, its opinion and its position on corruption see part V.

224 There are many cases that are even brought to justice or reach to be examined by official committees, but the results – punishment, legal amendments, etc. – are always below the expectations generated by the previous discourse.

225 Section VI: Administration (Art. 101–104).

226 Law 2683/1999.

227 Chapter Two: Status of Administrative Agents, Art. 103 par. 1 Const. On the contrary, strikes of any nature are prohibited in the case of judicial functionaries and those serving in the security corps. There could also be noted here that the provisions of this article, also apply to the staff of Parliament (for more detail, see below, Title II. Members of the National Parliament).

228 Art. 45–46 of the Public Servants' code, with a special mention to the right of criticism of the actions of the administration and the prohibition of any measures against him/her because of such criticism.

government agencies and of public law legal persons, the operation of which is of vital importance in serving the basic needs of the society as a whole. These limitations, however, may not be carried to the point of abolishing the right to strike or hindering its lawful exercise.²²⁹

Additionally, the public servants are obliged to follow the orders of their superiors, maintain secrecy on all confidential subjects in the course of their duties and respect the civil and human rights of the people he or she serves, as part of their work.²³⁰

Regarding special privileges that the public servants have, the following can be noted.

First of all, there is the fact that for the employees of the public sector, the various kinds of rights (like leaves of absence, working times, overtime remunerations, etc.), which in principle are granted to all employees, are more guaranteed and respected in the public sector than in the private. They also receive productivity bonuses and some other compensations like remuneration for serving far from their place of living.

Apart from that, the public servants do have some more privileges regarding special kinds of leaves of absence like the right of a mother or father of an underage child to work 1 or 2 hours less, or other leaves of absence for educational and professional reasons. The public servants also have the right to receive low interest loans from a special fund.

In what health care and pensions are concerned, the employees of the public sector do not have any important additional benefits, with maybe two exceptions. First, that the pensions they receive are somewhat higher than the average pension in Greece²³¹ and second that, due to a plan initiated during the last years, the government is giving extra motives to older employees of enterprises under privatization, in order for them to decide to retire.²³²

Finally, the public servants cannot be removed from their office, as long as the position they occupy exists.²³³

229 Art. 23 par. 2 Const.

230 Art. 25–27 of the Public Servants' code. It may also be of interest to note two details of the art. 25 of the above mentioned Code. First that, in case that a public servant receives an order that is obviously illegal and/or unconstitutional, he/she has the right to refuse to obey and the obligation to report the fact to the person who is superior to the one that issued the order. Second, if the public servant disagrees with an order he/she still has the obligation to comply, but also the right to report, in writing, the reasons of the disagreement.

231 In the Greek pensions system, there are many providers of pensions, almost for every category of workers. In the light of that, the level of the pension for any employee depends on the prosperity of their respective carrier, more than on them being public or private employees.

232 The whole issue is a little complicated. There is an ongoing process of amendments to the Greek pensions system, which will more likely include reductions of the pensions, increase of the age limit and other, not so favourable, provisions. This is considered an effort to reform this system which is at a point of crisis (some speak of the possibility of a general collapse in a few years). In the light of this, the above mentioned motives are based on the right of the employees to retire with the current, more favourable, provisions.

233 Art. 103 par. 4 Const., Art. 39 par. 1 of the Public Servants' code.

It is of common acceptance in Greece that a position in the public sector is the best way to secure one's future. The combination of the permanence, the absolute respect of working hours, the various possibilities of leaves of absence and other privileges with an economic remuneration that is above the average in the country, contributes to the appeal of the public sector. This is especially true regarding the lower and middle ranks of the public sector.²³⁴ As for higher ranks, the income of the employees of the private sector can be significantly higher but, surely with more working hours, more competitiveness and thus insecurity, etc.

The public servants are divided into seven levels (D to A and then the Directors and General Directors). Each employee enters the service in one of the categories D or F, depending on their educational status and other prerequisites, except for the graduates of the *National School of Public Administration*, who enter service at the B rank. The last two ranks have no decision-making power.

The privatization process is ongoing in Greece for almost the last 10 years and regards mainly the public transport, telecommunication and electricity services and some banks.

b) Allocation of Financial Resources

The General Inspector of Public Administration is the main controlling body for the public administration, with the mission to guarantee the order and effective operation of public administration, the follow-up and evaluation of the work of the *Inspectors-controllers Body for Public Administration* and all the particular Bodies and Services of Inspection and Control of public administration, as well as the disclosure of phenomena of corruptness and misconduct.

According to the article 1 of Law 3074/2002, the General Inspector of Public Administration:

- Orders the realisation of inspections, controls and researches from:
 - the *Inspectors – Controllers' Body of Public Administration*,
 - the particular Bodies and the Services of Inspection and Control of the ministries, the regions, the institutions of local self-government (of first and second level), their enterprises, the legal persons of public right, the government owned legal persons of private right, the public enterprises.
- Supervises the actions of SEEDD and the particular Bodies of Inspection and Control.
- Supervises the course of controls held by the above Bodies and is informed on the conclusions whenever he wishes.
- Evaluates the work of the above Bodies of Inspection and Control.
- Carries out controls, retests, inspections and researches

234 Generally speaking, the starting wage for people with only the Basic Education Degree is the same in the public and the private sectors (approx. € 600–700). Nevertheless, the bonuses and other additions provided for the public servants (and not always awarded to the people of the private sector), raise this sum.

- Carries out control of the annual statements of economic situation of all the members of the bodies of inspection and control.
- It checks charges that are submitted in his office with regard to phenomena of misconduct in the institutions of 2nd article of 1 [N].3074/2002 and in the Bodies of Control of these.
- It chairs the *Coordinative Body of Inspection and Control* which it has aim the follow-up and the co-ordination of inspections and controls of particular bodies and services of inspections and control.²³⁵

Finally with the article 12 of Law 3320/2005, the General Inspector of Public Administration acquired the right to be informed on the course of penal prosecutions practised against employees or bodies of public institutions.

The *Inspectors-Controllers Body for Public Administration* (I.C.B.P.A.), was established by Law 2477/1997 as a body for the internal control of the public administration. I.C.B.P.A. comes under the Minister of Interior, Public Administration and Decentralization, without any possibility to interfere in its controlling work (Law 2477/1997). The I.C.B.P.A. started its operation in 1998, the same year its method of organization and operation was determined (Presidential Decree 247/1998).

The unimpeded operation of the Body is secured by the personal and functional independence of its personnel. More specifically, the people serving with the I.C.B.P.A. are not examined, prosecuted or sued for any opinion they express during the exercise of their duties, with the exception of infringing secrecy cases and breach of the duty of confidentiality.²³⁶

The head of the I.C.B.P.A. is the Secretary General, who is politically appointed by means of joint decision of the Prime Minister and the Minister of the Interior, Public Administration and Decentralization. The Secretary General is assisted by 8 Special Inspectors, 80 Inspectors-Controllers and 30 Assistant Inspector-Controllers. Permanent Civil Servants of university level education with long term experience are chosen as Inspectors-Controllers and Assistant Inspector-Controllers for a term of three years that can be extended.

The mission of the I.C.B.P.A. is to secure the harmonious and effective operation of the Public Administration by focusing to phenomena of:

- Corruption,
- mismanagement,
- non-transparent procedures,

235 The role of General Inspector of Public Administration was strengthened considerably with the article 26 of the law 3200/2003 on his disciplinary jurisdiction. More specifically, the General Inspector of Public Administration can practise or order the exercise of disciplinary prosecution or the reception of other administrative measures.

236 Law 3074/2002 and Law 3260/2004.

- ineffectiveness,
- low productivity.

The I.C.B.P.A is entitled to:

- Carry out inspections, special controls and researches.
- Gather the required evidence for the filing of penal and disciplinary prosecutions.
- Proceed to the exercise of disciplinary prosecutions and refer offenders to the Public Prosecutor's Office for due assessment of their illegal acts.
- Assess the financial position of the officials of the services inspected.
- Conduct inquiries/preliminary examinations following an order by the competent public prosecutor.

The I.C.B.P.A. has competence of control over virtually the totality of the public administration in its widest sense (including for example any government owned legal persons of private right).

Finally, there are other Inspectors' Bodies (specific for ministries or sectors of the public administration), like for example:

- The Internal Affairs of Greek Police.
- The Internal Affairs Service of the Ministry of Mercantile Marine.
- The Directorate General of Financial Inspections.
- The *Coordinators - Fiscal Controllers* of the Ministry of Economy and Finances.

c) **Public Services Law and Human Resources in the Public Administration**

Although the permanency of the public servants protects them from dismissal related to changes of government, both the political parties and the elected governments maintain some influence in the new appointments of public servants.

Of course there have been measures taken to tackle such clientelism, with the most important of them being the institution of the *High Council of Choice of Personnel* (ASEP in Greek). ASEP is an Independent Authority, not subject to any governmental or other control and is stipulated in the Constitution. It was established with Law 2190/1994.²³⁷

The Competences of the ASEP, apart from the selection of the staff of the public sector, include also the control over staffing of the public sector when such staffing is not directly handled by the authority, the conduct of written exams for the teachers of the Greek educational system, the

237 It constitutes of 24 members (Chairman, 2 Vice-presidents and 21 Advisers). Its members are persons of scientific prestige and professional sufficiency, mainly persons that have been supreme judges, high ranked public officials, professors of the University, or highest executives of public organs or other legal persons of the public sector.

general supervision of tendering procedures in the public sector and the prerequisites demanded, etc.²³⁸

Nevertheless, as already mentioned, the political parties and the governments, do maintain some influence on the staffing of the public sector, through various ways of bypassing or avoiding the strict legal procedures controlled by the *ASEP*. For example, not all kinds of tenders of staffing have to be handled by the *ASEP*. Another, more important, relevant case is the promulgation of a Law by the current government which permits the appointment of public servants through oral interviews with the candidates. The interviews will be conducted by the *ASEP*, but the impossibility of control over the procedure due to the lack of documents, has led to a public discourse on the legality of such provisions and, of course, to the suspicion that this is simply an effort of the government to favour its political 'clients'.²³⁹

Undue influence in the public sector is controlled and sanctioned by both the Penal Code²⁴⁰ and internally, by the *Public Servants' Code* (Law 2683/1999), which has its Part E dedicated to the disciplinary provisions for the public servants.

The Penal Code includes provisions on various forms of misconduct by public servants of all the sectors of the public administration, the security forces and the judiciary. Among the crimes punished one can see: bribery, extortion, unlawful denial of service, crimes regarding trust, etc. The punishment for these crimes depends on the seriousness of the offence and could be from 3 months (for example for undue collection of tax or other public money²⁴¹) to 10 years of imprisonment (for example in aggravated cases of embezzlement²⁴²). Bribery of a public servant is punished with one year of imprisonment.²⁴³

On the other hand, the *Public Servants' Code*²⁴⁴, also includes provisions on unlawful actions like acceptance of gifts or bribery, serving personal interests by using the public servant's position, etc. The disciplinary punishments provided for are:

- written reprobation,
- fine of up to 3 months of the employee's salary,

238 The choice of personnel, according to the aforementioned Law 2190/1994 (as amended), is made through written exams, or through the application of objective criteria, or through the evaluation of formal qualifications (supported by official documents, degrees, etc), but it is a fact that there are always ways to bypass the legal procedures in order to influence staffing in the public sector.

239 Even members of *ASEP* have expressed their doubts on the constitutionality of such provisions.

240 Chapter 12 on 'Crimes regarding Service', Art. 235 – 263A of the Greek Penal Code (PC).

241 Art. 244, PC.

242 Art. 256, PC.

243 Art. 235–236, PC. The first of these articles refers to the cases when the result of the bribing is an action of the public servant which is otherwise legal, but it is performed in undue time, or despite the absence of typical prerequisites of the civilian who offers the bribe, while the second one refers to bribery for illegal actions by the public servant.

244 Art. 106–152, where all the procedural provisions are also included.

- impossibility of promotion for a period of one to five years,
- demotion by one rank,
- temporary suspension from three to six months without payment, and
- dismissal.²⁴⁵

It has to be also noted that, any disciplinary process does not exclude the possibility that the public prosecutor takes further legal actions against the perpetrator.²⁴⁶

d) Privatization

There haven't been any known cases of corruption during privatization processes worth noting. It is however a fact that each privatization process of the last decade is accompanied by allegations (of the political parties of the opposition and the media) of 'selling off' public property.

2. Members of the National Parliament

a) Legal Position within the National Legislation

There are numerous legal provisions regulating the issues of the MPs in Greece. The most fundamental worth noting would be the Constitution²⁴⁷, the Law 3023/2002 (see also below, section IV on political parties) and the Standing Orders of the Greek Parliament.

The procedure for the nomination of the candidate MPs is principally regulated in the electoral Law²⁴⁸, although there are relevant provisions in other legal texts as well. First of all, the Constitution stipulates that in order for someone to be nominated he or she must be a Greek citizen, have the legal capacity to vote and have attained the age of twenty-five years on the day of the election.²⁴⁹

Furthermore, each candidate MP must be proposed as such by at least 12 citizens with right to vote. After the proposal and 11 days after the official procurement of the elections by the President of the Republic, the nominations are published under the decision of the competent

245 Due to the permanency of the public servants, the law is very clear on the actions that can be punished with dismissal. It stipulates that dismissal can be imposed in case of violation of, among others, a) defiance of the Constitution, lack of devotion to Democracy, b) Breach of Covenant by the Penal Code or other special laws, c) Acceptance of any material favour or return that emanates from a person whose affairs the public servant handles or will handle, at the exercise of his official duties, d) Violation of secrecy of service. It is also permitted to dismiss a public servant for any offence if a) during the last two years before the current offence, there have been imposed at least three (3) disciplinary sentences superior to the fine of one month's salary or b) during the last year before the current offence a disciplinary sentence superior of the fine of one month's salary have been imposed for the same offence.

246 Art 114, Public Servants Code.

247 Section III, especially Art. 51–63.

248 Presidential Decree 92/1994.

249 Art. 55 par. 1.

court. The same court can disapprove the candidacy if there is any incompatibility or lack of prerequisites.²⁵⁰

For the discharge of their duties, MPs are entitled to receive compensation and expenses, the amount of which is determined by the Plenum of the Parliament. They also enjoy exemption from transportation, postal and telephone charges, the extent of which is again determined by decision of the Parliament in plenary session.²⁵¹

An MP can not be prosecuted or in any way interrogated for an opinion expressed or a vote cast by him in the discharge of his parliamentary duties. He or she may be prosecuted only for libel, according to the law, after a special permission granted by the Parliament. An MP is neither liable to testify on information given to him or supplied by him in the course of the discharge of his duties, or on the persons who entrusted the information to him or to whom he supplied such information. Additionally, the MPs cannot be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament.²⁵²

Regarding incompatibilities with other public positions and private positions, the Constitution prohibits the MPs from the capacity of members of a board of directors, governor, general manager or their alternates, or those of employees of commercial companies or enterprises enjoying special privileges or subsidies by the state, or to which concession of public enterprise has been granted.²⁵³

MPs may neither undertake commissions, studies, or the execution of works for the state, local government agencies or other public law legal persons or of public or municipal enterprises. Violators of the above forfeit their parliamentary office and related acts shall be considered null and void. Nevertheless, there is no cooling-off period stipulated in the Greek legal system.

b) Additional Incomes of Members of the National Parliament

With the exception of the above-mentioned incompatibilities, the MPs do have the right to receive additional income from the management of their personal assets. They also have the obligation to publish such income. As stipulated by the Law 2429/1996, a report on the financial status must be submitted by:

- the members of the government,
- the MPs,

250 Art. 32-33 of the Presidential Decree 92/1994.

251 Art. 63 Constitution.

252 Article 61–62 Constitution.

253 Those falling within these provisions must, within eight days of the day of election, state their choice between their parliamentary office and the above stated duties. Failing to make the said statement within the set limit, they shall forfeit their parliamentary office *ipso jure*. The same applies for those that accept such duties after their election, Art. 57 Const.

- the elected or appointed officials of the public administration and the local governments,
- the judges,
- other public officials mentioned in the Law,
- the owners of media enterprises and the journalists.

The report is filed for the first time, 30 days after the election or appointment and, after that, annually each April. The obligation to file such a report remains in force for three years after the person has left the position. The reports extend to the assets of all the members of the family of the person obliged to declare such assets. The reports of the political persons are sent to the above-mentioned *Special Permanent Committee on Institutions and Transparency*, while the ones from the officials of the public administration, the local governments, etc., are audited by the vice-chief prosecutor of the Supreme Court. Those entitled to perform the audit publish a report with the findings of the audit. In the case that one of the above-mentioned persons is caught obtaining personal profit by taking advantage of his or hers position, the punishment is at least 3 years of imprisonment, a fine of the same value as the profit and deprivation of the right to vote for a period of 1 to 5 years.²⁵⁴

c) **Undue Influence**

There are no special criminal provisions of bribery for MPs. the Art. 235 – 263A of the Greek Penal Code (Chapter 12 on ‘Crimes regarding Service’), also apply for the MPs, as for any other public office-holder or civil servant, etc. Of course, as the MPs have the privilege of immunity, being found guilty of a crime presupposes that they have lost their status of MP through the process described before. Furthermore, the Penal Code does include the loss of the political rights for specific categories of penal infractions (like aggravated fraud for example).

3. Political Public Office-holders on the National Level

a) **Legal Position within the National Legislation**

The legal position of the public office-holders is mainly governed by the following legal texts:

- The Constitution (Art. 83-86, where the below laws are provided for),
- Law 3126/2003 (amendment of the older 2509/1997, on the criminal and civil Liability of the Prime Minister and the members of the government),
- The above-mentioned Law 2429/1996, which also applies to the members of the government, apart from the MPs.

²⁵⁴ Art. 24-29, Law 2429/1996.

Due to the fact that, in the Greek state, the MPs are appointed in the ministerial and other governmental positions by the Prime minister, their general status, their privileges and obligations are the same as with any other MP.

b) Additional Incomes of Political Office-holders

As stated above, the members of the government have the same privileges, rights and obligations with the MPs and other public officials. Therefore, they also have the same incompatibilities with the MPs.

Anyway, holding another occupation is not common at all for a political office-holder, as they have neither the time, nor the need for such thing. Neither is there a cooling-off period stipulated in any legal provision.

c) Undue Influence

Regarding the criminal liability of members of the government, there exists the Law mentioned above; 3126/2003 (amendment of the older 2509/1997). It is not a law specific for corruption, but refers to any criminal and / or civil liability of ministers and other members of the government. The law mainly regulates the process for the charges and other procedural issues. For the essence of the case, the Penal and Penal Procedural Codes are still used.

There is also the constitution, which stipulates that only the Parliament has the right to charge serving or former members of the Cabinet and Undersecretaries before an *ad hoc* court, according to the statutes on the liability of ministers.

Prosecution, judicial inquiry or preliminary judicial inquiry of the above persons for actions or omissions committed during the discharge of their duties shall not be permitted without a prior resolution of Parliament.

If in the course of an administrative inquiry evidence arouses establishing responsibility of a member of the Cabinet or an undersecretary, those in charge of the inquiry shall, after its termination, forward the evidence to Parliament through the competent public prosecutor. Only the Parliament is entitled to suspend any criminal prosecution.²⁵⁵

255 Art. 86 Constitution. This court is presided by the President of the Supreme Civil and Criminal Court and is composed of twelve judges chosen by lot by the Speaker of Parliament in public sitting from among the members of the Supreme Civil and Criminal Court and the Presidents of Civil and Criminal Courts of Appeal who held office prior to the accusation, as specified by statute.

4. Political Parties

a) Legal Position within the National Legislation

The Greek political parties are unions of people and have a special legal status foreseen in the Constitution (Art. 29 par. 1) and the Art. 29 par. 6 of the Law 3023/2002 (amendment of the older 2429/1996).

b) Revenues of Political Parties

The political parties obtain state funding, as stipulated in the Constitution (Art. 29 par. 2), which provides: *'The financial support of parties by the State and the publicity of electoral expenses of parties and parliamentary candidates may be provided by law'*. Furthermore, the specific provisions on the state funding of the political parties and the control of their revenues and those of the MPs and candidate MPs are included in the aforementioned Law 3023/2002.

By this law, the political parties receive state funding: a) annually as their regular funding and b) a special electoral funding, each time elections are conducted. The regular funding sums up to a 1.02% of the regular state incomes as foreseen in the annual state budget, while the electoral funding is a sum of 0.22% of the above incomes.

The eligible political parties are: a) The parties or coalitions that are represented in the parliament, b) The ones represented in the European parliament and c) the ones that, during the last elections, have had candidates in at least the 70% of the electoral counties in which Greece is divided and have obtained at least 1.5% of the valid votes. The funding is distributed among the above parties (or coalitions) as follows:

- For the regular funding, an 80% goes to the parties (or coalitions) of the above case a, while 10% goes to the parties (or coalitions) of the cases b and c.
- For the electoral funding, a 60% goes to the parties (or coalitions) of the above cases a and b, while 40% goes to the parties (or coalitions) of the case c.

The Law also determines the mathematical equation by which the funding is distributed among parties (or coalitions) of the same category, depending on the votes obtained during the last elections.²⁵⁶

The political parties can also obtain private funding, except for the cases forbidden by the same law. Namely, they cannot receive funding from:

- Non-Greek citizens,
- Legal entities of Public or Private Right (Companies),

²⁵⁶ Art. 1 - 3 of the Law 3023/2002.

- Local administration institutions,
- Owners of any kind of media.

The private funding of a party (or coalition) cannot exceed the € 15,000 from each person/year, nor the € 3,000 per person/year for the candidate MPs (during election time).²⁵⁷

c) **Legislation on Transparency of Political Party Funding**

The same above-mentioned law is the one that contains all the provisions on transparency of political parties funding. The fourth Chapter of the Law, titled '*Publicity of the financial state of political parties and candidate MPs*',²⁵⁸, stipulates that the political parties that receive state funding must:

- Maintain a special registry of incomes and expenses. The same obligation exists for the candidate MPs who were elected, after their election.
- Issue receipts for any sum superior to € 600 received (apart from the state funding)
- Publish their annual economic balance to at least two major national newspapers and submit a copy to the special control committee of the Parliament.²⁵⁹

The fifth Chapter of the same Law²⁶⁰ stipulates the processes of control exercised by the *Special Permanent Committee on Institutions and Transparency* over the financial transactions and status of the political parties, the coalitions and the MPs and candidates. The committee produces a report for all the above and submits it for approval to the President of the Republic and the Minister of Interior, Public Administration and Decentralisation. A copy is also sent to all the audited parties and persons. The committee is entitled to perform any logistic or other control, ask for any relevant evidence, interview people, etc.

The infraction of the provisions of the law may lead to a lawsuit against the party or candidate, carried by the *Supreme Special Court*.²⁶¹ A decision by this Court may lead to the imposition of a fine to the party or the candidate, the pause of the state funding for a year, or even to the expulsion of the MP from the mandate.

257 Art. 8 of the Law 3023/2002.

258 Art. 15–20 of the Law 3023/2002.

259 As the political parties that do not receive state funding are concerned, they also have to publish their annual Balance to two major national newspapers and submit a copy to the auditing committee.

260 Art. 21–22 of the Law 3023/2002.

261 The Supreme Special Court is provided for in the article 100 of the Constitution. It is not a permanent court and it sits only when a case belonging to its special competence arises. It is regarded as the supreme 'constitutional' and 'electoral' court of Greece. Its decisions are irrevocable and binding for all the courts, including the Supreme Courts.

V. General Comments

As already stated above, the question of corruption is one of the most important ones in the daily agenda in Greece (both the political and the social one), as well as a key factor in order to analyse and understand the social and economic processes in the country. The main fields where corruption is more observed or, at least, there are more allegations of corruption, are those of public infrastructure tenders, bribery of medics and hospitals provisions tenders, tax evasion and Cadastre – Urban Planning Bureau (issue of building permissions, evaluation of real estate, etc).

There are a number of factors that make the issue of corruption in Greece a very important and very complicated one:

First of all, there are historically established practices of clientelism among the Greeks (both as users/clients of the administration and as public servants). This clientelism has various historical explanations, but in any case, it has always functioned as a substitute to the lack of a welfare state in Greece.

Secondly, but strongly connected to the previous, there is a deeply rooted belief of the Greek people (and justified to a certain extent), that the state does not provide enough – in services and/or wages – for the money it receives from its citizens (through taxes, etc.). In this context, the average Greek citizen and/or businessman tries to compensate for that by tax evasion, bribery and any other means of getting a job done.

Thirdly, the large extent of bureaucracy and the complexity of the legal system have two major side effects. On the one hand, they leave margins for misconduct and illegality and, on the other hand, they provide a motive for such conducts (by representing a non-rational system that no one can understand or accept).

Lastly, there is a lack of consensus among the political forces in Greece, both on the roots of corruption and on the appropriate measures to combat it. It seems that the Greek political parties are consumed in an endless interchange of accusations but, at the time of concrete measures, there is always a lot left to be desired.

All in all, despite the vast public interest on the issue and all the relevant verbalism, the issue of corruption has to do with the political motivation to combat it, as well as with the public disposition to back any legal or other changes with a change of attitude towards the functions that the public administration must and can perform.

It would be unfair of course to argue that no progress has been made and that nothing can be done. During the last decade, Greece has experienced a proliferation of institutions, committees and other bodies charged with the combat of any kind of corruption. There have been some results and some changes of attitude, but the more drastic changes of a culturally defined phenomenon like corruption would need more time to produce results.

Report Hungary²⁶²

262 We would like to thank Eszter Polgari, legal assistant, Human Rights Information and Documentation Center (INDOK), Budapest, for answering the questionnaire and supporting the realization of the Report Hungary, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

Public sources of data-collection are:

- State Audit Office – www.asz.hu,
- the Governmental Supervisory Office (under the Prime Minister's Office) – www.meh.hu,
- Ministry of Justice – www.im.hu,
- National Security Office – www.nbh.hu,
- Hungarian Customs and Finance Guard – www.vam.gov.hu,
- Tax and Financial Audit Office (APEH) – www.apeh.hu,
- Department for the Fight against Organized Crime of the National Police Headquarters – www.orfk.hu,
- Council of Public Procurements – www.kozbeszerzes.hu.

2. Private Sources of Data-collection on Corruption in the Public Sector

Private sources of data-collection are:

- Transparency International – www.transparency.org
- The American Chamber of Commerce in Hungary – www.amcham.hu
- Constitutional and Legal Policy Institute (COLPI) - http://www.osi.hu/colpi/N5e.html#COLPI_ACI
- Gallup Monitor – www.gallup.hu

Generally, these data are of public interest, hence anyone can request them in writing from the competent authorities. The yearly reports of the State Audit Office, the National Security Office and the Governmental Supervisory Office are public; they are accessible on their websites. Similarly, the website of the Hungarian Customs and Finance Guard offers comprehensive tables on the results of the fight against corruption. The private bodies collecting data and drafting reports on corruption in Hungary present their findings either on their websites (see: Gallup Monitor) or at conferences (e.g. COLPI).

II. Legislation dealing with Corruption

The legislation dealing with the fight against corruption comprises the following laws:

- Act no. CXXXIV of 2005 on the promulgation of the United Nations' Convention against Corruption signed on 10th December 2003 in Medina.²⁶³

263 2005. évi CXXXIV. törvény az Egyesült Nemzetek Szervezete Meridában, 2003. december 10-én kelt Korrupció elleni Egyezményének kihirdetéséről.

- Act no. CXV of 2005 on the promulgation of the Convention on the fight against corruption involving officials of the European Communities and officials of the member states of the European Union signed on 26th May 1997.²⁶⁴
- Act no. XXIV of 2003 on the amendments of acts related to the more public and transparent use and control of public funds and public property.²⁶⁵
- Decree no. 1023/2001. (III.14.) of the Government of the Republic of Hungary on the governmental strategy against corruption.²⁶⁶

Despite the existence of the above-mentioned legislation, corruption is not defined in Hungarian law. Title VII of Act no. IV of 1978 on the Criminal Code²⁶⁷ contains the crimes against public justice: Articles 250-255/B deal with the crime of bribery and Article 256 criminalizes influence peddling.

In the case of bribery, the prosecution does not have a discretionary power to prosecute if the suspicion of committing the crime is well-established. The start of the investigation is not dependent on any private motion, and any public official who has knowledge of an undetected act of bribery must report it to the authorities. The failure to do so constitutes a crime. The investigation is the task of the prosecution authority.

The Hungarian legal system provides for the right of access to administrative files for individuals who are not concerned in those cases. The detailed rules are contained in Act no. XC of 2005 on the Freedom of Information by Electronic Means.²⁶⁸

III. Control and Sanctions

The specific administrative bodies charged with the duty of preventing and fighting corruption in the public sector are the following:

- The Governmental Supervisory Office (under the Prime Minister's Office),
- the State Audit Office,
- the Department for the Fight against Organized Crime of the National Police Headquarters,
- the National Security Office,
- the Tax and Financial Audit Office (APEH).

264 2005. évi CXV. törvény az Európai Közösségek tisztviselőit és az Európai Unió tagállamainak tisztviselőit érintő korrupció elleni küzdelemről szóló, 1997. május 26-án kelt egyezmény kihirdetéséről.

265 2003. évi XXIV. törvény a közpénzek felhasználásával, a köztulajdon használatának nyilvánosságával, átláthatóbbá tételével és ellenőrzésének bővítésével összefüggő egyes törvények módosításáról.

266 1023/2001. (III.14.) Korm. határozat a korrupció elleni stratégiáról.

267 1978. évi IV. törvény a Büntető Törvénykönyvről.

268 2005. évi XC. törvény az elektronikus információszabadságról.

Apart from the above-mentioned bodies, the cases of corruption in the public sector can also be subject of parliamentary control mechanisms.

The Parliamentary Committees of Inquiry are ad hoc bodies, regulated by the Standing Orders of the Parliament:

- The Committee of Inquiry has to be set up on the motion of at least one-fifth of the Members of Parliament (MPs).
- The Committee of Inquiry has to publish a report on its activities, which shall contain the task of the Committee, the procedural rules and means of inquiry, the factual and legal findings, the evidence on which the findings are based, the observations of the person affected by the inquiry, and the proposed measures, if the Committee considers it necessary.
- The parliamentary political parties have a proportionate representation in the Committees; the opposition parties nominate the president of the Committee.

However, the Constitutional Court, in its decision no. 50/2003 (XI. 5.), declared an unconstitutional omission as the Parliament failed to provide for the necessary guarantees in the procedures before the Committees of Inquiry. The Standing Orders have not been amended yet.

Examples:

- In 1999, the Parliament set up a Committee of Inquiry to investigate the possible links between corruption and the organized crime related to the oil affairs.
- In 2004, a Committee of Inquiry was established to investigate the role of some members of the Orbán Government (1998-2002) in some dubious financial transaction of some state enterprises. The Committee did not publish its report; it ceased working in May 2006.
- In 2003, a Committee of Inquiry was set up to investigate the high scale fraud at the Bank K&H, and the personal responsibilities of the then Prime Minister, Péter Medgyessy. In this case, the prosecution authority started an investigation too, it is pending before court.

As a Committee of Inquiry has to be set up on the request of one-fifth of the MPs, it is an effective means in the hands of the parliamentary opposition. All the parliamentary parties have proportionate representation in the Committees; the president belongs to the opposition parties. The Committees of Inquiry prepare a final report on their activity, the Parliament votes on it.

According to Article 22 (3) of the Constitution, upon the written request of one-fifth of the MPs, an extraordinary session of the Parliament shall be convened.

Any Member of the Parliament may address questions to the government or any member of the government on an issue falling within the authority of the government or the respective ministry (Article 27 of the Constitution).

Article 39/A of the Constitution allows for a constructive vote of confidence against the government. It may be held upon the written motion of one-fifth of the MPs.

According to Article 129 (1) of the Standing Orders ‘Parliament shall – on the motion of the government or of at least one fifth of the Members – hold a debate on the comprehensive political topic indicated in the motion. Such motions may be introduced and discussed exclusively at an ordinary session. Each Member may support, per session, at most two motions which are aimed at holding a political debate.’

The role of the media in fighting corruption, revealing cases and raising concerns about corruption is very important. Investigative journalism draws attention to dubious cases, in some cases articles or series of articles had important impact on the political discourse, e.g. the topic was picked up by the parliamentary opposition and resulted in setting up parliamentary Committees of Inquiry. NGOs – such as the COLPI or the Human Rights Information and Documentation Centre – contributed to the discussion of the reasons and patterns of corruption by organizing conferences. Scholars extensively publish studies on the criminal aspects of corruption, the international trends of fighting corruption (see for example the articles listed on www.monitor.gallup.hu).

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Public servants do have special legal obligations referring to the state body. For example, their right to strike is restricted. The right to strike in case of persons working in the public administration can be exercised only in accordance with the agreement drawn up between the respective trade unions and the government (Article 3 (2) of Act no. 7 of 1989 on the right to strike). Public servants are also required to declare their assets periodically and there are stricter rules of incompatibility applying to them.

On the other hand, they also have special privileges and additional benefits, compared to the people working in the private sector:

- Limited possibility of dismissal,
- permanent employment,
- guaranteed public servant career,
- guaranteed social, cultural, health care benefits (discretionary),
- mandatory premiums,
- holiday contribution,
- *ex lege* benefits and premiums.

Depending on the nature of the private employment, income with the same qualification may be higher in the private sector. However, entrants with a university degree may earn more at the beginning of their career if employed in the public sector. For lawyers for example, the starting salary after finishing university is higher in the public sector; after passing the bar exams, however, the private sector offers higher income.

It is, however, not necessary for public servants to make additional money in order to make their living.

The structure of the public sector can be described as follows:

- Local authorities – municipalities (villages, towns, cities, and the capital) – 19 counties (their transformation into regions is under preparation) – national authorities (including also decentralized organs).
- The municipalities have constitutionally guaranteed autonomy; their decisions are not subject to national supervision. The decentralized bodies of national authorities also have decision-making power, subject to review within the hierarchy.

b) Allocation of Financial Resources

The State Audit Office controls the allocation of financial resources. According to Article 32/C of the Constitution, the State Audit Office has the following responsibilities:

- Within its sphere of authority, it shall control the management of public finances;
- It shall review the fundamental soundness of the proposed state budget;
- It shall review the necessity and expediency of expenditures, and countersign contracts pertaining to the assumption of credits for the budget;
- It shall review the legality of proposed state budget expenditures in advance;
- It shall audit the final accounts of the implementation of the state budget;
- It shall monitor the management of state assets, audit state-owned enterprises and their activities directed at the maintenance or increase of the value of their assets;
- It shall attend to other duties assigned to its sphere of authority by law.

The State Audit Office shall carry out its review and control activities bearing in mind the aspects of legality, expediency and efficiency. The State Audit Office shall present a report on the auditing activities it has carried out to Parliament. Its report shall be made public. The President of the State Audit Office shall present the audit report on the final accounts to Parliament together with the final accounts themselves.

The mandate of the State Audit Office does not explicitly contain the task of fighting corruption. However, it does pay attention to the unlawful use of public funds during the implementation of the review and control activities.

Furthermore, the Parliamentary Standing Committee of State Budget, Finance and Audit also monitors the use of public funds.

The reports of the State Audit Office are presented to the Parliament and made available at the website of the Office. The minutes of the Standing Committee of State Budget, Finance and Audit are also published on the website of the Parliament.

In 2004, the Ministry of Informatics and Communication announced a tender for computers to kindergartens. The tender was won by IBM, which offered computers for HUF 1 Million (approx. € 3,571). The opposition parties raised concerns on the lawfulness of the tendering as the market price of these computers was significantly lower. The responsibility of the State Secretary was raised, but no further steps were taken.

Similarly, the public procurement carried out by the Ministry of Education within the framework of the Sulinet Express Programme (a programme aiming at providing computers at a lower price to students, teachers and families) caused an outcry among opposition politicians. The Council of Public Procurements first quashed the decision of the Ministry of Education and imposed a fine, but no inquiry into the personal responsibilities was carried out.

c) Public Services Law and Human Resources in the Public Administration

Generally, public servants are protected against dismissal, so parties do not have significant influence on the staffing. However, political positions – like the former position of the political State Secretary – are filled on political grounds by the governing party/parties.

As regards the expert and administrative public servants, they are usually not affected by a change of government. The holders of political positions usually lose their positions together with their immediate employees. The number of ministries and specialized agencies may vary from government to government, the rearrangement of the ministries often result in changing the position of certain public servants, but their heightened protection against dismissal applies to these cases as well.

In addition to their employment, public servants may work under a secondary employment, but this right is subject to approval from the employer.

The mandate of the State Audit Office covers current operations, and the Government Order no. 193/2003 (XI. 26) on the internal audit of budgetary organs²⁶⁹ contains the detailed rules of the internal supervision.

269 193/2003. (XI. 26.) Korm. rendelet a költségvetési szervek belső ellenőrzéséről.

Undue influence in the public administration is covered in the National Legislation in article 250-255/A of the Criminal Code, which penalizes bribery. The sanction of imprisonment ranging from one to five years depends on the gravity of the crime. Furthermore, once convicted, public servants lose their job.

The above provisions of the Criminal Code apply to any other relevant questions concerning corruption (e.g. statutes prohibiting travel at the expense of companies or individuals, acceptance of presents).

Although there is no statutory obligation to set up internal bodies dealing with the fight against corruption, some of the ministries have such internal bodies, but these are without significant importance, as no case of corruption revealed by these has been made public up to now.

d) Privatization

The privatization process includes: waste management, electricity and water supply, and some segments of transportation.

In May 2005, a Committee of Inquiry was set up by the Parliament in order to clarify the role of Ferenc Gyurcsány (current Prime Minister) and his mother-in-law in the privatization process in the early 1990's. The Committee finished its work without finding any clarifying results in November 2005.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The status of Members of Parliament is regulated in Article 20 (2) - (5) of the Constitution (election, duties and responsibilities, incompatibility, immunity and compensation) and the Act no. LV of 1990 on the legal status of Members of Parliament.²⁷⁰

The procedure for the nomination of the candidates for parliamentary election, as laid down by the Act no. XXXIV of 1989 on the elections of Members of Parliament²⁷¹, Article 5, could be briefly described as follows:

- (1) Candidates in single-member constituencies may be nominated, with the conditions specified in paragraph (2), by voters and social organisations that comply with the provisions of the Act on the Functioning and Management of Political Parties (hereinafter: party) (...).
- (2) In a single-member constituency, proposals of at least 750 voters, authenticated by their signatures, shall be required for nomination (...).

²⁷⁰ 1990. évi LV. törvény az országgyűlési képviselők jogállásáról.

²⁷¹ 1989. évi XXXIV. törvény az országgyűlési képviselők választásáról.

- (3) In regional constituencies, parties may make nominations for regional lists. A regional list may be drawn up by a party that has nominated the number of candidates specified by the annex to this Act in a quarter of the single-member constituencies in the regional constituency, but in at least two single-member constituencies.
- (4) A national list may be set up by a party that has set up lists in at least seven regional constituencies (...).
- (7) The same person may be nominated simultaneously to one single-member constituency, to one regional list and to the national list. If a candidate obtains a seat in the single-member constituency, his/her name shall be removed from the regional and the national list. If the candidate obtains a seat on the regional list, the name of the party candidate shall be removed from the national list.

If these provisions are violated, Act no. C of 1997 on the electoral procedure²⁷², Article 50, stipulates that: nominations that were collected with the violation of the rules of procedures shall be invalid. Similarly, if one citizen nominates more than one candidate, all the nominations shall be considered invalid.

As provided by the Act LVI of 1990 on the remuneration, cost reimbursements and other benefits of the Members of Parliament²⁷³: the base of the remuneration is six times the prevailing wage base of civil servants (HUF 220,000, approx. € 785). Furthermore, MPs are entitled to additional remuneration for their membership in Parliamentary Committees. In addition to this income, Members of Parliament obtain reimbursement of travel expenses, housing contribution for non-Budapest residents, mail and telecommunication services (calls made through the Office of the Parliament are for free), free use of public transportation and free provision of material assets necessary for their work.

The MPs also have the privilege of immunity, as provided by Article 20 (3) of the Constitution and Articles 4-8 of Act no. LV of 1990 on the legal status of Members of Parliament.²⁷⁴

As incompatibilities between parliamentary mandates and other public offices or private positions are concerned, a Member of Parliament may not be:

- The President of the Republic,
- a member of the Constitutional Court,
- the Ombudsman for Civil Rights,
- the President, Deputy President or auditor of the State Audit Office,
- a judge or prosecutor,

272 1997. évi C. törvény a választási eljárásról.

273 1990. évi LVI. törvény az országgyűlési képviselők tiszteletdíjáról, költségtérítéséről és egyéb kedvezményeiről.

274 1990. évi LV. törvény az országgyűlési képviselők jogállásáról.

- an employee of a public administration body – with the exception of the members of the government and Parliamentary State Secretaries,
- a professional member of the armed forces, the police or other security (Article 20 (5) of the Constitution).

Furthermore, an MP shall not be:

- Employee of the official organizations of Parliament, of the President of the Republic, of the Constitutional Court, of the State Audit Office or of the parliamentary Commissioner of Citizens' Rights;
- President, Deputy President, Managing Director or member of the Board of Directors of the National Bank of Hungary, member of its Board of Directors or Supervisory Board, resp.;
- Employee of the State Privatization and Property Management Company Limited by Shares;
- Member of the Council of Public Purchases;
- Representative of the employee's and/or employer's side of the Council of Interests Reconciliation (Article 9 of Act no. LV of 1990 on the legal status of Members of Parliament).

There are also further rules of economic incompatibility, due to which an MP shall not be:

- Chief executive officer, deputy chief executive officer, manager, deputy manager of a state enterprise, trust, company of trust, public-service company, or member of the managing body and supervisory board of the same;
- Director general, deputy director general, manager, deputy manager, member of the board of directors or leading body of the enterprise founded by local governments, pension insurance local government and health insurance local government (hereinafter: local government);
- Leading office-holder of an economic association wherein the property share of the state exceeds ten per cent of the voting rights, member of its board of directors, management or leading body, of its supervisory board, or any other leader (chief executive officer) being in employment or in any other relationship with the company aimed at the performed job;
- Leading office-holder, member of the board of directors, management or leading body of an economic association operating with the full or majority participation of the local government as well as any other leader (chief executive officer) being in employment or in any other relationship with the company aimed at the performed job;
- Chief executive officer, deputy chief executive officer, manager, deputy manager, member of the board of directors, management or the leading body of an economic association wherein the state property share exceeds ten per cent of the voting rights, or operating with the full or majority property participation of the local government;
- Chief executive officer, deputy chief executive officer, manager, deputy manager, member of the board of directors, a leading body or the supervisory board of a privatized organization carrying on economic activity;

- Leading office-holder, member of the board of directors or a leading body or the supervisory board of a credit institution, insurance company, voluntary mutual insurance paying office, housing savings paying office, pension insurance payment office, as well as any other leader (chief executive officer) being in employment or in any other relationship with the company aimed at the performed job;
- Leading office-holder or member of the supervisory board of a company carrying on economic activity in contractual relations with an organization coming under the effect of Act XL of 1995 on Public Procurement, aimed at procurement subject to the effect of the Act, as well as any other leader (chief executive officer) being in employment or in any other relationship with the company carrying on economic activity aimed at the performed job;
- A leading official or a member of the supervisory board of a concessionaire company;
- Nor shall he have the right to act as leader (chief executive officer) either in an employment relationship or other work-related legal relationship with the company carrying on economic activity while his mandate is in effect and within two years after the termination of his mandate (Articles 13-14 of Act no. LV of 1990 on the legal status of Members of Parliament).

At the same time, Members of Parliament usually obtain shares in private enterprises and generally partake in Stock Market related activities. Furthermore, it is usual for them to be members of boards of trustees or supervisory organs, to work as lawyers, consultants, etc.

There is no legal provision restricting (former) Members of Parliament from particular employment or an employment field after leaving office (cooling-off periods).

b) Additional Incomes of Members of the National Parliament

The Members of Parliament do have the right to receive additional income, but they also have to report such income, as well as property and economic interests, each year. There is no threshold for publishing the additional salaries and all the reports are public.

Apart from the Members of Parliament, the MP's spouse or partner and the children living in the same household have the same obligation.

All these reports are published on the website of the Parliament.²⁷⁵

275 www.mkogy.hu.

c) **Undue Influence**

Members of Parliament are not subject to any special criminal provisions of bribery. The provisions of the Criminal Code apply to them as well, as they are included in the category of public officials.

The prescribed sanction is imprisonment. In case of being sentenced to imprisonment, as every other citizen, they lose their right to vote.

There are no statutes specifically addressing issues of corruption, such as prohibiting travel at the expense of companies or individuals, acceptance of gifts, etc.

Regarding recent cases of corruption related to undue influence, in May 2005 a Committee of Inquiry was established in order to examine whether the former Prime Minister (Viktor Orbán) and his family unlawfully used their influence to receive state subsidy for their vineyards. The committee could not agree on a final report, and finished its operation in November 2005.

3. Political Public Office-holders on the National Level

a) **Legal Position within the National Legislation**

The legal position of public office-holders in the National Legislation is regulated in Chapter VII of the Constitution on the Government, the Act no. LVII of 2006 on the central administrative authorities, and on the legal status of members of the government and State Secretaries²⁷⁶ and the Act no. XXIII of 1992 on the legal status of public servants²⁷⁷ – on non-regulated matters, the general rules on public servants apply.

The income that political office-holders receive is as follows:

- Minister: 15.6 times the prevailing wage base of civil servants (HUF 574,000, approx. € 2,000 €)), an additional 50% supplement, and 65% leadership supplement;
- State Secretary: 12 times the prevailing wage base of civil servants (HUF 441,600, approx. € 1,578), an additional 50% supplement, and 65% leadership supplement;
- Expert State Secretary: 9 times the prevailing wage base of civil servants (HUF 331,200, approx. € 1,183), an additional 50% supplement, and 65% leadership supplement.

Political office-holders are also entitled to all the benefits of the public servants in general.

276 2006. évi LVII. törvény a központi államigazgatási szervekről, valamint a Kormány tagjai és az államtitkárok jogállásáról.

277 1992. évi XXXIII. törvény a köztisztviselők jogállásáról.

The leaders of the state (prime minister, ministers, state secretaries, expert state secretaries) cannot have secondary employment – including membership in supervisory bodies, private enterprises, membership of board of foundation or other interest representing organ – and cannot receive remuneration for his/her public appearances related to his/her work.

However, the Act does not exclude the possibility of their being Members of Parliament at the same time. Furthermore, the strict incompatibility rules basically exclude the possibility of holding a position another than that of MP. But they can freely pursue their academic career.

Finally, there are no provisions prohibiting (former) political office-holders from particular employment or employment fields after leaving office (cooling-off periods).

b) Additional Incomes of Political Office-holders

Political office-holders do have the right to receive income for their additional work; although, if the political office-holder is an MP at the same time, he is not entitled to full remuneration for the second position held.

The rules for MPs also apply to political office-holders. They have to publish a yearly report of their income; there is no threshold for this. As in the case of MPs, the spouse and the child(ren) living in the same household also have the same obligations.

The relevant reports are also published on the website of the government.²⁷⁸

c) Undue Influence

The same rules applying to public servants and MPs regarding bribery also apply to cases of undue influence of political office-holders. The sanction for such crimes is imprisonment, up to five years, depending on the gravity of the crime.

The same applies for all the other relevant questions concerning corruption (e.g. statutes prohibiting travel at the expense of companies or individuals, acceptance of gifts); there are no statutes specifically addressing this issue.

There have not been any recent cases of corruption related to additional income or undue influence that are worth noting.

278 (www.kormanyzat.hu).

4. Political Parties

a) Legal Position within the National Legislation

The political parties are associations that keep a register of their members, they are registered by the competent court and express that they accept the binding force of Act no. XXXIII of 1989 on the functioning and management of political parties.²⁷⁹

b) Revenues of Political Parties

The political parties do receive state funding: the act on state budget devotes a certain amount each year to state funding. 25% of this amount is distributed equally among the parties that obtained seats in the Parliament with their national party lists (i.e. passed the 5% hurdle). The remaining 75% is divided among the parties on the basis of their results in the first round of the parliamentary elections. Only parties that obtained at least 1% of the votes are entitled to receive state subsidy. The main income of the parties is still the funding received from the state budget, approximately two-third of the total income, while the membership fees make up approximately 10% of the total income. The remaining part comes from national and foreign donations.

c) Legislation on Transparency of Political Party Funding

Article 4 (2)-(3) of Act no. XXXIII of 1989 on the functioning and management of political parties prohibits political parties from accepting contributions from public administration bodies, state enterprises and foundations receiving direct state funding. Furthermore, parties cannot accept contributions from foreign states, or contributions that were donated anonymously. Anonymous donations can, nevertheless, be paid to the party foundations.

Furthermore, Article 9 of Act no. XXXIII of 1989 on the functioning and management of political parties regulates that parties shall make an account of their previous year's management until 30th April each year. The report must be published in the Official Gazette, and on the website of the party. In case of donations exceeding HUF 500,000 (approx. € 1785) – in case of donations arriving from abroad HUF 100,000 (approx. € 357) – the name of the donator has to be indicated. The rules of duly management for associations apply for political parties.

The State Audit Office supervises the management of political parties. In the case that the party has violated the rules of financing, the State Audit Office must comment on it. In case of a serious violation, the President of the State Audit Office initiates a court procedure.

There have not been any recent cases of corruption linked to the above-mentioned.

279 1989. évi XXXIII. törvény a pártok működéséről és gazdálkodásáról.

V. General Comments

One of the main problems is that in some situations, it is socially accepted to offer and to accept bribes in order to escape the legal consequences of an unlawful act. For example, it is still a large issue that policemen are corrupt, and there is no willingness on part of the public to eliminate corruption from the police forces, as this solution is mutually beneficial. The situation is very similar in the case of the medical professions.

The main obstacle to fighting corruption effectively is the lack of reporting. It is difficult to reveal the cases of corruption, as none of the parties report them.

In some sectors – as police or medicine – offering additional payment or gifts is perceived as normal, and it is not considered corruption. Recently, a relatively new area of corruption emerged: there were cases where university professors asked for payment in order to give a higher grade for students.

The legal framework – in principle – offers a relatively large amount of guarantees against corruption; emphasis needs to be placed on the implementation of the law. There is also a need for a comprehensive legislation instead of providing scattered rules for the different sectors. Public administration has become more transparent recently, but there are areas – as in public procurement or tendering – where transparency is seriously missing.

As mentioned above, the main fields of corruption are the following: police, medicine, education (more recently), municipalities (especially in relation to real estate matters), tendering and public procurement.

The *Orbán* Government is extensively using private companies for various purposes. The contracts – usually unpublished – have raised a lot of concerns: in some cases the obligation to order a tender was neglected, the agreed price for certain services was higher than the market price and sometimes personal interest could not be excluded. Furthermore, some ministers travelled without having an official reason or interest, which caused a public outcry. After a change of government in 2002, the new Parliament adopted the act described below in order to make the use of public funds more transparent.

Regarding best practices, in 2003 the Parliament adopted the Act no. XXIV of 2003 on amending the laws relating to the transparent use of public funds and public property. The Act requires for example all ministries and centralized public administration bodies to regularly publish the use of public funds on their websites. Ministries have to publish in detail the amount spent on travel expenses, mobile phones, etc.

Report Ireland²⁸⁰

280 We would like to thank Prof. Neil Collins, Head of the Department of Government, University College of Cork, Cork, Ireland, for answering the questionnaire and supporting the realization of the Report Estonia, written by Alessandra Di Martino. Sources: official websites (i.e. <http://www.citizensinformation.ie/>) and the following literature: Elaine Byrne, Corruption in Irish National Politics, a paper given to the PSAIs 2006 annual conference, UCC, Cork; Elaine Byrne, Nineteenth and Twentieth Century Political Corruption in Ireland (forthcoming); Neil Collins/ Terry Cradden/ Patrick Butler, The Politics of Administrative Reform, Dublin, 2007; Neil Collins/ Mary O'Shea, Political Corruption in Ireland, in: M.J. Bull and J.L. Newell (ed), Corruption in Contemporary Politics, London, 2003; reports of TI Ireland.

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I. Sources of Data-collection on Corruption in the Public Sector

As public sources of data-collection on corruption in Ireland, the following should be mentioned:

The Office of the Standards in Public Office Commission (www.irlgov.ie); The Standards in Public Office Commission (the Standards Commission). This is an independent body established in December 2001 by the Standards in Public Office Act, 2001, which replaced the Public Offices Commission established in November 1995 by the Ethics in Public Office Act, 1995 (Data can be accessed also writing to sipo@ombudsman.gov.ie); The Office of the Comptroller and Auditor General and The Committee on Public Accounts (parliamentary committee chaired by Opposition member).

The main private source of data-collection on corruption is still Transparency International Ireland.

II. Legislation dealing with Corruption

Although, as specialised legislation dealing with corruption, both The Ethics in Public Office Acts (1995 and 2001) and the Electoral Acts have been approved, a strict legal definition for corruption is still lacking. Prosecuting corruption is considered to be at the discretion of the Director of Public Prosecutions. The Prosecution of Offences Act, 1974, established the Office of the Director of Public Prosecutions. The Director is independent in the performance of his functions. A right of access to administrative files is provided under the Freedom of Information Act, 1997, according to which most material is available, though some exclusions and exemptions are also foreseen.

III. Control and Sanctions

Following administrative bodies have the competence to prevent and fight corruption in the public sector: The Office of the Standards in Public Office Commission; The Office of the Comptroller and Auditor General; The Ombudsman.

The parliamentary opposition displays in controlling corruption the usual parliamentary methods, such as addressing questions to ministers and investigating in committees (most notably the Committee on Public Accounts). Moreover, the whole Parliament has relied on *ad hoc* judicial tribunals of enquiry in specific cases. It is estimated that a total of € 250 million has been spent in the last 10 years on more than 40 separate tribunals, independent inquiries and investigations (*Irish Times*, 13th October 2006).

As for the role of social and other institutional actors, that of the media has been important, though constrained by resources due to small circulation, libel laws and the high costs of

investigative journalism. Some corruption has been revealed by foreign media especially from the UK. Academics seem to have played a very little influence so far, while major has been the input of NGOs such as Transparency International Ireland as well as aid agencies discussing Ireland's responsibilities abroad.

IV. Actors

1. Public Administration

Ireland is a unitary state and local government operates within tight legal and regulatory constraint. At central government level, the doctrine of ministerial responsibility focuses all decisions on the politician though, in practice, many civil servants exercise policy discretion.

Public servants enjoy the usual tenure privileges and these are not primarily related to corruption. They are not given additional benefits compared to employees of the private sector, though public sector jobs are generally more secure. Some senior public servants have a legal duty to ensure probity in financial and planning matters. As for the income, positions in the public and private sectors are comparable though public servants earn higher average salaries – largely reflecting higher qualifications and recent pay settlements.

Some public tasks have been transferred to private companies. For example, mandatory vehicle safety checks have been contracted to a private firm and some toll roads are now in public/private partnerships.

As previously mentioned, the allocation of financial resources is controlled by a specific body: the Office of the Comptroller and Auditor General audits and reports on the accounts of public bodies to verify that funds are applied for the purposes intended. However, this appears to be more about financial control and the effectiveness of operations than corruption. These controlling bodies give reports to the national parliament and are publicly available.

No major issues of corruption concerning tendering procedures have occurred, though some incidents have emerged at local government level as well as a concern that former public employees have taken posts with private sector suppliers.

Political parties appear not to have a major influence regarding staffing in the public sector. The rules have been tight since the 1920s, when corruption in appointments was rife. Ironically, the judiciary is the only state body where political allegiance is suspected as important in appointments. Since the same party has dominated government since 1932, some observers suspect that sympathies could have been decisive. However, the Irish political spectrum is very narrow and partisan differences hard to detect. The Civil Service Code addresses the subject of what constitutes a conflict of interest and advises civil servants on how to deal with gifts. Civil

Servants who hold ‘designated positions’ (Principal level and above) are required to declare their interests and those of their spouse and children. Civil servants (Assistant Secretary level and above, including resigned or retired civil servants) are obliged to report to the Outside Appointments Board if they intend to be engaged in or connected with any outside businesses. This Board is established by the Minister for Finance and consists of the Secretary General in the Department of Finance, the Secretary General to the Government, and three other members, who are not civil servants. The Board reports annually to the Government. Where breaches of the Code may take place, the Standards Commission is empowered to investigate.

A change of government seems to have a neglectable influence on staffing in the public sector.

Public servants may not hold a secondary job in addition to their employment, at least at a senior level. Though a permission is provided for junior public servants, second jobs are not an issue as salaries and conditions are good.

Current and closed operations are subject to internal revision, as the Comptroller and Auditor General monitors the system of internal financial control.

As for law provisions addressing undue influence in the public administration, the Prevention of Corruption (Amendment) Act, 2001, penalises active and passive corruption involving employees, domestic and foreign public office-holders and members of domestic and foreign Parliaments. This statute was enacted to enable Ireland to give effect to various international conventions and strengthens the law against corruption generally by amending the earlier Prevention of Corruption Acts, 1889 -1995. The Act provides for a presumption of corruption in certain circumstances, including the failure to disclose political donations or in relation to the exercise of certain functions. It penalises corruption in office and establishes the liability of officers of companies, as well as companies themselves, for offences of corruption. Furthermore, it gives Irish courts jurisdiction in cases where any element of the offence occurs in the State or where an Irish office-holder or official is involved. It also makes provision for the issue of search warrants. The Act increases the maximum penalties for those convicted of the offence of corruption to an unlimited fine or 10 years of imprisonment, or both.

As for other statutes, the Civil Service Code has been already mentioned. It addresses what constitutes a conflict of interest and advises civil servants on how to deal with gifts. Civil servants who hold ‘designated positions’ (Principal level and above) are required to declare their interests and those of their spouse and children. Civil servants (Assistant Secretary level and above, including resigned or retired civil servants) are obliged to report to the Outside Appointments Board if they intend to be engaged in or connected with any outside businesses. This Board is established by the Minister for Finance and consists of the Secretary General in the Department of Finance, the Secretary General to the Government, and three other members, who

are not civil servants. The Board reports annually to the Government. Where breaches of the Code may take place, the Standards Commission is empowered to investigate.

As for administrative internal regulations, Section 10 of the Standards in Public Office Act 2001 provides for the introduction of Codes of Conduct which set out the standards of conduct and integrity expected to be observed by the persons to whom they relate in the performance of their official duties. The Civil Service Code of Standards and Behaviour was issued in 2004 and a similar one for holders of designated positions in the public service generally is currently being prepared. Internal audit procedures and Outside Appointments Board have both the competence of preventing and fighting corruption.

2. Members of the National Parliament

The Irish Constitution deals with the status of Members of Parliament (MPs) in art. 15f. As for the electoral proceedings, anyone eligible to stand can become a candidate by registering with the appropriate returning officer – usually a local government official. In practice, the political parties dominate the candidate selection process. The Electoral Acts ensure openness and accountable political parties, individual politicians and supporters. They limit electoral expenditures and provide a system whereby candidates at elections can, in certain circumstances, recoup election expenses. The Electoral Acts also provide for State financing of qualified political parties which received at least 2% of the first preference votes at the last preceding general election. In case of violation of these provisions, the same Electoral Act of 1997 as amended provides for related sanctions.

MPs receive an income of € 96,000 plus allowances (travel, post, research and other allowance). MPs are not given additional benefits in comparison to employees of the private sector. Anyway, from being rather modest, the salaries of politicians are now good.

MPs have the privilege of immunity which is however very limited and seldom invoked except in relation to protection from legal action for what is expressed in parliamentary debate (the big corruption related privilege concerns their protection from legal consequences for statements made in the parliament).

Incompatibilities are provided for MPs, e.g. no dual mandates are allowed – current Members of the European Parliament (MEPs) must decide in 2007 whether to retain membership of the national or European parliaments. Local mandates are already incompatible with the national office.

It is now no common practice for MPs to hold other positions. Though there used to be a practice of having two jobs, especially in the legal profession, this is no longer the case. Most politicians

are full time public representative though some, such as teachers, can be officially on leave from former posts. Cooling-off periods are provided for ministers.

MPs may receive an additional income, which is to be published under the Ethics Acts. MPs also have to disclose their interests and evidence that they are tax compliant; both must be furnished to the Standards Commission by all members. Apart from MPs, their family members are also obligated to publish their income. Assets are subject to reports, which can be accessed on the web.

As for recent cases of corruption indirectly related to additional income, the first report of the Moriarty Tribunal into payments received by the former prime minister, Charles Haughey, should be mentioned. It said that the late Mr Haughey lived a life vastly beyond the scale of what he earned as a public representative. He received payments from business people and, according to the tribunal, favours were done in return.

As for criminal provisions on bribery of MPs, the Ethics Acts is to provide for disclosure of interests, including any material factors which could influence a government minister or a Member of Parliament. A statutory framework, noted above, has been put in place to regulate the disclosure of interests and to ensure that other measures are taken to satisfy the broad range of obligations arising under the legislation. Imprisonment and fines are possible sanctions, but they have not been inflicted so far, excepting the indirect loss of income due to suspension. For example, Denis Foley, a Member of Parliament, resigned from the main government party in 2000 following revelations that he had held an undisclosed (offshore) account to avoid tax. He was the first politician to receive a penalty for breaching the Ethics in Public Office Act 1995, and was suspended from the parliament for 14 days. This confirms also that in cases of undue influence, a single Member of Parliament has been excluded by the parliamentary groups or political parties.

3. Political Public Office-holders on the National Level

The answers are the same as for the previous section as all ministers are Members of Parliament. There is, however, an additional handbook providing extra guidance to ministers. It can be found at <http://www.sipo.gov.ie/en/CodesofConduct/OfficeHolders/>. Irish ministers are constrained by collective and ministerial responsibility and cabinet secrecy. Ministerial responsibility means that if corruption, misbehaviour, policy failures or administrative errors occur within a department, the minister is responsible even though s/he may not be directly involved, or perhaps has an influence upon only a small proportion of the policy for which s/he is ostensibly 'responsible'. This convention is supposed to guarantee that an *elected* official is answerable for every single government decision, and that if things have indeed gone wrong, the minister must resign. In Ireland, however, ministers seldom resign from office because of errors or failures, still less as consequence of parliamentary pressure or because of policy disagreements with their

colleagues. In 2005, a minister of state resigned in a controversy concerning (in part) the painting of his house, without charge by a property developer in the early 1990s. This is an unusual example and the minister could probably have survived if he had not been linked to other errors of judgement in relation to the use of civil servants to do clearly partisan work.

A Minister of State resigned in 2001 following findings by a Public Offices Commission that he voted for a motion without declaring that he had a beneficial interest in the subject matter. It was also found that he had failed to fully disclose a statement of additional interests as required under the legislation. He was the first Minister to receive a penalty for breaching the Ethics in Public Office Act 1995 and was suspended from the parliament for 10 days.

4. Political Parties

Political parties are placed on the Register of Political Parties and members of registered parties may add their parties' name to their own names on the ballot paper. Others seeking election are described as a non-party candidate on the ballot paper. The Registrar and the actual Register of Political Parties are based in the parliament.

Political Parties obtain state funding for their activities. There are regulations that govern the financing of elections, the disclosure of donations, the registration of interests and the enhanced scrutiny of exchequer funding for political parties. The legal framework which provides for this includes the Ethics in Public Office Act, 1995, the Electoral Acts, 1997, 1998, 2001, 2002 and 2004, the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, the Standards in Public Offices Act, 2001 and the Prevention of Corruption (Amendment) Act, 2001. In particular, the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001 substantially increased state funding to political parties.

Political donations to political parties (exceeding € 5,079) and individual candidates to the legislature, Presidency and European elections, (exceeding € 635) must be disclosed and must not exceed € 6,349 in any given year by the same donor. These are available for public inspection on the Standards Commission's website. In the event of failure to disclose, prosecution in the courts may follow. This has occurred just once in the case of a former vice speaker of the upper house who failed in 1997 to declare a donation of IR£ 2,500 (€ 3,714). He was sentenced to community service in 2006. The acceptance of foreign donations (with the exception of Irish passport holders living abroad) is prohibited. There are a number of gaps in this legislation. For example, election expenditure is only calculated in the three-week period prior to the election date. Rules for local elections are also quite lax.

V. General Comments

In looking at corruption in Ireland and adopting a relatively long-term perspective, corruption is grounded in the Republic's post-independence experience. This approach has suggested the likelihood of corruption in the early decades of the state for which however there is little direct evidence.

Certain public policies and institutional arrangements that have an association with corruption elsewhere in similar circumstances are part of the Ireland's experience, for example protectionism up to the 1960s and rapid growth in recent decades. Concluding, corruption in the Irish Republic is routine in some areas, within which it occurs pervasively; weak or lax controls are associated with it; public trust in these areas is low. In particular, corruption has been found where politicians have a direct role in conforming specific, individual policy decisions of high value to wealthy business interests such as planning at local government level; where civil servants routinely exercise discretion over commercially valuable decisions in the context of lax systems of accountability and ambiguous policy objectives; and where ministerial decisions are both commercially charged and the policy criteria are insufficiently explicit.

The main fields where corruption occurs in Ireland are planning permissions and policing and local development incentives. Scandals have had effect on legislation, so that Ireland has had a major legislative overhaul to update the laws on corruption in many areas especially in relation to elections and ministers.

It is uncertain whether Ireland provides a good example for best practices regarding corruption, but it is making valuable use of experience elsewhere in augmenting the anti-corruption framework.

Report Italy²⁸¹

281 The Report Italy is written by Alessandra Di Martino (chapter I.), Gianluca Bascherini (chapter III.) and the other chapters by Andrea De Petris.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

In Italy, the public authority generally responsible for the collection of data, statistics and information, also in the area of corruption, is the *Istituto Italiano di Statistica* – ISTAT (*Statistisches Nationalinstitut*). The office has its own Internet website²⁸², where most of the collected data is made accessible to the public.

Also to be mentioned is the Alto Commissario per la prevenzione e il contrasto della corruzione e delle altre forme di illecito nella pubblica amministrazione (High Commissioner for Prevention and the Fight Against Corruption and Other Types of Offences in the Public Administration) established by Law No. 3 of 16th January 2003 from the Italian Parliament. The aim of the new board – which is located at the Council of Ministers and whose functions are standardised in the government ordinance of 6th October 2004²⁸³ – is the prevention of and the fight against corruption and other possible offences within the public administration. For this purpose it has the authority to lead investigations, check expenditures from the implementation of contractual procedures as well as data evaluation and the creation of analyses regarding the compliance to the normative and organisational framework, also in relation to the danger of infiltration of organised crime into the public administration.

2. Private Sources of Data-collection on Corruption in the Public Sector

Transparency International is the most important private agency for the research and evaluation of the phenomena of corruption. An Italian ‘national chapter’ (Transparency International Italia – *Ti-it*) does exist with its own Internet presence.²⁸⁴

Another important non-government organization which gathered and published data on the corruption situation in Italy is ‘Global Integrity’. It is an organization based in Washington D.C. which focuses on analysing the corruption situation in 25 countries – Italy being one of them.²⁸⁵

282 <http://www.istat.it/>, 23rd August 2006.

283 Published in the *Gazzetta Ufficiale - Serie Generale* no. 249 from 22nd October 2004.

284 <http://www.transparency.it/> (23rd August 2006).

285 The organisation describes itself as a ‘*nonprofit, nonpartisan organization that conducts investigative research and reporting on public policy issues in the United States and around the world. Based in Washington, D.C., its mission is to provide citizens with vital information about public officials and institutions*’. The most important project is the so-called ‘*Global Access*’: ‘*an international research project of the Center for Public Integrity tracking corruption and integrity in 25 countries around the world*’. See <http://www.globalintegrity.org/> (23rd August 2006).

The report created for Italy in the year 2004 (*Global Integrity report*)²⁸⁶ offers a detailed analysis of the Italian corruption-related phenomena.

II. Legislation dealing with Corruption

A legal definition of the term *corruption* does not exist. In a legal respect, it encompasses the offence of bribery, which is mainly regulated in art. 318-322 of the Italian Penal Code (*Codice Penale* – C.P.). According to this, *corruzione impropria* (indirect and/or simple bribery) when the official acts lawfully is distinguished from *corruzione propria*²⁸⁷ (direct and/or severe bribery) when the official acts unlawfully, which is punishable with a higher penalty. While art. 318-320 of the Penal Code standardize the *corruzione passiva* and thus refer to the bribed *Intraneurs* (office-holders²⁸⁸), the punishability of the bribing *Extraneurs* (third persons²⁸⁹) and thus the *corruzione attiva* results from art. 321 of the Penal Code.²⁹⁰

The recognition of the principle of legality in the Italian legal system²⁹¹ in addition to other principles – such as the general guarantee of access to the courts (art. 24 and art. 113 of the Constitution), the guarantee of a legally competent judge (art. 25 of the Constitution), the principles of liability in office (art. 28 of the Constitution) and of the administrative structure (art. 97 of the Constitution) – represents an important measure in the fight against political corruption.

At the end of 2006, a so-called ‘law against corruption in public administration’ was legislated. This law, which supplemented the budget law by two paragraphs, provides that income received and assets earned through corruption may be seized in advance and used for charitable purposes.²⁹²

A ‘law on the access to the administrative acts’²⁹³ has existed since 1990; consequently, citizens enjoy a fundamental right of access to the acts of the public administration at no cost.

286 <http://www.globalintegrity.org/docs/2004/2004Italy.pdf> (23rd August 2006).

287 This can be further distinguished according to the *corruzione antecedente* (antecedent bribery) and the *corruzione susseguente* (subsequent bribery).

288 Only public officials (*pubblico ufficiale*) or persons charged with a public service (*persona incaricata di un pubblico servizio*, art. 358 Penal Code) can be guilty of taking bribes. Public officials are those who ‘practice a public function in the legislation, justice system or administration.’ (art. 357 para. 1 of the Penal Code).

289 Anyone can be guilty of giving a bribe.

290 In all cases, the act as well as the attempt (art. 322) are punishable. For details, see: *Susanne Hein*, Länderbericht Italien, in: A. Eser/M. Überhofen/B. Huber, *Korruptionsbekämpfung durch Strafrecht*, Edition iuscrim, Freiburg im Briesgau 1997, see 217-279.

291 Art. 112 of the Constitution: ‘The public prosecutor has the duty to criminally prosecute’.

292 Compare §§ 220-221 of the Budget Law 2007, 27th December 2006, no. 296 (*Legge finanziaria* 2007), published in *Gazzetta Ufficiale* no. 299/2006.

293 *Legge* 7 agosto 1990, n. 241 (‘*Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi*’), published in *Gazzetta Ufficiale* n. 192/1990.

III. Control and Sanctions

First, the High Commissioner for the prevention of and the fight against corruption and other types of offences in the public administration, already mentioned above, should be named.

Under administrative law, the Italian Court of Auditors (*Corte dei Conti*) is an advisory board independent of the government, which can subsequently examine the legality of the acts passed by the national government as well as all measures which concern the state budget.²⁹⁴ In the cases regulated by law, it takes part in the examination of the financial management of the corporations which permanently receive funds from the regular state budget.

The Court of Auditors practices the judicial authority in the field of the public accounting system and in other areas defined by law (art. 103 of the Constitution).

The *Corte dei Conti* is completely independent of political influences and their judges are appointed according to a very complicated public process. The reports on its activities, among them also annual reports for the Parliament, are published regularly and can be publically viewed at no cost via the Internet website.²⁹⁵

For a few years now, the formation of a network of regional and local Ombudsmen (*Difensore civico*) has been ongoing in Italy, whose main task consists of overseeing the legality of files and actions of the public administration in the respective region, and thus protecting the rights and interests of the citizens.²⁹⁶ Due to the independence of the regional administrations, there are different regulations for almost every region, which is why responsibilities and composition of the various Ombudsmen are not uniformly defined.²⁹⁷ The regional Ombudsmen submit an annual report on their activities to the Parliament and their own regional council. These reports are accessible to the public without cost –often on the Internet as well.

The CONSOB (*Commissione nazionale per le società e la borsa*), the state stock exchange supervisory board, is responsible for the control of the Italian stock market and the protection of the stock investors.²⁹⁸ It also exercises control on the public corporations and thus monitors the connections between politics and economy. However, the CONSOB itself complains about the small efficacy of its sanctions.²⁹⁹

294 See art. 100 and 103 of the Constitution.

295 <http://www.corteconti.it/index.asp> (24th August 2006).

296 Compare art. 11 of statutory regulation No. 267 of 18th August 2000.

297 In 2004, there were 14 regional and 2 provincial ombudsmen as well as several at the local level.

298 Compare Law No. 216 of 7th June 1974 and www.consob.it.

299 Compare the annual report 2002: http://www.consob.it/produzione/Pubblicazioni/Relazione_annuale/lin2002.pdf.

Specific investigating committees for political corruption are not provided for. Compared to that, the mass media usually plays a meaningful role in relation to the connections between politics and corruption: The fact that the leader of one of the most important parties and Prime Minister of Italy several times over – as well as owner of the largest private media groups – often accused of being corrupt, has inevitably influenced the attention of the media on these topics.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

According to the positivized law, the Italian public administration is a plurality of public administrations. Concerning the territorially differentiated administrations one mainly has to distinguish between the state, regional, provincial and finally the communal administration. The most recent constitutional reform³⁰⁰ recognises a principle equality of all regional authorities.³⁰¹ According to this, the general competence of the administration mainly lies with the municipalities. In order to secure a uniform implementation, the administrative functions of the provinces, the metropolitan cities, the regions and the state can be transferred by law.

Besides the regional authorities, other public institutions (*enti pubblici*) also number among the complex structure of the public administration. Up to the beginning of the '90s, the so-called public economic institutions (*enti pubblici economici*) together with the state participating corporations represented the most important feature in the Italian administrative law³⁰² as a direct form of public economic activity (*attività economica pubblica*). Already at the beginning of the twentieth century, the lack of solid industrial and competitive private enterprises led to the production of economic goods as well as the provision of services through public agencies. In the '90s, public *Holdings* (IRI, ENI) were converted into corporations – above all, in order to remedy public financial deficits – and more public institutions were privatized, in the area of energy, insurance systems and credit systems, among others. In this context, several so-called independent administrative authorities (*autorità amministrative indipendenti*) were created, whose main function was to secure the transparent flow of economic transactions in sensitive areas of the economy.³⁰³ Such facilities can sometimes also be seen as a reaction of institutional

300 Constitutional laws no. 1/1999 as well as 3/2001.

301 This comparison arises from art. 114, 118 of the Constitution.

302 See art. 41 section 3 of the old Constitution; A. Massera, *La crisi del sistema ministeriale e lo sviluppo degli enti pubblici e delle autorità amministrative indipendenti*, in see Cassese/C. Franchini (Hrsg.), *L'Amministrazione pubblica italiana. Un profilo*, Bologna 1993, 23 ff.

303 See already in the 70s and 80s the stock exchange supervisory board (Consob: l. 216/1974) and the supervisory authority in the insurance system (Isvap: l. n. 576/1982). In the 90s, *Authorities* were made for the fair competition and the market (*Autorità garante della concorrenza e del mercato*, l. n. 287/1990) respectively,

politics to the special Italian scandals of corruption which concerned the nation at the beginning of the '90s.³⁰⁴ Nevertheless, such authorities have not always been able to discover and to sanction nontransparent and unlawful market relationships, as the most recent cases of Cirio (2000-2002) and Parmalat (2003-2004)³⁰⁵ prove.

According to statistical evaluations, there are a total of 9,556 public administration units in Italy. Of those, 195 are attributed to the central administration, 9,333 to the regional and/or local administration and 28 to institutions responsible for social security. The number of employees amounts to 3,539,674 in total, of which 2,010,118 are active in the central administration units, 1,471,214 in the smaller regional authority units and 58,342 in the other institutions.³⁰⁶

Employment in the public service has been one of civil-service status right into the '90s. It then approached an employment relationship largely under private law. A comprehensive regulation can now be found in Law No. 165/2001.³⁰⁷ The payment of the employees therefore complies with a wage agreement of the respective category. Individual and collective productivity as well as the implementation of especially difficult, dangerous and/or unhealthy activities set the standards. Special payments such as bonuses and vacation pay are allowed once per year according to assessment of the heads (*dirigente*) of the respective administration. After the introduction of the private-law regime, limited employment relationships are now also generally common in the administration.

public works and contracting (*Autorità di vigilanza per i lavori pubblici*, l. n. 109/1994), electric energy and gas (l. n. 481/1995) and telecommunications (l. n. 287/1990).

304 The widespread corruption at the interface between the public sector and economy was to be reduced by certain tasks central for the marketability being withdrawn from the political leader for a short time and were transferred to highly qualified and independent instances for leading and controlling instead. Strict incompatibility guidelines are provided for regarding the members of these authorities, in which no other professional occupation is fundamentally permitted for them.

305 Both cases belong to the most important scandals relating to public financial management of the last years, whereas the *Parmalat* case has reached the largest dimensions and international resonance. Fundamentally, this is about the large debts of these corporations through an unlawful spending of debentures, as well as about the violation of the accounting standards of the accounting law, which they are responsible for. Despite their control authorizations, neither the Italian Central Bank who is in charge of the banks nor the *Consob* who is responsible for the Italian stock market had been able to prevent these breakdowns of the financial system which were so grave for the consumer. After the most recent banking scandal (summer 2005), in which the Governor of the Central Bank was accused of having favoured Italian banks as opposed to foreign banks during the takeover of the Banca Antonveneta, the Governor resigned and a new law 'on the protecting of savings and the regulation of the financial markets' has been passed (*Legge N. 262/2005 'Disposizioni per la tutela del risparmio e la disciplina dei mercati finanziari'*), according to which the competences in this area are to be newly distributed and the Governor who used to be appointed for life shall now only stay in office for a maximum term of twelve years.

306 ISTAT, *Statistiche delle Amministrazioni Pubbliche*, v.2, 2003.

307 T.U. *Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche*. A special duty and fiduciary relationship is widely assumed for judges, public prosecutors, those active in the military and police as well as in the diplomatic service, so that their employment is still regulated by the public law (art. 3 section 1 D.lgs N. 165/2001). For now also the employment of professors and researchers at the universities is to remain under public law: art. 3 section 2. Basically the employment is thus contractually regulated to a large extent, whereas the labour agreement forms the basis and a solely supplementary function is to be awarded to the individual contract.

There is a system of social security which is obligatory for all those working in the public service and goes with the job. An autonomous management was established at INPDAP³⁰⁸ through art. 2 l. N. 335/95. (This is a specific department which is solely responsible for the social security of the employees in the public service. More transparency and efficiency is to be achieved through this institutional separation). In addition to pensions from the public service, only income from self-employment may be earned (up to the year 2001, a principle exclusion of profession for pensioners in the public service was in effect, although some exceptions were provided for. One of these was the allowances for mayors and other members of the regional authority bodies, which were at the same time also allowed to be drawn. Since 2001, income from the public service is also possible next to that, as long as one is older than 58 and has paid social security contributions for 37 years). The social security reform, which was started in the '90s³⁰⁹, is aimed at cutting state finances and illegal employment as well as preventing other evasions of the law.³¹⁰ The expenditures concerning personnel management, including labour costs, are subject to a special control by *Ministero del Tesoro* since the reform from the year 1993; the *Ministero del Tesoro* was assigned a targeted authority of inspection.

Not all aspects of employment in the public service were covered by the reform. Regarding recruitment, the principle of access via open competition provided by the Constitution is applicable (art. 97 para. 3 of the Constitution).³¹¹

The public administration in Italy offers average promotion prospects and chances, as long as one possesses the required qualifications. However, since activities in the public service are dependent on the availability of public resources, this limits promotion prospects practically. Thus for example, the Budget Law of 2005 ordered a general job freeze as well as a lowering of the expenditures concerning the personnel management (not less than 5%). These regulations are to be in effect until the year 2007, yet corresponding, partially extensive exceptions are also provided for.

Concerning the comparison of money-earning opportunities in the public service with those in the private sector, a public employment offers a well-paid and longterm security for less qualified work. In the private sector, however, it is usually the case that clearly higher wages are paid for skilled labour.

308 *Istituto Nazionale di Previdenza per i Dipendenti delle Amministrazioni Pubbliche.*

309 Especially pertaining to pension and retirement income: see l. n. 335/1995, l. n. 243/2004.

310 In Italy, the phenomenon of early retirement was very common. Additionally, cases of fraud concerning the payment of disability pension are not infrequent. The age of retirement is fundamentally raised through the reform, the funding of early retirement abolished and a voluntary, supplementary private pension system demanded, which is run by pension funds operating on the stock market.

311 The subjective request of a sufficient qualification and/or high qualification of the employees and civil servants is to be objectively aimed at the 'impartiality and good processing' (*imparzialità e buon andamento*) of the public administration in the sense of art. 97 section 2. Compare recently *Corte Cost.* n. 81/2006, 159/2005, 205/2004, 34/2004.

b) Allocation of Financial Resources

The controlling of the public management of financial resources resides chiefly with the Court of Auditors³¹², whereas in the last years, additional internal controls of the entire management of financial resources were established.³¹³ The Court of Auditors must submit an annual report to the Parliament – including statistics on corruption – which is seen as one of the most important sources of information on the situation of the public administrations. Additional (though limited) forms of the external controlling of the public management of financial resources are possible through individual parliamentary committees (budget, finances). Especially investigating committees³¹⁴ have contributed to collecting important information on cases of corruption and making them accessible to the public. Scandals during privatization³¹⁵ have indirectly affected the public management of financial resources.

312 Art. 100 section 2 Cost.it. see the executive Laws n. 19 and 20/1994. An autonomous department has already been responsible for local authorities for a long time (l. n.51/1982); now individual positions of the Court of Auditors have been additionally set up in each region.

313 The first selective provisions of l. 142/1990 and statutory regulation 29/93 is followed by a general regulation by the statutory regulation N. 286/1999. Different than the old selective controls, newer internal controls are to check the complete activities and management under administrative law according to statutory regulation 286/1999. Four categories of internal control can be distinguished: administrative legality and accounting, efficiency of the management of financial resources, evaluation of the head civil servants and finally strategic setting of goals and their attainment.

314 See especially the so-called *Antimafia* investigating committee.

315 Compare e.g. the well-known case of SME, which was to be privatized as food industry by IRI already in 1985. A preliminary agreement was made between the then chairman of the IRI, Romano Prodi, and the then chairman of Buitoni Spa, Carlo De Benedetti, in which Buitoni was to buy SME for a share price under the market price (1,107 L. instead of 1,275 L.). However, the contract was not implemented, as the authorization by the government at that time necessary for it (Bettino Craxi was *Presidente del Consiglio*) was not granted. Meanwhile, further offers were made concerning the acquisition of SME (a.o. by the Silvio Berlusconi Fininvest Spa). The suit filed by Buitoni for non-fulfilment of the concluded pre-contract were dismissed in the first, second and third instances. With regard to the process in the first instance, it was later investigated whether the offence of bribery as well as bribery in actions of the judiciary (*corruzione in atti giudiziari* i.seev. art. 319 c.p.) were present. The prosecution was based on a money transfer of 500 mio. Lira by Fininvest Spa to the account of Judge Renato Squillante. A large part of the defendants were sentenced (a. o. the parliamentarian Cesare Previti (*Forza Italia*), who was sentenced to five years in prison for indirect bribery, see last Corte d'Appello Milano, December 2005). The defendant, Silvio Berlusconi, is presently exonerated due to the statute of limitations. The ongoing proceedings against him were first partially suspended due to the Immunity Law N. 140/2003 and later were resumed again due to the decision of the *Corte Costituzionale* N. 24/2004, which had determined the unconstitutionality of art. 1.

Another possible example of questionable privatization, however, never clarified by a court was the Telekom case. In 1994, the dissolution of the then SIP, IRITEL, Italcable, Telespazio and SIRM into the limited company Telekom Spa was decided on by the board of directors of the IRI. Telekom Spa was controlled by the Ministry of Finance through Golden Shares, until its privatization was decided on in 1997. A public acquisition offer (*offerta pubblica di acquisto*) raised by Olivetti and Tecnost as well as *hostile takeover* was generally supported by the then ruling government (Massimo D'Alema-DS- was *Presidente del Consiglio*). When Telekom Italia Spa 1997 was still operated by the state, it held a considerable share of stocks in the state enterprise of Telekom Serbia (at that time, Slobodan Milosevic was the President of Serbia). That the government still -despite the privatization- lays claims to influencing the operations of economical actors, is confirmed by the decision through Telekom that was passed during the last few days to sell the *Tim* mobile sector which was fought from the government side. See *Il sole 24 ore e Il Corriere della Sera*, 14th September 2006.

The law on the awarding of contracts has been newly regulated several times in the last decade and since Law No. 109/1994; here, the stricter guidelines of European law were implemented. In this context, an independent supervisory board (*Autorità per la vigilanza sui lavori pubblici*, see also above) has been set up.

c) **Public Services Law and Human Resources in the Public Administration**

As mentioned, the Constitution provides for access to the public service through open competition.³¹⁶ Nevertheless, the positions in the public service are still allocated more according to personal relationships to relatives and loyalties than as a result of an inspection of personal and professional suitability.³¹⁷ Furthermore, the rule of access through open competition is not valid for the management positions of public institutions, which are very often staffed by the political office-holders according to loyalty criteria. The issue of leadership forms a special delicate area at the interface between politics and administration, although the reigning parties of the past decades have been successful in steering the staffing of the administration's top positions via a targetted practice of nomination.³¹⁸

Concerning aspects of incompatibility, employees in the public service are generally not allowed to be employed in the private sector or to take an additional office.³¹⁹ However, exceptions are provided for, and are often made use of. In principle, permission must be obtained from the administration with which the concerned party is active.

According to art. 28 of the Constitution, employees in the public service are liable in compliance with the criminal, civil and administrative laws. Concerning sanctions under criminal law, the provisions of the Penal Code on offences against the public administration (art. 314ff. of the Penal Code, see above) apply to employees in the public service. The Court of Auditors is responsible for the supervision of the administrative as well as the accounting liability.

Before the 1990s, criminal sanctioning of the employees and/or civil servants in the public administration was mainly for minor offences. With the *Mani Pulite* proceedings, prosecution due to abuse of office as well as other offences of corruption has increased substantially.

316 The subjective demand of a sufficient and/or high qualification of the employee and civil servants is to aim objectively at 'impartiality and good operation' (*imparzialità e buon andamento*) of the public administration in the sense of art. 97 section. 2. C.f. last Corte Cost. n. 81/2006, 159/2005, 205/2004, 34/2004.

317 This phenomenon clearly belongs to the range of corruption problems in the public administration. Thus for example the following was determined: that between the end of the 70s and the beginning of the 90s, approx. 60% of the employees in the public service were not hired through open competition but that rather their employment was only legitimized afterwards, which reflects the so-called division (*lottizzazione*) of the public administration between political parties and exchange ratios between bureaucracy, parties and government. The hiring of employees without a public competition procedure is punishable as abuse of office (*Abuso d'ufficio*) in the sense of art. 323 of the Penal Code.

318 E. Casetta, *Manuale di diritto amministrativo*, cit., 5-6.

319 Art. 53 statutory regulation N. 165/2001; art. 60 d. P. R. N. 3/1957.

However, the very broad approach to the offence of the abuse of office (introduced by Law no.86/90) and therefore its generalised application was criticised in as much as that only 5% of the criminal proceedings ended with a conviction. As a result of this, a further and more restrictive reform of this offence has come into force (Law No. 234/97). The last statistical details in the year 2005 show that 977 cases of abuse of office (*abuso d'ufficio* ex art. 323 c.p.), 18 cases of bribery for the carrying out of an official act (*corruzione per un atto d'ufficio* ex art. 318 c.p.), 85 cases of bribery for the carrying out an act which constitutes violation of official duty (*corruzione per un atto contrario ai doveri d'ufficio* ex art. 319 c.p.), 106 cases of extortion in office (*concussione* ex art. 317 c.p.), 253 cases of embezzlement of public funds (*peculato* ex art. 314 c.p.), misappropriation of official funds to the disadvantage of the state (*malversazione a danno dello stato* ex art. 316 bis c.p.) have been determined.³²⁰ An asymmetry in the committing of offences exists between South and North Italy (regions such as Campania and Sicily in the south have a relatively higher portion of offences. Lombardia is located not very far away from there, to the north).

The somewhat more ineffective disciplinary proceedings (including the dismissal from office sanction) can be initiated independently of the criminal procedure. The reason for this is that despite legally valid rulings, those convicted can still be on duty – something which created quite an uprising in the public.³²¹ The attempt to regard dismissal from office as an automatic legal consequence of a legally valid passed judgment for crimes of corruption was initially deemed unconstitutional by the *Corte Costituzionale* (Corte cost. no. 197/1993). Although in the most recent Law no. 97/2001, a prejudging effect of the criminal judgement for the disciplinary proceedings and the supplementary punishment of the employment relationship finalisation in the case of a conviction due to a corruption offence of no less than 3 years of imprisonment was provided for. The standards of Law no. 97/2001 on the provisional dismissal from office and the retroactive applicability were lifted, however, by the *Corte Costituzionale* with the rulings no. 145/2002 and 394/2002.

Contrary to this, the sanctions imposed by the Court of Auditors in the administrative and/or accounting liability proceedings appear somewhat more effective, though a punishing function is partially attributed to the damage compensation which was pronounced in favour of the administration. At least one gross negligence of the employees is required as a subjective element. If protection money has been paid (*tangente*), it is included in the calculation of the damage to assets as well as the calculation of the immaterial damage (such as for the infringement of the right of the public administration to the own picture). Last year, the Court of

320 Details of the High Commissioner for the prevention of corruption and other forms of offences in the public administration (*Alto Commissariato per la prevenzione ed il controllo della Corruzione e delle altre forme di illecito nella pubblica amministrazione*), www.anticorruzione.it.

321 Compare *Corte di Cassazione*, annual report to the judiciary 2006 (*Relazione sull'attività Giudiziaria nell'anno 2006*), 9., www.cortedicassazione.it.

Auditors evaluated a total of 1,549 cases, 727 of those ended in convictions (638 rulings: 41%, 89 decisions according to summary proceedings: 6%) and 352 in acquittal (23%). The 470 other cases (30%) were closed in other ways.³²²

A special code of conduct has been issued for employees in the public service via statutory order.³²³ Among other things, it contains the legislative enactment of the principle of independency and the principle of the avoidance of conflicts of interest; the prohibition of giving or accepting gifts; the principle of notifying the head of the administration any previously paid relationships and/or about any potentially clashing financial interests with the public service; an order of injunction in the case of a clash of interests; the prohibition of drawing additional sums of money for the task which are part of the job; the prohibition of using mediation services within the framework of the contractual activities of the administration.

Moreover, a so-called *spoil system* mechanism³²⁴ was established through Law No. 145/2002, which was recently partially considered unconstitutional by the *Corte Costituzionale* (Corte Cost., sentt. NN. 103-104/2007), however. A certain fluctuation of leading officials between the public and the private sector is provided for and is partly promoted. Regulations on incompatibility include those leading officials, however, who in the last two years have either fulfilled control or supervisory functions regarding the respective potentially new employer of the private sector and/or have formulated expert opinions regarding him or have closed legal transactions with him. The other way around, newly employed leading officials of the public services are not allowed to practice such functions in the first two years of their employment in relation to their previous employment in the private sector (art. 23 para. 5 and 6, as amended by l. n. 145/2002).

Up to the beginning of the '90s, it was a typical characteristic of the Italian System of Administrative Control that it was oriented almost exclusively externally, preventively and to the supervision of the legality of individual acts of administration. Decisive acts of the management activities remain withdrawn from such controls, however. As described above, the main control of the public management of financial resources rests with the Court of Auditors, including its regional agencies. This original model has remarkably developed in the last years, as in the meantime, internal controls of the entire management of financial resources have been provided

322 Information from the annual report 2006 of the Court of Auditors (*Relazione per l'inaugurazione dell'anno giudiziario 2007*), Table 2, www.corteconti.it.

323 D.P.C.M.: *Codice di comportamento dei dipendenti delle pubbliche amministrazioni* from 28th November 2000, published in law gazette no. 84 of 10th April 2001.

324 Secretary General and leading officials are to leave office 90 days after the vote of confidence of a new government (art. 19 Section 8 d.lgs. N. 165/2001 n. F.). Appointments for top positions, as well as for administrative councils of public institutions of associations controlled and/or partially owned by the state as well as of the agencies, made by the government or the ministries during the last six months of the legislation period can be either confirmed or revoked by the new government within six months after the vote of confidence (art. 6 law n. 145/2002).

for. A general regulation through statutory regulation No. 286/1999 has been followed by the first selective provisions of l. 142/1990 and statutory regulation 29/93. Different than the the old selective controls, internal controls according to statutory regulation 286/1999 are to check the entire activities and management under administrative law. Four categories of internal controls can be distinguished: administrative legitimacy and accounting, efficiency of the management of financial resources, evaluation of the leading officials and finally strategic objectives and their attainment.

2. Members of the National Parliament

a) Legal Position within the National Legislation

According to the Constitution, the Members of Parliament are ‘representatives of the entire nation and not subject to orders and directives’ (art. 67). For this, the Constitution provides for several guarantees in favour of the parliamentarians: art. 68 II guarantees basic immunity, except in those cases in which the party concerned is caught red-handed. In the other cases, measures by the criminal prosecution authorities aimed against freedom or privacy require authorisation by the chamber, in which the person in question is active. Before 1993, even the mere initiation of preliminary proceedings against a parliamentarian inevitably required authorization from the chamber.

Art. 68 I of the Constitution guarantees indemnity.³²⁵

The right of Members of Parliament and members of the senate to compensation for their political activities is recognised in art. 69 of the Italian Constitution. This remuneration consists of the various points of income described as follows:

- The *Indennità* is the annual payment which the parliamentarians receive independent of their effective presence in Parliament. The monthly net amount is € 5,419³²⁶ after the following deductions: pension (€ 749.79), welfare (€ 503.59), life annuity (*Assegno vitalizio*) (€ 962.42) and taxes (€ 3,555.63).
- The *Diaria* is the compensation for lodging expenses, which the parliamentarians have to spend for their stay in Rome. The monthly sum amounts to € 4,003.11: the members of the senate and Members of Parliament have € 258.23 and/or € 206.58 deducted from this amount for each day of absence from a voting session. Any parliamentarian is considered to be present if he or she takes part in at least 30% of the votes in a session.

325 The administration of justice under constitutional law limited the range of validity of indemnity to votes and opinions of the parliamentarians which have an official connection to their office, compare Decision Nos. 289/1998, 10 and 11/2000 and 176/2005.

326 Compare Law No. 266 of 23rd December 2005, art. 1 par. 52 in connection with the ordinance from the executive agency of the *Camera dei Deputati* from 17th January 2006.

- Every parliamentarian receives a monthly lump-sum of € 4,190³²⁷ for constituency work as well as the payment of his or her employees, which is accepted by his or her faction and passed on to him or her.
- The parliamentarians receive a refund for their trips between place of residence and their seat in Parliament (Rome). For a distance of up to 100 km, the quarterly compensation amounts to € 3,3270.70; for distances over 100 km, the parliamentarian receives € 3,995.10. Besides this, parliamentarians can claim a refund of up to € 3,100 per year for study or international business trips.
- Members of Parliament and the members of the senate receive an annual payment to the amount of € 3,098,74 or € 4,150 for telephone costs.
- At the end of his or her term of office, each parliamentarian receives a monthly allowance (*Assegno di fine mandato*) to the amount of 80% of his or her gross pay for each effective year in office (comprises at least 6 months of effective time in office).
- As of his or her 65th birthday, each parliamentarian also receives a life annuity (*Assegno vitalizio*), at least 25% and no more than 80% of his or her gross pay depending on the length of term of office.

In comparison to the average wage level of private employees, the Italian parliamentarians receive a very generous salary.

According to the current electoral law, parliamentarians are elected according to a proportional system: the voters can only vote for a list of candidates which is set up by a political party or an alliance of parties.

b) Additional Incomes of Members of the National Parliament

The law defines numerous cases of incompatibilities with the parliamentary mandate. The most important examples are incompatibility with the function of President of the Republic, as a member of the *Consiglio Superiore della Magistratura* (Supervising Authority of the Italian Courts), as a member of a regional Parliament or of a regional government, as a constitutional judge, as a member of the general council of the *Banca d'Italia*, as an honorary judge, as an editor of a newspaper or a magazine, as a civil servant of the Italian Civil Service or the Italian Military Security Service, as a Member of the European Parliament or as a university professor.

Law No. 441 of 5th July 1982 assigns parliamentarians the duty to disclose their financial details. Accordingly, every Member of Parliament must submit an annual statement of accounts to his or her chamber containing the details of his or her personal assets, his or her incomes and the election campaign costs incurred by him or her and/or his or her party. A copy of the income tax

327 € 4,678.36 for members of the senate.

declaration must accompany the statement of accounts. These documents are published in a generally accessible special bulletin. Law No. 515 of 10th December 1993 also introduced a duty of transparency for the election campaign costs of parties and individual candidates.³²⁸

No standard on duties of transparency for parliamentarians exists in the Italian legislation with regard to secondary incomes.

c) **Undue Influence**

Law No. 1261/1965 defines the incompatibility of parliamentary compensation with additional benefits, premiums or compensation from the state, public bodies or franchise corporations of public services at a national, regional or local level

3. **Political Public Office-holders on the National Level**

a) **Legal Position within the National Legislation**

The Italian legal system recognises the Prime Minister (*Primo Ministro*), the ministers – which together with the Prime Minister form the Council of Ministers (*Consiglio dei Ministri*) – and the state secretaries as ‘political office-holders’.

The Constitution describes the legal position of the members of government as follows: First, the State President appoints the Prime Minister and, at his or her recommendation, the ministers (art. 92); the Prime Minister determines the guidelines of the government policy and carries responsibility for it, he or she ensures a uniform alignment of political and administrative actions of the government through support and adjustment of the activities of the ministers, while the ministers are jointly responsible for the actions of the government and as individuals for their own areas of business (art. 95).

The legal system differentiates between the ‘traditional’ case of an accumulation of offices (when ministers or state secretaries are also Members of Parliament) and the separation of these duties.

Ministers and state secretaries who are not Members of Parliament are remunerated just as the Members of Parliament and members of the senate – after deductions for pension and social security contributions.³²⁹ In other words, they can receive payment to the same amount as the parliamentarians. Furthermore, they can receive a salary which they draw as ministers and state secretaries.³³⁰ However, according to art. 2 of Law 418/1999, ministers or state secretaries must

328 See in detail below, Part IV.4.b).

329 Compare above, Part IV.2.b).

330 Compare art. 1 of Law No. 418 of 9th November 1999.

choose between the mentioned remuneration and the salary to which they as employees of the state or other facilities of the public administration have claim, even if they are so-called 'laid off'. They remain 'laid off' for as long as they hold a governmental office. The mentioned remuneration must not exceed the salary of the parliamentarians.³³¹

The regulations which apply to the salary of the parliamentarians, contained in art. 3 of Law 1261/1965, are also applicable to public office-holders. The mentioned incompatibility of parliamentary compensation with additional benefits, premiums or compensation stateside, public corporations or franchise corporations of public services at the national, regional and local level is also valid for political office-holders as it is for the Members of Parliament. Fees for the participation in tendering commissions, study and investigation committees are exceptions to this prohibition of additional income.

As with the parliamentarians, the salary of the public office-holders is also evaluated as being very generous when compared to the average wage level of employees in the private sector.

b) Additional Incomes of Political Office-holders

The duties of transparency for political office-holders are contained in art. 10 of Law 441/1982 – as for parliamentarians³³²: Consequently, the Prime Minister, ministers and state secretaries must make known their yearly tax declarations in the same form as the Members of Parliament, for as long as they remain in office.

The general principles concerning incompatibilities of ministers and state secretaries are contained in Law No. 215 of 20th July 2004. According to this, government office-holders³³³ must care for and pursue the public interests exclusively as well as avoid any handling of matters which could produce a conflict of interest.³³⁴

The following activities are therefore forbidden to government office-holders:

- Public positions – with the exception of the MP seat and the other posts provided for in Law No. 60 of 15th February 1953;
- Activities in public facilities;
- Leading functions in commercial enterprises;
- Professional activities which are connected to the government office and are carried out in favour of public or private subjects;
- Any form of employment in the public service;

331 See also art. 47 II of Law No. 146 of 24th April 1980.

332 Compare also below, Part IV.4.b).

333 Meant here are the Prime Minister, the ministers, the deputy ministers, the state secretaries and the special commissioners according to art. 11 of Law 400/19888.

334 Compare art. 1 of Law 215/2004.

- Any form of private employment.

In Italy, the regulations concerning conflict of interest have an especial importance: this occurs if a political office-holder takes part in a public resolution and:

- he or she is in a position of incompatibility in accordance with art. 2 of Law 215/2004 or
- the resolution has an influence on his assets, on the property of his/her spouse, or of relatives up to a second degree of relatedness as well as their own enterprises and, in addition, poses an encroachment of the public interest.

An additional regulation concerning conflict of interest is provided for in Law 441/1982: According to this, every political office-holder must disclose all incompatibilities of his or her position to the *Autorità Garante della Concorrenza e del Mercato* (supervising authority for fair competition and market)³³⁵ within 30 days of his or her assumption of office. He or she must also declare all information on his/her financial situation, including shares, within 60 days. Also included here is all property which the politician has had at his/her disposal in the last three months before his or her assumption of office.

In the case of an incompatibility with regard to the broadcasting mass media, the publishing industry and electronic media, the already mentioned duty of disclosure also covers goods and property of the politically active entrepreneur: The required declaration must then be submitted to the *Autorità Garante delle Telecomunicazioni* (supervising authority for telecommunications).³³⁶ The political office-holder in question must notify the responsible authorities of any change of his/her financial situation within 20 days thereafter. The supervising authorities must carry out the necessary inspections within 30 days after the acceptance of the above-mentioned declaration.

Law 215/2004 provides that the mentioned supervising authorities must submit a semi-annual report on their supervisory activities to the Parliament. Should the declarations submitted by the political office-holders prove to be false or incomplete and the required complementing declarations by those in question not be submitted within 30 days, they are liable to prosecution according to art. 328 of the Penal Code. The supervising authorities report to the responsible justice authorities as well as to the presidents of both chambers of Parliament about the irregularities assessed. The above-mentioned declarations of the political office-holders are published in a generally accessible special bulletin also in this case, which is issued by the responsible chamber of Parliament.³³⁷

335 Compare Law No. 287 of 10th October 1990.

336 Compare Law No. 249 of 31st July 1997.

337 In the current legislative period (XV.), a bill (Bill No. 1318) has been introduced by the majority of the government which should newly regulate the topic of incompatibilities and of conflict of interest. The most

It is common in Italy that public office-holders also practice other occupations in parallel: Often, Members of Parliament and/or members of the government hold an important position in enterprises, whose interests can inevitably become the object of parliamentary or governmental resolutions. To be mentioned in this context is, above all, that public office-holders keep a clear position of influence in the company – even if they themselves no longer head any private enterprises – via their (e.g. familial) connections with the management board (as is the case with the former Prime Minister Silvio Berlusconi and the media enterprise of Mediaset).

In order to strengthen the guarantees in this context, Law 215/2004 orders the above-mentioned cases of incompatibility to continue for 12 months after the finishing of the public posts with reference to public or private enterprises, as long as the major part of activities shows a connection to the finished public position.

c) **Undue Influence**

The criminal regulations applicable to the Prime Minister and the ministers for the execution of their official authority – not only for cases of corruption – are found in the following legal sources:

- Art. 96 of the Italian Constitution specifies that the Prime Minister and the ministers – after authorization by the senate or the Chamber of Representatives – are handed over to ordinary courts of law for offences during the execution of their official authorities. This applies after leaving office.
- Constitutional Law No. 1 of 16th January 1989 contains further regulations; it contains its own rules of procedure for the offences described in art. 96. An extensive description of this regulation is not possible here due to spatial restrictions: Most important in this context is that the punishment of the Prime Minister and the ministers for offences during the execution of their official authorities can be increased by one third if the criminal offence is especially severe.³³⁸
- Standards on the criminal offences of ministers as well as the criminal offences of the state president according to art. 90 of the Constitution³³⁹ are contained in Law No. 219 of 5th June 1989. The law contains a detailed procedure for criminal offences of ministers and the state president, the description of which is not possible here to due limitations of space.
- Law No. 140 of 20th June 2003 as well as the statutes of implementation to art. 68 of the Constitution contain more detailed regulations on incompatibility.³⁴⁰

important reform relates to the setting up of a new supervising authority, which assesses the possible conflicts of interest and should legislate the countermeasures necessary for them.

338 Compare art. 4 L. *costituzionale* no. 1/1989.

339 High treason or attack on the constitutional order.

340 This deals with the hearing, personal searching, house searching, arresting and any other restriction of personal freedom of Members of Parliament. See also above, Part IV.2.c).

- The parliamentary regulations on the procedure of prosecution for Members of Parliament is also to be mentioned.

An individual regulation on crimes of corruption and the corresponding sanctions of political office-holders is lacking.

4. Political Parties

Although the Italian legal system does not directly attribute a public task to the political parties, the republican Constitution indirectly recognises the importance of their function for the public. ‘All citizens have the right to freely assemble in parties in order to be involved in the formulation of state objectives in a democratic way’ is the only regulation under constitutional law contained in art. 49 of the Constitution which relates to political parties. The main focus here is not on the parties but rather on the citizens and their voluntary initiative: At the same time, it is stressed that their organization in political parties is a basic, almost unavoidable precondition for their participation in the formulation of state objectives. According to Italian jurisdiction, the political parties are ‘associations without legal capacity’, without legal personality and therefore are subjected to general civil law.³⁴¹

Different than in other legal systems, an individual party act does not exist in Italy which standardizes specific aspects of their organisation, function or activity. However, the regulation of their financing is completely different.

The regulation of financial sources of the political parties has been changed quite often in Italy, while the preceding laws have only partially been abolished by the later ones. To bring about order, legislators instructed the government through art. 8 of Law No. 157 of 3rd June 1999 to adopt a summarizing unified document for the entire regulation within 120 days: however, the executive did not fulfil this requirement. For this reason, it is inevitable that the representation of the party financing regulations can only be carried out by means of a chronological summary of the different standards.

Up to the beginning of the '80s, the finances of the parties were mainly regulated by Law No. 195 of 2nd May 1974 on ‘state contributions to the finances of political parties’. Corresponding to that, all parties which won more than 2% of the cast valid votes during the last national election were allowed to receive public allowances. These were paid out as annual subsidies for political activities as well as *ad hoc* contributions for national, local and European election campaigns. Targeted financing of individual political parties by the public sector was forbidden and all private donations over the amount of one million lira had to be made public. Moreover, the law did not provide for either a limit on private allowances or tax advantages connected to that.

³⁴¹ Compare Art. 36 ff. *Codice Civile*.

However, punitive measures for unlawful financing as well as for violations of the publishing of annual statements of party accounts were provided for.

Law No. 441 of 5th July 1982 aimed at the transparency of the individual asset situation as well as the expenditures in the election campaigns of Members of Parliament and political office-holders active on the national, regional and local level.³⁴² As a basic principle, the standard requires that the named office-holders disclose their yearly tax declaration.

Law No. 413 of 8th August 1985 imposed the duty to publish a detailed statement of accounts on the costs for election campaigns (e.g. media access, publications, posters etc.) on the parties. In addition, it was stipulated that the public subsidies were to be distributed between the central and the local levels of the political parties.

90.3% of the voters voted for the abolition of state party financing in the Referendum of 18th April 1993. As a result, public allowances for party funds were drastically reduced, so that the need of private donations rose correspondingly.

Law No. 515 of 10th December 1993 introduced important regulations concerning expenditures and donations for election campaigns as well as in relation to the transparency of the statements of accounts of political parties. The state general financing of political parties was abolished and the public allowances for election campaigns were replaced by reimbursement of campaign expenses. According to Law 515/93, the money was divided among the parties according to their election results. For each candidate, the highest amount of public donation allowed amounted to 80 million lira plus a fixed amount, which amounted to 100 and/or 10 lira per citizen in each single-member and multiple-member constituency. The parties had to disclose the donator by name with election campaign donations from a threshold value of 11,453,000 lira. Single donations over 22,906,000 lira were forbidden. Concerning election campaign costs, the parties were not allowed to exceed a limit which is very complicated to calculate: Two different funds arose from the calculation, one for the chamber and one for the senate. The first was distributed among all parties which achieved either at least 3% of the valid votes cast on the national level and which could show at least one elected candidate or who exceeded the 4% clause of the proportional quota. The second fund was distributed among all parties which had at least one elected candidate on the regional level or had achieved 5% of the valid votes cast. On the other hand, independent candidates had to be elected or had to have at least 15% of the valid votes cast in their own constituency in order to raise claim to the public election cost reimbursement.³⁴³

342 Compare above, Part IV.3.b).

343 In accordance with the then valid voting system, this standard obviously pressured parties and political persons to form a coalition.

Besides this, candidates and parties could enjoy special rates for the shipping of election campaign advertising and of a reduced value-added tax for printed material.

Law No. 2 of 2nd January 1997 offered taxpayers the possibility to pay 4% of their income tax to a special fund for the financing of parties and political movements. This fund, which was not allowed to exceed an upper limit of 110 billion lira, should have balanced out the drastic reduction of the private donations which followed the enormous corruption scandal at the beginning of the '90s (so-called '*Mani Pulite*', clean hands). The basic idea of the law was to support a more active roll of the citizens, who as taxpayers were allowed to determine the scope of the fund. However, they themselves could not determine the receiver of the money, as the funds were to be distributed among all parties according to their election results. All political groups who had at least one representative in the *Camera dei Deputati* or a member in the senate were eligible to participate in this kind of state financing. Besides that, natural and legal bodies were allowed to deduct up to 22% of their party donations from their income tax, additionally to the previously mentioned 4‰ regulation. In order to guarantee extended transparency of the parties' finances, the statements of accounts of the political parties had to be published in the Italian law gazette (*Gazzetta Ufficiale*) as well as in two national newspapers.

Only two years after the introduction, Law No. 157 of 3rd June 1999 abolished the voluntary giving of the 4‰ share of the income tax once again, as this had not achieved the desired results. Only one of a potential 14 million taxpayers has actually made use of it, which is why the parties were lacking approx. 50 billion lira; they had however been calculating with much higher contributions. As a result, several parties were close to going bankrupt. For this reason, Law 157/99 initiated once again the state party financing, although disguised as election campaign cost reimbursement. Differently to Law 515/93, the public money is now only allowed to parties and political movements – no longer to individual candidates. Otherwise Law 157/99 basically conforms to the structure of Law 515/93: Most of the relevant changes concern only the scope of the allowance.

- The new regulation provides for four different funds for the reimbursement of the election campaign costs for the chamber, the senate, the European Parliament and the regional parliaments; a sum of 4,000 lira (approx. € 2) per eligible voter is available for the elections for the *Camera dei Deputati*³⁴⁴, respectively.
- Parties entitled to claim are all those which have either achieved at least 1% of the cast valid votes and can show one elected representative in the last election for the *Camera dei Deputati* or which have achieved 4% of the valid votes of the proportional quota.

344 This regulation has been criticized: As there are more eligible voters for the Camera (18 years old and over) than for the senate (25 years old and over), the parties must raise different amounts of election campaign costs accordingly, in order to reach the voter. Despite this, the disposable funds are calculated identically in both cases.

Additionally, the parties receive special rates for the shipping of political publications and materials. Party donators can deduct 19% of their allowances and up to 200 million lira (approx. 100,000 euros) from their income tax. Financial contributions from public enterprises are forbidden.

As a result, the parties received 663 million lira (approx. € 330,000) in three years.

In the end, the entire sum of the election campaign cost reimbursement was raised due to Law No. 156 of 25th July 2002.

Summary of the current financing system:

In Italy, the political parties are financed by two different sources of money:

- Reimbursement of campaign expenses (public);
- Donations to parties and candidates (private).

a) Reimbursement of Campaign Expenses (public)

The reimbursement of campaign expenses concern election campaigns for elections of the National Parliament (*Camera dei Deputati* and *Senato della Repubblica*), European Parliament and the regional parliaments. The upper limit of the allowed costs in election campaigns now comes to € 1 per eligible voter in elections for the *Camera dei Deputati*. The entire amount of the reimbursement fund amounts to a sum of € 1 per eligible voter in elections for the *Camera dei Deputati*. The allowances are distributed among all parties which achieved at least 1% of the valid votes on the national level in the last parliamentary elections. For the European elections, the state allowances are distributed among all parties in relation to the valid votes received, provided that at least one candidate was elected in the last European election. For the regional elections, the state allowances are distributed among all parties in relation to the valid votes received on the regional level, if at least one candidate was elected in the last regional election.

Reimbursement of campaign expenses for the Parliamentary elections – 9/10 April 2006*		
CHAMBER OF PARLIAMENT	PARTIES FINANCED	TOTAL REIMBURSEMENT
Camera dei Deputati	18	€ 49,964,574.57**
Senato della Repubblica	18	€ 48,288,540.28**

* Source: Ital. Parliament, Servizio studi, Dossier 'Il finanziamento della politica in Italia', No. 30, 6th Nov. 2006

** The sum relates to the total financing for the entire legislation period (2006-2011).

b) Donations to Parties and Candidates (private)

The voluntary financing of politics is allowed for all natural and private legal bodies (associations, commercial corporations etc.). They may finance political parties, their facilities as well as the corresponding parliamentary factions. Enterprises (financial corporations) may make donations only if the share of the public authority stays under 20% of its overall capital amount. In contrast, public or mainly public controlled financial corporations are not allowed to make

donations. The direct financing of representatives of the national parliaments and of the European Parliament as well as of members of the regional, provincial and municipal parliaments is absolutely out of the question. There is no absolute upper limit on the amount of financing allowed.

aa) Special Regulations for Election Campaign Costs of Political Parties

The law provides for an absolute upper limit for election campaign costs in elections for the National Parliament: This amount is € 1 per citizen registered in the constituency in which the parties have set up candidates. The entire sum consists of the combination of the corresponding amounts for the *Camera dei Deputati* and the *Senato della Repubblica*.

For the regional elections, the cost upper limit comes to a total sum of € 1 per citizen registered in the provincial constituencies of the respective region in which the parties have set up candidates. There is no upper limit for European, provincial or municipal elections.

bb) Special Regulations for Election Campaign Costs of Individual Candidates

Corresponding to the regulations already mentioned, candidates may only receive donations for parliamentary elections via a so-called ‘*Mandatario Elettorale*’ (election commissioner). The upper limit of the allowed costs amount to a total sum of € 52,000 plus € 0.01 per resident in the constituencies in which the politician in question is running.

For regional elections, the upper limit for the allowed costs comes to a total amount of € 34,247.89 plus € 0.0054 per resident in the constituency in which the politician in question is running. Each region can change the previously-mentioned upper limit to a certain degree.

c) Legislation on Transparency of Political Party Funding

Donators and those receiving donations must submit a joint declaration addressed to the *Camera dei Deputati* for each donation over € 50,000 within three months or by March of the following year. Donations from banking institutes are excluded from this regulation. For foreign donations, the declaration duty exists only for the recipient of the donation.

aa) Duties of Accountability of Parties, Movements or Political Groups

Party representatives must submit statements of accounts with details on all costs and sources of income (including all election campaign donations received) to the chair persons of both chambers: These statements of accounts are then passed on to the *Corte dei Conti*³⁴⁵, where a commission of three drawn judges checks the correctness and reports on it to the Chairman of

345 See above Part III. in detail on the role of the *Corte dei Conti*.

the Parliament. If the statements of accounts are not submitted on time, the payment of the election campaign cost reimbursements is discontinued. If the statements of accounts contain any uncertainties concerning the origin of a donation, the *Corte dei Conti* imposes a fine. Should the maximum cost limit be exceeded, the commission imposes a fine, which must not be less than half or more than three times the amount of the excess.

The structure of the party financing is still oriented towards the guidelines of Law 515/93. The following changes in the law chiefly concerned the regulation on reimbursements.

bb) Duties of Accountability for Candidates

Every candidate – whether or not he or she is elected – must name an appointee who alone has the right to accept donations for his or her election campaign. The appointee must list all received donations in a statement of accounts and present this to a supervisory commission, the so-called *Collegio regionale di garanzia elettorale* (regional commission for campaign security).³⁴⁶ This commission checks the correctness of the submitted declarations and statements of accounts. If these documents are not submitted on time or contain inconsistencies, the *Collegio* imposes a fine on the candidate concerned. If the required documents are not submitted within 15 days or the legal maximum limit for election campaign expenses is exceeded twofold, the people's representative in question must step down.

V. General Comments

The phenomenon of corruption is not limited to political bodies in Italy, it has systematically spread to all levels of the public administration.³⁴⁷ It is however questionable, in the face of the first implemented regionalism reform, if and how this deeply rooted practice makes itself felt in light of the changed circumstances. A factor which supports corruption is already lessened by the regional authorities having been granted extensive financial autonomy (art. 119 of the Constitution (new version)).³⁴⁸ On the other hand, one could assume that the increase of the interdependencies of decisions resulting from the reform might have a corruption-initiating

346 This commission, whose competences are exercised on the regional level, consists of a chairperson who has to be a judge of a Court of Appeal, and an additional 6 members, 3 of which must be judges in ordinary and an additional 3 university professors of the legal or economic faculties and/or business graduates.

347 D. Della Porta / A. Vannucci, *Corruzione Politica e Amministrazione Pubblica*, Bologna 1994.

348 See also statutory regulation no.76/2000, 'Principi fondamentali e norme di coordinamento in materia di bilancio e di contabilità delle regioni, in attuazione dell'art. 1 comma 4 della legge 25 giugno 1999, n.208'. In the past, local decision-makers had financial resources at their disposal transferred from the state (often earmarked). Consequently, local politicians made expenditure decisions without having to be responsible to their voters for it, since the drawing of taxes was solely reserved for state agencies. The acceptance of financial autonomy relating to income as well as the expenses is to increase the responsibility of these decision-makers towards the taxpayer.

effect. The splitting of the decision locations³⁴⁹ could possibly also have a corruption-supporting effect, so that a diffuse ‘micro-corruption’ could increase. The public tendering sector is especially sensitive to this. In accordance with the purpose of the reform, an increased democratic participation of the local population in decisions regarding the community, the exercising of individual rights which further the transparency of the administrative process as well as the strengthening of the independent local control instances such as the *difensore civico*³⁵⁰ could be effective as a countermeasure.³⁵¹

The most important aspects of the problem are:

- A basic inability of the public administration to function;
- A corresponding inadequacy in the transparency of administrative activities,
- which facilitates the opportunity of committing offences and makes violation of rights in the political sector very easy;
- Existing uncertainties concerning the outcome of legal proceedings;
- A general politization of the mass media, due to which, cases of political corruption only earn reduced attention or coverage is influenced due to reasons of bias.

Above all it is decisive, however, that the political culture of Italy is not shaped by a wider consensus concerning the legitimacy of the political perception of duties. On the contrary, most members of the Italian public are always ready to look at and evaluate the specific cases of corruption solely according to their own standards, which are thus inevitably influenced by parties. This is why only changing the law is not suitable to master the problems, as long as nothing is done on the level of the general political culture as well. However, a change of the public mood requires much more and takes much longer than a pure improvement of standards and regulations.

349 Through the reform, authority to make decisions is transferred to the lower levels and state as well as regional control agencies are abolished. Compare the abolition via the Constitutional Law No. 3/2001 of art. 124 and 125 of the Constitution on the control of the regional administrative acts via the *Commissario del Governo*, as well as of art. 130 of the Constitution on the control of the regional examination commission (*Comitato regionale di Controllo*). As is well known, the latter organs were however very favourable towards the creators of the administrative acts to be controlled, and their activity was shown to be very unsatisfactory.

350 Compare art. 11, 127 statutory regulation No. 267/2000. The *difensore civico* (lit. Civil Defense) is to secure the ‘impartiality and good execution’ (*imparzialità e buon andamento*, according to the formula of art. 97 of the Constitution), in that s/he detects abuses, delays in and disturbances of the administrative activities. Its powers are rather of an informal nature and aim at convincing. Compare also above, Part 4.

351 The recently adopted new statutes of the regions, which increased and strengthened the internal control agencies move in that direction. Compare the diverse so-called *Consulte Regionali*.

Report Latvia³⁵²

352 We would like to thank Agnese Lesinska, Centre for Public Policy (PROVIDUS), Riga, for answering the questionnaire and supporting the realization of the Report Latvia, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

The public bodies that collect data on corruption in Latvia are:

- Statistics on detected crimes collected by the Corruption Prevention and Combating Bureau.³⁵³
- Ministry of the Interior.³⁵⁴
- Statistics on convictions collected by the Latvian Courts Information System.³⁵⁵
- Surveys and analysis of corruption collected by the Corruption Prevention and Combating Bureau.³⁵⁶

2. Private Sources of Data-collection on Corruption in the Public Sector

The private institutions that collect relevant data are:

- Transparency International (Sabiedrība par atklātību – Delna).³⁵⁷
- Centre for Public Policy PROVIDUS.³⁵⁸

Most of this data is published. The rest is available to everybody upon request, save material of particular criminal investigations where specific disclosure restrictions apply. Additionally, the right of access to administrative files for individuals who are not concerned is provided in the Freedom of Information Law which was adopted on 29th October 1998.

II. Legislation dealing with Corruption

The specialised legislation dealing with the fight against corruption includes:

- The Law on Corruption Prevention and Combating (adopted on 18th April 2002),
- The Law on Prevention of Conflict of Interest in Activities of Public Officials (adopted on 25th April 2002).

According to the Law on Corruption Prevention and Combating (Article 1):

‘For the purposes of this Law, corruption means bribery or any other action by a Government official intended to gain a benefit or advantage for him/herself or other persons by means of his/her office or authority or by abusing it.’

353 www.knab.lv.

354 www.iem.gov.lv.

355 <http://tis.lursoft.lv/>.

356 www.knab.lv.

357 www.delna.lv.

358 www.policy.lv, www.politika.lv, www.providus.lv.

Regarding the obligation to prosecute, the Latvian legal system follows the principle of legality, according to which prosecution of an offence is mandatory for the public prosecutor. According to the Criminal Procedure Law, however, there are certain criminal offences where the public prosecutor discretionally decides about prosecution. These are mainly personal offences which are not related to corruption.

III. Control and Sanctions

There are administrative bodies on preventing and fighting corruption in the public sector in Latvia.

The Corruption Prevention and Combating Bureau is an institution of the state administration under the supervision of the Cabinet of Ministers, performing functions to prevent and investigate (though not prosecute) corruption and monitor compliance of political parties and their associations with party financing regulations.

The State Audit Office is an independent collegial supreme audit institution. The State Audit Office performs financial and efficiency audits, as well as examines the conformity of transactions and activities with regulatory enactments and the planned results, by controlling:

- revenues and expenditures of the state budget and local government budget resources;
- utilization of the resources of the European Union and other international organizations or institutions, which have been included in the State budget or local government budgets; and
- the management of any kind of State and local government property.

The Latvian National Human Rights Office is Latvia's equivalent to an ombudsman office. It is an independent national institution aimed at promoting the observance of human rights. The office carries out investigations of individual complaints, promotes conciliations, issues recommendations, analyses the human rights situation, and engages itself in the education and information of the public and public officials on human rights. On 24th April 2006 the Saeima (Parliament) adopted the Ombudsman Office Law, which will enter into force on 1st January 2007 when the Ombudsman Office is to start operation.

Additionally, the cases of corruption in the public sector are also subject to parliamentary control mechanisms.

The *Saeima* shall appoint parliamentary inquiry committees for specified matters if not less than one-third of its members request it. These are *ad hoc* bodies. In compliance with the assignment given by the *Saeima*, a parliamentary inquiry committee shall have the right to invite and question private persons and, if necessary, in cooperation with experts to audit government, local government and private establishments and enterprises, provided that the private establishments and enterprises directly or indirectly receive state subsidies or loans or are in a contractual

relation with the government or participate in the privatization of government or local government property.

Currently, the *Saeima* has a parliamentary inquiry committee on reviewing the financial activities of Mr. Einars Repse. He is the president of the opposition party *New Era* (since 2002), a former Prime Minister (2002 – 2004), former Member of Parliament (2004), and former Minister of Defence (2004 – 2005). Mr. Repse attracted public attention by borrowing large amounts of money to invest in real estate so as to raise doubts about his solvency and possible clandestine sources to cover the debt.

In the *Saeima* there is also the standing ‘Mandates, Ethics and Submissions Committee’. The committee is authorized to supervise compliance with the Code of Ethics of *Saeima* Members and review violations thereof. The committee reviews a violation based on a written statement of a Member of the *Saeima* or a group of members. The committee is to notify the member of *Saeima* in question immediately after the case is initiated (i.e. accepted for review). If a violation is confirmed, the committee shall adopt one of the following decisions: issue an oral warning and/or written warning, which is announced at the plenary and published in the official bulletin.

There is also a standing ‘Committee on Supervising the Prevention and Combating of Corruption, Contraband and Organised Crime’. As all other standing committees, this committee has the right to directly request the information and explanations necessary for its work from the relevant Minister and the institutions subordinated to or supervised by him/her, as well as from local governments. The committee itself may summon the appropriate officials to provide the required comments.

The opposition can also request the appointment of a Parliamentary inquiry committee if not less than one-third of *Saeima* members support it. At least five Members of the *Saeima* may submit questions in writing to the Prime Minister, a Deputy Prime Minister, a Minister, a State Minister or the President of the Bank of Latvia concerning matters which fall within the competence of these officials. At least 10 Members may submit in writing interpellations to members of the Cabinet. However, the plenary may still reject such interpellation. Members of the opposition have equal rights as members of governing parties to participate in parliamentary debates. Not less than one third of the Members of the *Saeima* may request the convening of a plenary session. However, this provision has not been utilized in any corruption-related matters since 1993.

By the time of editing of the present report, the standing Committee on Supervising the Prevention and Combating of Corruption, Contraband and Organized Crime is chaired by a Member of Parliament (MP) of the opposition.

Apart from the right of Parliamentary committees to request information, Members of Parliament enjoy the right to access information identical to that of any citizen according to the Freedom of Information Law.

Regarding the role of the media, the academic world and the society or NGOs in the discussion and perception of corruption it has to be stated that Latvia has a rather high degree of media freedom from the interference of state institutions. Some newspapers and the public television have been extremely active in exposing corrupt affairs. However, a major problem is secrecy around owners of the media and the weak protection of journalists against pressures from the owners.

NGOs, such as the Latvian chapter of Transparency International and the Centre for Public Policy PROVIDUS, have been very active in voicing critical opinion about public officials (particularly politicians) who have been involved in corruption. These organizations have also been engaged in advocacy to improve anti-corruption legislation. However, these few very visible organizations are rather exceptional and the overall level activity of the civil society is quite modest.

The academic circles have not exerted any particularly active involvement in corruption issues in Latvia.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Civil servants are obliged to be loyal to the legally elected government. They are responsible for the legality of their actions and they are obliged to refuse to fulfil illegal orders given by superiors. Except for some special categories (e.g. police or boarder guard officers), civil servants are allowed to strike (no such strikes have taken place though).

Civil servants are protected against groundless dismissal. Some of the main existing grounds for dismissal are that the civil servant has been proved unsuited for the position, has committed certain proved violations, the agency in question is closed or the number of civil servants is cut down.

According to the Civil Service Law, civil servants enjoy a number of special social guarantees, which are not granted to any other employee:

- Benefit in case of civil servant's injury or death, civil servant's relative's death (Article 24);
- Benefit in case of a birth of a child (Article 25);

- Bonus for additional duties (Article 28);
- Bonus for work under particularly intense conditions (Article 29);
- Coverage of expenses related to education (Article 30).

The official average income in the public sector slightly exceeds that of the private sector, although this could be explained by a high degree of unofficial payments in the private sector. However, for qualified professionals wages in the private sector are considerably higher, especially for some professions such as lawyers or construction specialists.

Latvia employs the principle of the unity of state administration.³⁵⁹ According to the State Administration Structure Law, in state administration, officials are included in a unified hierarchical system, in which one official is subordinate to another. A member of the Cabinet is the highest official with respect to the officials of the institutions subordinate to him or her. The next highest official is the State Minister, Parliamentary Secretary and State Secretary (the administrative head of a Ministry).³⁶⁰

An official of the direct administration is a higher administrative official with respect to all the officials of the direct administration of hierarchically lower levels that are subordinate to him or her. The same applies for the indirect administration, like local governments or other public persons established by law or on the basis of a law. In other words, in each of the areas of the direct and indirect administration there is an official to whom all the officials of hierarchically lower levels are subordinate to.³⁶¹

Most of the employees of the public administration bodies are civil servants. Generally, any civil servant may be entrusted certain decision-making powers. Employees of local government administration are not members of the civil service.

Notable examples of the privatization process are waste management, reconstruction and maintenance of water and heating utilities, maintenance of data bases.

b) Allocation of Financial Resources

As already mentioned, the State Audit Office performs financial and efficiency audits, as well as examines the conformity of transactions and activities with regulatory enactments and the planned results by controlling:

- revenues and expenditures of the state budget and local government budget resources;
- utilization of the resources of the European Union and other international organizations or institutions, which have been included in the State budget or local government budgets, and

359 The State Administration Structure Law, Article 6.

360 Article 32.

361 Article 32.

- the management of any kind of State and local government property.

However, the State Audit Office does not have any explicit responsibility for combating corruption, although the findings of their audits at times indicate dubious deals in which incidents of corruption may have occurred.

In addition to that, the Public Expenditure and Audit Committee of the Parliament is entitled to control the financial management in the public institutions.

Moreover, according to the State Audit Office Law (Article 3), each public institution is required to have its own internal control system which has the following duties:

- Provide an opinion for the *Saeima* regarding the annual financial report submitted by the Minister of Finance, concerning the implementation of the State budget and the budgets of the local governments (their financial state). The State Audit Office shall also submit this opinion to the Ministry of Finance by 15th September of the financial year that follows the accounting year;
- Provide opinions regarding the correctness of the preparation of annual reports by the ministries and other central state institutions;
- Submit reports to the *Saeima* and the Cabinet, regarding:
 - Internal financial audits in the cases that the State Audit Office issued an opinion expressing doubts or a negative opinion, or for which there has been a refusal to issue an opinion.
 - All efficiency audits performed by the State Audit Office.
 - Especially important and significant findings.
- Notify the state institutions of findings that affect the activities of such institutions, as well as law enforcement institutions regarding violations of legal norm findings in audits.

These reports are accessible on the internet site of the State Audit Office.

Public procurement is perceived by many indicators as one of the most corrupt areas of the public sector. However, there are few exposed instances of procurement corruption. The Corruption Prevention and Combating Bureau has investigated a few corruption cases in the public procurement. Thus, in June 2006 the court convicted the former Deputy Head of the Health Insurance State Agency upon bribery accusations, for taking bribes from suppliers of medicines. There have also been relatively minor corruption cases in the area of military procurement.

c) **Public Services Law and Human Resources in the Public Administration**

Latvia has experienced a number of cases where politicians (inter alia the current Prime Minister Aigars Kalvitis³⁶²), used any legal opportunity to provoke disciplinary actions against administrative public officials who refused to accept political interference in their duties. Moreover, certain categories of public officials, such as representatives of the state's interests on boards of publicly owned companies, are staffed entirely based on party preferences, although there are laws prohibiting such procedures. However, also staffing in other senior public administration positions sometimes is thought to be influenced by partisan considerations.

In general, a change of government does not have any influence on the staffing in the public sector.

In principal, the public servants may have a secondary job, but this is subject to approval.

Each public institution is required to develop an internal control system, which is supposed to also ensure control over current and closed operations. In Ministries, there are special bodies of internal audit, which assess the effectiveness of internal control.

As far as the specific acts of corruption are concerned, there are several provisions worth noting.

- For a person who accepts a bribe, that is: *‘intentionally illegally accepting the offer of material value, property or benefits of another nature, where commission thereof is by a public official personally or through an intermediary, for the performing or failure to perform some act in the interests of the giver or offerer of the bribe or the interests of other persons by using his or her official position’*, the applicable sentence is deprivation of liberty not exceeding eight years, with or without confiscation of property (par. 1).
- For a person who commits the same acts repeatedly, or on a large scale, or if the bribe is demanded, the applicable sentence is deprivation of liberty for a term of three to ten years, with confiscation of property (par. 2).
- The commission of the acts of the paragraphs one and two of this Article, in association with others with the purpose of extortion of a bribe, or by a group of persons pursuant to prior agreement, or by a state official holding a responsible position, the applicable sentence is deprivation of liberty for a term of eight to fifteen years, with confiscation of property (par. 3).³⁶³

Moreover, the *Law on Prevention of Conflict of Interest in Activities of Public Officials* provides incompatibility rules and disclosure requirements for civil servants.

362 http://www.europa-digital.de/laender/let/nat_pol/, 6th September 2007.

363 Article 320 of the Criminal Law.

The issues relevant to corruption are covered in Article 13 (Restrictions on Accepting Gifts) of the Law:

- (1) A public official is prohibited from accepting gifts directly or indirectly, except the cases specified in paragraphs three and six of this Article.
- (2) By the letter of this law, a gift is any financial or other kind of benefit including services, transfer of rights, release from obligations, refusal from any right in favour of a public official or his or her relatives, as well as other activities by which any benefit is granted to such persons. By the letter of this law, diplomatic gifts are gifts that official representatives of foreign states give to the President, Chairperson of the *Saeima*, Prime Minister, Minister of Foreign Affairs and officials of the Ministry of Foreign Affairs, referred to in this Article, paragraph 1, clause 17 and this Article, paragraph two of this Law, during official or work visits in accordance with protocol.
- (3) A public official in relation to his or her activities is permitted to accept only diplomatic gifts and gifts which are presented:
 - 1) by official representatives of foreign states during official or work visits abroad;
 - 2) by foreign delegations or official representatives of foreign states during official or work visits in the Republic of Latvia;
 - 3) by official representatives of foreign states to the public officials of diplomatic and consular representation offices of the Republic of Latvia;
 - 4) by official representatives of foreign states during work visits in the Republic of Latvia – to the President, Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments and State Ministers;
 - 5) on public holidays of the Republic of Latvia and on days of commemoration and celebration;
 - 6) on the anniversary of the state or local government authority in which the official works;
or
 - 7) in other cases provided for in laws.
- (4) A public official is prohibited from accepting gifts in the cases specified in paragraph three of this Article, if a gift is a benefit of another type referred to in paragraph two of this Article.
- (5) The gifts referred to in paragraph three of this Article shall be the property of the State or the relevant local government. Diplomatic gifts shall be registered in the Unified State Protocol Register of the Ministry of Foreign Affairs, and the Minister of Foreign Affairs shall decide on their utilisation. The head of the state or local government authority in which the recipient of the gift holds the office shall decide on the utilisation and redemption of the remaining gifts in accordance with the procedures provided for in Cabinet regulations.
- (6) Public officials are permitted to accept gifts from their relatives outside the performance of the duties of their office. It is permitted to accept gifts from other natural or legal persons outside the performance of the duties of their office, if the value of the gift received from one person within a time period of one year does not exceed the amount of a minimum monthly

salary and the public official has not issued an administrative act or performed supervision, control, inquiry or punitive functions in relation to the donor within a time period of two years before the receipt of the gift. If a public official has accepted gifts from natural or legal persons outside the performance of the duties of office, he or she is not entitled to issue administrative acts or perform supervision, control, inquiry and punitive functions in relation to the donor for the time period of two years after the acceptance of the gift.

As for the issue of internal regulation dealing with the fight against corruption, most Ministries have issued codes of ethics. Civil servants may be disciplinarily and administratively sanctioned for the breach of these codes. Furthermore, some institutions have specific internal control bodies which, among other tasks, fulfil functions of controlling corruption.

In 2004–2006, several cases which involved acceptance of bribes and abuse of office of court bailiffs and public prosecutors were detected. Several of these officials have been sentenced by now. Moreover, during the same time several sworn advocates have been accused of bribery (bribe giving, misappropriation of bribe, mediation in bribery). Statistically, however, the largest group of public officials who have been sentenced for corruption is police officers.

Currently, a major case is that of the mayor of the city of Ventspils, Mr. Aivars Lembergs. On 20th July 2006 Mr. Lembergs was charged by the public prosecutor with accusations of bribe taking (of about LVL 453,000, approx. € 644,560), money laundering and violation of incompatibility rules for public officials. Mr. Lembergs is often believed to be a major oligarch who has allegedly steered secretly a lot of Latvian politics throughout the 1990s.

d) Privatization

Most of privatization was completed several years ago. So there are no fresh and significant scandals of corruption in the area of privatization.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The Latvian legal framework as for the status of the members of Parliament is rather concise. Article 5 of the Constitution states that the *Saeima* shall be composed of 100 representatives of the people. Article 6 determines the basic principles of elections: the *Saeima* shall be elected in general, equal and direct elections, and by secret ballot based on proportional representation. A person elected to the *Saeima* acquires the mandate of a Member of Parliament if such person gives a solemn promise as stipulated in the Constitution. Voters cannot recall members of Parliament (Article 14 of the Constitution).

Members of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process in connection with their voting or their views as expressed during the execution of their duties. Members of the *Saeima* may be brought against Court proceedings if they disseminate, even in the course of their Parliamentary duties:

- 1) defamatory statements which they know to be false, or
- 2) defamatory statements about private or family life.³⁶⁴

Members of the *Saeima* have the right to refuse to give evidence concerning:

- 1) Persons who have entrusted to them, as representatives of the people, certain facts or information;
- 2) Persons to whom they, as representatives of the people, have entrusted certain facts or information; or
- 3) Such facts or information itself (Article 31 of the Constitution).

The Rules of Procedure of the *Saeima* and the Law on Prevention of Conflict of Interest in Activities of Public Officials govern, generally, the status of the Members of Parliament.

The procedure for the nomination of the candidates for Parliamentary election is as follows. According to Article 9 of the Constitution any citizen of Latvia who enjoys full rights of citizenship and who is more than twenty-one years of age on the first day of elections may be elected to the *Saeima*.

According to the *Saeima* Election Law (Article 5) persons are not to campaign for and are not eligible to the *Saeima* if they:

- have been recognized as incompetent in accordance with the procedure set by law;
- are serving a court sentence in a penitentiary;
- have been sentenced for a deliberately committed crime, with the following exceptions: persons who have been exonerated or whose previous criminal record has been expunged or annulled;
- have committed a criminal offence in a state of mental incompetency or a state of limited mental competency or who, after committing a crime, have become mentally ill and are incapable of taking conscious action or controlling it and as a result have been subjected to compulsory medical treatment or their cases have been dismissed without applying such a compulsory measure;
- belong or have belonged to the salaried staff of the USSR, the Latvian SSR or another country's state security, intelligence or counterintelligence services;
- have been active in the CPSU (the CP of Latvia), the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organization of War and Labor

³⁶⁴ Article 28 of the Constitution.

Veterans, the All-Latvia Salvation Committee or its regional committees, after 13th January 1991;

- have been punished by a prohibition to run for elections of the *Saeima*, European Parliament, city councils, county councils and rural municipality councils unless they have been exonerated or their criminal record has been expunged or annulled.

According to the Article 9 of the same law a list of candidates may be submitted by a legally registered political organization (party) or by a legally registered association of political organizations (parties).

The procedure of nomination of candidates is to be determined by the internal statutes of political parties.³⁶⁵ Article 29 of the same law provides for any member of a party a general right to participate in the nomination of candidates for elections in accordance with the party's internal statute.

Article 90 of the Criminal Law provides a sanction for a person who knowingly commits interference with the unrestricted exercise of the right to elect representatives, the right to be elected, or the right to freely participate in a national referendum organized in accordance with the laws of the Republic of Latvia, by the use of violence, fraud, threats, bribes, or other illegal means. The applicable sentence is deprivation of liberty for a term not exceeding three years or a fine not exceeding sixty times the minimum monthly wage.

Regarding the income of the Members of Parliament for their Parliamentary mandate:

According to the Article 33 of the Constitution, the remuneration of the Members of the *Saeima* shall be from state funds.

According to the Rules of Procedure of the *Saeima*, while in office, a member shall receive a salary in accordance with the procedure and schedule set by the Presidency. The base salary of a member should correlate with the average salary in the country's public sector for the previous year, as published in the official report of the Central Statistical Bureau, rounded to full Lats. When calculating the amount of the member's salary, a coefficient of 3.2 shall be applied. The *Saeima* officials (e.g. the speaker, chairperson of a standing committee, etc.) shall receive a premium in addition to their salary. A member shall also receive remuneration for participation in the work of the *Saeima* standing committees.

As of May 2006, the base monthly salary of a Member of Parliament was LVL 912 (approx. € 1298).

³⁶⁵ Political Parties Law, Article 14, paragraph 2.

Additional allowances are stipulated in the Rules of Procedure of the *Saeima*. Thus, each member is paid money for representation expenses. Moreover, a member is reimbursed from the *Saeima* budget for:

- accommodation expenses if the member does not live in the capital and if in order to fulfil his/her duties as a member he/she needs to pay for accommodation in Riga;
- transport expenses in the territory of Latvia according to the actual expenditure.

Members are entitled to receive reimbursement for business trip expenses (travel, accommodation, representation and transport expenses, per diem, premiums), and these expenses shall be reimbursed according to actual expenditures.

A Member of Parliament whose mandate expires because a newly elected Parliament convenes, or because a Minister for whom he or she substituted returns to the Parliament, is entitled to receive a compensation which equals his or her three average monthly wages.

According to Article 29 of the Constitution Members of the *Saeima* shall not be arrested, nor shall their premises be searched, nor shall their personal liberty be restricted in any way without the consent of the *Saeima*. Members of the *Saeima* may be arrested if apprehended in the act of committing a crime. The Presidency shall be notified within twenty-four hours of the arrest of any Member of the *Saeima*; the Presidency shall raise the matter at the next session of the *Saeima* for decision as to whether the member shall continue to be held in detention or be released. When the *Saeima* is not in session, pending the opening of a session, the Presidency shall decide whether the Member of the *Saeima* shall remain in detention.

According to Article 30 without the consent of the *Saeima*, criminal prosecution may not be commenced and administrative fines may not be levied against its members.

According to the Law on Prevention of Conflict of Interest in Activities of Public Officials (Article 7, paragraph 2), Members of the *Saeima* are permitted to combine their office as public officials only with:

- 1) offices that they hold in accordance with laws, or international agreements ratified by the *Saeima*;
- 2) offices in public, political or religious organisations;
- 3) the work of a teacher, scientist, doctor or creative work; or
- 4) other offices or work in the *Saeima* or the Cabinet, if such is specified in decisions of the *Saeima* and its institutions, or regulations or orders of the Cabinet.

It is common for MP's to hold positions in public organizations (sports organizations, professional organizations, religious organizations, foundations, etc.).

According to Article 10 of the Law on Prevention of Conflict of Interest in Activities of Public Officials, Members of the *Saeima* shall not be the shareholders or partners of such commercial companies or such individual merchants which receive orders for procurement for state and local government needs, state financial resources, state-guaranteed credits or state privatization fund resources, except the cases where they are granted as a result of an open competition. The Members of Parliament shall comply with these provisions also for two years after they have ceased to perform the duties of the relevant office.

Any public official including a Member of Parliament, for two years after he or she has ceased to perform the duties of the relevant office in a state or local government authority, is prohibited to obtain the property of such merchant, as well as to become a shareholder, partner or hold an office in those commercial companies, in relation to which during performing his or her duties this public official has taken decisions on procurement for state or local government needs, allocation of state or local government resources and state or local government privatization fund resources or has performed supervision, control or punitive functions.

However, the types of official decisions under this paragraph are such that are not typically made by Members of Parliament.

b) Additional incomes of Members of the national Parliament

According to Article 9 of the Law on Prevention of Conflict of Interest in Activities of Public Officials any public official (including a Member of Parliament) is permitted to concurrently receive remuneration for the performance of duties of office as public official and remuneration for the performance of such duties of office, work-performance contract or authorization as are not prohibited to the official by the law, as well as to obtain income from commercial activity which is not prohibited to the official by the law (see also IV.2.a) at the end).

An annual disclosure of the additional income of Members of Parliament is required by the Law on Prevention of Conflict of Interest in Activities of Public Officials. Such information is published in the official bulletin and the Internet. Complete income is to be disclosed as well as other transactions exceeding twenty minimum monthly wages.

Assets are also subject to reports (e.g. real estate, capital shares, stock and securities, savings).

Apart from the Members of Parliament, there are not any other persons also obligated to publish their income.

The declarations of Members of Parliament are published in the official bulletin and on the Internet. The part of a declaration that is not publicly accessible is the place of residence and personal identification number of the public official, his or her relatives and other persons

specified in the declaration, as well as counterparties, including debtors and creditors specified in the declaration.

A recent case of corruption related to additional income that is worth noting would be that of the Parliamentary inquiry into the financial activities of Mr. Einars Repse – the president of the opposition party *New Era* (since 2002), a former Prime Minister (2002 – 2004), former Member of Parliament (2004), and former Minister of Defence (2004 – 2005). In this case, although an investigation was launched also by the Corruption Prevention and Combating Bureau, no formal accusations have been made so far. However, Mr. Repse resigned from the office of Minister of Defense on 23rd December 2005. The possible object of investigation was presumably failure to disclose transactions.

c) Undue Influence

The same criminal provisions apply as for any public official holding a responsible position (*Accepting Bribes* Article 320 paragraph 3 of the Criminal Law). Public officials holding a responsible position are the President, Members of the *Saeima*, the Prime Minister and members of the Cabinet as well as officials of state institutions who are elected, appointed or confirmed by the *Saeima* or the Cabinet, heads of local government, their deputies and executive directors (Article 316 paragraph 2 Criminal Law), see IV.1.c).

A Member of *Saeima* who has been convicted of a criminal offence shall be considered expelled from the *Saeima* as of the date when the sentence comes into force.

The relevant questions concerning corruption are covered in Article 13 (Restrictions on Accepting Gifts) of the Law on Prevention of Conflict of Interest in Activities of Public Officials, see IV.1.c).

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

According to the definition given, political office-holders in Latvia are the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries.

The status of Cabinet Ministers is governed by the following Articles of the Constitution:

- Article 55 and 56 deal with the composition of the Cabinet.
- Article 59 stipulates that the Prime Minister and the Ministers (Cabinet) are accountable to the *Saeima* for their actions and depend on its confidence. The Cabinet or single members of the Cabinet must resign if the *Saeima* expresses lack of confidence.

- Article 63 says that Ministers, even if they are not Members of the *Saeima*, and responsible government officials authorized by a Minister, have the right to attend sessions of the *Saeima* and its committees and to submit additions and amendments to draft laws.

Detailed regulation of the status of Ministers is found in the Law on Structure of the Cabinet. Moreover, Article 2 of this law allows that the Prime Minister invites as full members to the Cabinet one Deputy Prime Minister and one or more Ministers for Special Assignments. The Prime Minister may also appoint one or more of the Ministers as Deputy Prime Ministers. The Prime Minister, in consultation with a Minister, may also appoint a State Minister as head of a sector, which lies within the competence of the Ministry concerned. A State Minister may participate in meetings of the Cabinet as an advisor. The State Minister has the right to vote only on matters pertaining to his or her sector.

Article 12 of the Law on Structure of the Cabinet stipulates the status of Parliamentary Secretaries: ‘The Prime Minister, on the recommendation of a Minister [...] may appoint Parliamentary Secretaries to the Ministry. A Parliamentary Secretary shall assist the Minister in maintaining communication between the Ministry and the *Saeima* and its committees.’

Also the Law on Prevention of Conflict of Interest in Activities of Public Officials governs certain aspects of the status of the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries.

Members of the Cabinet, State Ministers and Parliamentary Secretaries receive remuneration, representation and travel allowances (Article 28 of the Law on Structure of the Cabinet). Monthly salaries of political office-holders are expressed as a product of the average public sector salary in the previous year as published by the Central Statistics Board multiplied by a coefficient. The coefficients for particular offices are as follows:

- Prime Minister – 8.9;
- Deputy Prime Minister – 8.5;
- Minister, Minister for Special Assignments – 8.0;
- State Minister – 6.3;
- Parliamentary Secretary – 3.4.³⁶⁶

The current monthly wage of a Minister is approx. LVL 2000 (approx. € 2845).

Members of the Cabinet, including State Ministers as well as Parliamentary Secretaries receive their remuneration, but not representation and travel allowances, for additional three months

³⁶⁶ Source: Regulations of the Cabinet of Ministers No. 1, 7th January 2003.

following the termination of their duties of office (Article 29 of Law on Structure of the Cabinet).

According to the Law on Prevention of Conflict of Interest in Activities of Public Officials (Article 7, paragraph 2) the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries are permitted to combine their office as public officials only with certain functions named in IV.2.a).

Furthermore, it is common also for political public office-holders to hold positions in public organizations (sports organizations, professional organizations, religious organizations, foundations, etc.).

Article 10 of the Law on Prevention of Conflict of Interest in Activities of Public Officials also applies for the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries, see IV.2.a).

b) Additional Incomes of Political Office-holders

Article 9 of the Law on Prevention of Conflict of Interest in Activities of Public Officials also applies to the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries.

Annual disclosure of additional income of the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries is required by the Law on Prevention of Conflict of Interest in Activities of Public Officials. Such information is published in the official bulletin and the Internet. Complete income is to be disclosed plus other transactions exceeding twenty minimum monthly wages.

Apart from political office-holders, there are not any other persons also obligated to publish their income (e.g. husband or wife, members of the family).

The assets (e.g. real estate, capital shares, stock and securities, savings) are subject to reports. These declarations of the Prime Minister, Deputy Prime Ministers, Ministers, Ministers for Special Assignments, State Ministers and Parliamentary Secretaries are published in the official bulletin and on the Internet. The part of a declaration that is not publicly accessible is the place of residence and personal identification number of the public official, his or her relatives and other persons specified in the declaration, as well as counterparties, including debtors and creditors specified in the declaration.

c) **Undue Influence**

The Criminal provisions for public officials holding a responsible position apply (*Accepting Bribes* Article 320 paragraph 3 of the Criminal Law) and also Article 13 of the Law on Prevention of Conflict of Interest in Activities of Public Officials (see IV.2.a)).

On 10th March 2006 the court found the former Health Minister Mr. Aris Auders guilty of fraud in his earlier capacity as a surgeon in a public hospital. Mr. Auders was sentenced with a fine in the amount of 150 minimum wages for illegally demanding approx. LVL 40,000 (approx. € 57,400³⁶⁷) from his patients.

In spring 2006, transcripts of tapped telephone conversation were broadcasted on the national television, which disclosed the arrangement of bribery in the election of the mayor of Jurmala city. The Minister of Communication Mr. Ainars Slesers was also involved in the conversations whereby it seemed likely that he was aware of the bribery plot. Mr. Slesers resigned from his ministerial office after request by the Prime Minister.

4. **Political Parties**

a) **Legal Position within the National Legislation**

A political party shall be a legal body as of the moment of its registration to the registry of political parties.

b) **Revenues of Political Parties**

Political parties do not obtain direct state funding.

c) **Legislation on Transparency of Political Party Funding**

The issue of illegal party donation is covered in the Law on Financing of Political Organizations (Parties). Parties may receive donations from the citizens of Latvia and individuals who, under the law, have the right to hold a non-citizen's passport from the Republic of Latvia (Article 4 paragraph 1).

The following restrictions apply to donations:

- Only donations from natural persons are allowed;
- A person may offer donations of no more than LVL 10,000 (approx. € 14,400³⁶⁸) to a party during the course of a calendar year (Article 4 paragraph 2);

367 <http://www.oanda.com/convert/classic>, 5th December 2006.

368 <http://www.oanda.com/convert/classic>, 5th December 2006.

- Natural persons shall not provide parties financing that is the result of gifts or loans from other persons (Article 6 paragraph 1);
- Involvement of third parties in the provision of financing to parties shall be banned (Article 6 paragraph 3);
- Natural persons who have been convicted of an intentional crime against property, an intentional crime against the national economy, or an intentional crime while holding a job at a government institution, shall be banned from financing parties in the form of donations, provided that the criminal record of the said individual has not been expunged and the individual has not been rehabilitated (Article 6 paragraph 1);
- Former staff employees, freelance employees and informers of the KGB shall be banned from financing parties through donations or any other means (Article 6 paragraph 1);
- Parties shall not receive loans (Article 6 paragraph 5);
- Parties shall not issue loans or guarantees of any kind (Article 6 paragraph 6);
- Financing of parties via anonymous donations is prohibited (Article 7 paragraph 1).

The political parties are required to render account of their total revenues and expenses. Accounting requirements are determined in the Law on Financing of Political Organizations (Parties).

The following forms of reporting are required:

- Within ten days time after a donation has been received, the party publishes, on a separate Internet page, information about the said donation, stating its type, sum, date of receipt, and the natural person who has provided it (Article 4 paragraph 3).
- Each year, by 1st March, each party submits an annual declaration of financial operations where the party states in detail its income and expenditure during the previous calendar year (Article 8).
- Parties, which have filed lists of candidates for elections, no later than 30 days before the election, file a declaration of campaign period expenditures stating all of the party's expenditures during the period between the 270th and the 50th day before the election (Article 8¹).
- No later than 30 days before the election, such parties file a declaration of the total sum of planned campaign expenditures (Article 8¹ paragraph 3).
- No later than 30 days after the election, parties submit a declaration of campaign income and expenditures as have occurred during the period of time between the 270th day before the election and the date of the election (Article 8²).

Moreover, parties submit annual reports of the sort that all organizations are required to file (Article 8⁵).

All of the above documents are published in the official bulletin and on the Internet within 10 days time after they are submitted (Article 9).

Political parties are requested to transfer anonymous cash donations to the state budget and anonymously donated property to the state (Article 7 paragraph 3). If the Corruption Prevention and Combating Bureau finds that a donation has been received, which has not been declared in the relevant party's annual declaration of financial operations and in the information about received donations, the Bureau is obliged to order the party to transfer unlawfully obtained financial resources to the national budget, and to transfer property to the ownership of the state (Article 10 paragraph 3). Parties are also required to transfer the amount of money equivalent to the share of campaign spending, which exceeds the statutory limit (Article 10 paragraph 2¹).

The Code of Administrative Offences provides sanctions for several kinds of violations of party finance regulations (Article 166³⁴). Possible fines for various violations vary from LVL 100 to LVL 10,000.

The Criminal Law provides sanctions for financing of parties through intermediaries (Article 288²). Possible sentences are deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine from 30 to 200 times the minimum monthly wage.

The general compliance rate with the party finance regulations is low. On 24th April 2006 the Corruption Prevention and Combating Bureau announced the results of controlling of party finances for the municipal elections of 2005. The main findings were as follows:

- Out of 52 parties, which participated in the municipal elections, 9 exceeded the expenditure limitation by the total amount of approx. LVL 105 482 (approx. € 150,087);
- 25 parties were held administratively liable for false reporting in their declaration (9 of them also for exceeding the expenditure limitation). The parties were punished with fines in the total amount of approx. LVL 42 810 (approx. € 60,913);
- 11 parties were held administratively liable for late submission and were punished with fines in the total amount of LVL 3 100 (approx. € 4,410).

V. General Comments

The main reasons for corruption in Latvia would be:

- Major overhaul of the economy (privatization) in the 1990s in conditions of new and still weak democratic institutions;
- Overall collusion and even fusion of economic and political elites;
- Passive civil society with rather widespread tolerance for corruption where it is perceived to give short/medium-term benefits for individuals involved.

The main fields where corruption occurs in Latvia are those of:

- Political parties,
- public procurement,
- territorial planning,
- regulation of construction,
- the police (maybe to a slightly lesser degree).

Latvia has numerous laws and regulations, which are aimed against corruption. Both various scandals, which have mainly been exposed by the media, and concentrated efforts of civil society organizations, some good-will politicians and – in the last few years – the Corruption Prevention and Combating Bureau have contributed to the development of legislation against corruption. The high number of various legislative initiatives and various scandals do not allow one to draw clear connections how the former have been affected by the latter.

Over several years the Supreme Court of Latvia has been carrying out gradual but steady actions in order to minimize corruption among the judges. Somewhat similar attempts have been carried out by the Prosecutor General to minimize corruption in the public prosecution system. Particularly in the case of the court system, the progress has been based on the combination of improving legal framework, increasing transparency and finding ways to at least disciplinarily sanction corrupt judges.

Otherwise, Latvia has a number of public institutions, which enjoy reputation for either permanent high integrity or rigorous attempts to root out corruption, e.g. the Central Bank, Road Traffic Safety Department, Naturalization Board, etc.

Latvia's rapidly developing political party finance regulations are often cited as a success story. However, one should be careful not to overestimate the actual effectiveness of these rules.

A key regulation in the Law on Financing of Political Organizations (Parties) is the limitation on campaign spending. A party or alliance of parties is allowed to spend a sum on campaign expenditures, which does not exceed LVL 0.20 (€ 0.28) per voter.

Report Lithuania³⁶⁹

369 We would like to thank Sergej Muravjov, Project manager, 'Transparency International' Lithuanian Chapter (TILC), Vilnius, for answering the questionnaire and supporting the realization of the Report Lithuania, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public sources of data collection on corruption in the public sector

The Special Investigation Service (SIS) (www.stt.lt) is the principal agency designed to tackle corruption in Lithuania. There are also other bodies that – directly or indirectly – deal with information on corruption:

- the Department of Organized Crime and Corruption within the Prosecution Service (DOCC),
- the Chief Official Ethics Commission (COEC), and
- the *Seimas* Anti-Corruption Commission (SACC).

The Interdepartmental Commission for Coordinating the Fight against Corruption is a non-permanent body established in 2003 under the government and consists of high representatives of different ministries and other state bodies.

Generally, official non-classified information by state institutions and agencies is publicly available or presented on request.

2. Private sources of data collection on corruption in the public sector

Transparency International' Lithuanian Chapter (TILS, www.transparency.lt) is the only private institution that collects data on corruption on a regular basis and in a structured way.

Information gathered and presented by TILS is public and readily available at its website.

II. Legislation dealing with Corruption

The National Anti-corruption Programme (NACP) adopted by the Parliament in 2002 sets to curb corruption via prevention, investigation and public education. The NACP outlines some 57 specific measures that have to be undertaken by 2007 and aims at preparing a new edition of the Draft Law on Lobbying by the first quarter of 2007; at preparing the Draft Code of Ethics of Lobbying in 2007; at preparing the Draft Law on the Amendment to the Law on Political Party Financing and Control thereof by the third quarter of 2006; at analysing legal acts that outline the process of decision-making by filing a complaint against public servants and at preparing relevant draft laws by the fourth quarter of 2006; at analysing a possibility of centralization of public procurement on the national scale and at preparing a concept study, to mention but a few NACP measures.

Apart from that, there are also:

- Law on Prevention of Corruption (2001),
- Law on the Special Investigation Service (2000),

- Law on the Seimas Anti-Corruption Commission (2000),
- Law on the Adjustment of Public and Private Interests in the Public Service (1997).

As for the meaning of the term *corruption*, the Law on the Special Investigation Service (Article 2) provides the following definition: ‘Corruption is a direct or indirect seeking of, or demand or acceptance by a public servant or a person of equivalent status of any property or personal benefit (a gift, favour, promise, privilege) for himself or another person for a specific act or omission according to the functions discharged, as well as the acting or omission by a public servant or a person of equivalent status in seeking, demanding property or personal benefit for himself or another person, or in accepting that benefit, also a direct or indirect offer or giving by a person of any property or personal benefit (a gift, favour, promise, privilege) to a public servant or a person of equivalent status for a specific act or omission according to the functions of a public servant or a person of equivalent status, as well as intermediation in committing the acts specified in this paragraph’.

The criminal process applied to cases of corruption is governed by the Criminal Procedure Code (CPC) that applies to all criminal offences. The Lithuanian justice system is based on the principle of mandatory prosecution and the prosecutor does not have discretion whether to proceed with the case when probable cause exists. Hence, the main difference between investigation and prosecution lies not in specific procedural powers of the actors but rather in specialized institutions responsible for detection and investigation (carried out by the SIS) and prosecution (carried out by the DOCC) of corrupt practices.

The access to public documents and information is prescribed by the Law on the Right to Obtain Information from the Government and Municipal Offices, which sets procedures and deadlines for local and state institutions to reply to public queries.

III. Control and Sanctions

The administrative bodies that have the prevention and fight of corruption in the public sector as the main task are:

- The Special Investigation Service (SIS, www.stt.lt),
- the Department of Organized Crime and Corruption within the Prosecution Service (DOCC),
- the Chief Official Ethics Commission (COEC),
- the Seimas Anti-Corruption Commission (SACC),
- the Interdepartmental Commission for Coordinating the Fight against Corruption,
- Internal ethics commissions (governed by intern codes of ethics).

Furthermore, there can be a parliamentary inquiry of alleged cases of corruption. The *Seimas* Anti-Corruption Commission was established in 2001 and acts according to the Law on *Seimas*

Anti-corruption Commission. The tasks of the Commission consist monitoring the implementation of the NACP, hearing reports on the work by different institutions in the field of anticorruption, analyzing and elaborating on various legislative proposals in the field of corruption and other financial and economic crimes. The Commission can also hear the complaints from citizens and has the right to request for documents and expert assistance from other state institutions, as well as to invite current and former state officials for explanations on matters under scrutiny. The Commission also has the powers to propose to other responsible institutions to conduct inspections and address issues that fall under their mandate.

There are also ad hoc commissions that may be established to investigate potential cases of corruption. One of the most notable commissions of such kind was gathered to investigate allegedly corrupt activities of the former Lithuanian president Rolandas Paksas, who was implicated in the abuse of his official position and in compromising state security. The commission, whose sessions were publicly broadcasted, recommended impeachment on six counts, three of which were upheld by the majority of Parliamentarians.

In the same context, the opposition enjoys the same rights delegated to other Lithuanian parties. There are some indications that the opposition may preside over the Parliament in the near future.

The media has significantly contributed to the discussion on potential corruption and conflict of interest in the EU structural funds (SF) allocation mechanism. In the span of the last two years, major Lithuanian dailies repeatedly published such arguments and have apparently contributed to the opinion the Lithuanian public has on corruption in EU SF allocation.

For instance, in January 2006 one of the Lithuanian dailies was quick to point out that the National Paying Agency responsible for agriculture and rural development was withholding the recipients of EU and national funds from the public. Such commentary was triggered by the reply of the Agency that stated that ‘requested information about physical and legal entities is viewed as private information, which means that it cannot be made public, since there is no permission to do so by the party in question’.

The academic world has also been taking up an active stance on regarding the phenomenon of corruption in Lithuania. As a matter of fact, ‘Transparency International’ (TI) Lithuanian Chapter was initially established by sociologists specialized in the field of criminology.

Finally, such NGOs as TI Lithuanian Chapter, Civil Society Institute, and other societal partners have been active in calling for greater transparency in decision-making mechanisms that concern EU financial support, decisions of the state government and work of state institutions.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Public servants do have some special legal obligations concerning the state body. Article 2 of the Ethical Guidelines for Activities of Public Officials states that *'public officials are obliged to behave neutrally, in a political sense, and not to disrupt decisions and actions of their respective institutions'*; Article 4 (5) of the same guidelines prohibits them from using their state office and asking for help from other public officials while seeking personal advantage or advantage gains for their family, friends, etc.

On the other hand, public servants do not have any special privileges. There are a number of special legal provisions that regulate various aspects of the work environment of public officials, which are usually supplementary to general provisions of Lithuanian labour law (please note: they however could hardly be called 'privileges' as they are simply aimed at ensuring their loyalty and proper working conditions).

As for additional benefits compared to employees of the private sector, the public state officials are insured by the state social insurance and obligatory health insurance. They are also paid a state social insurance pension.

The income of public servants is only slightly different in comparison to employees of the private sector. The Lithuanian Department of Statistics presents the latest data on the average income of public servants and employees of the private sector. According to the official data of the first quarter of 2006, the average income of these groups differs slightly, with public sector servants earning somewhat less than their private sector counterparts (LTL 1,752 (ca. € 507) vs. LTL 1833 (ca. € 530) for first quarter of 2006, as provided by the Department of Statistics).

However, it may be worthwhile to note that the private sector is often accused of showing only a part of personal income on paper and paying additional money 'in an envelope' to avoid additional taxation. If this indeed were true, the income of private employees should be even higher than what is officially stated.

The public sector is structured as follows: there are local and regional (municipal) level public servants and state (ministerial) officials. The lower level of administration has decision-making power in matters related to self-governance. The state public sector is financed from the national budget, while the local public sector is financed both from the national budget and locally obtained funds/income. There are no significant differences in the status of public servants of state and local and regional administrations. The heads of regional administrations are appointed

by the national government. Regional administrations (ten in total) do not have too many functions. Their role has been gradually diminishing and limited predominantly to issues related with the land reform. Municipal administrations are municipal institutions that consist of structural, and structural territorial subdivisions, neighbourhoods, and civil servants who do not belong to structural public administration subdivisions and other civil servants. At the same time, the powers of the municipal administrations are not related to the term of tenure of the municipal council, the members of which are elected for a four-year term by universal, equal and direct suffrage based on proportionate representation.

There is a privatization process going on in Lithuania, which at times generates public discussions. One of such cases was the transfer of Vilnius city heating system to the Rubicon City Service Company. The transfer led to heated discussions as, reportedly, the company is closely associated with the Vilnius mayor. Another example is the telecommunications system. At the moment, there is an ongoing discussion about transferring kindergartens and to under private management.

b) Allocation of Financial Resources

The allocation of financial resources is controlled by a number of public bodies. The State Control, the *Seimas* Audit Committee, and internal audit commissions, are among these. These bodies are not charged with fighting corruption but are obliged to inform the Prosecutor's Office of their findings.

Furthermore, the State Control and the *Seimas* Audit Committee provide reports of their activities to the Parliament twice a year. The internal audit commissions generally provide reports to the head of each particular organization. There are some concerns over their independence and actual effectiveness.

Reports regarding corruption in tendering procedures are mixed. On the one hand, officials directly responsible for administration of public procurement state that the state public procurement mechanism has been perfected over the years, that the procedures are clear and venues for fighting corruption are well established.

On the other hand, when talking with private sector representatives, one would get the impression that public tendering procedures still leave room for corruption that is reflected in unclear guidelines of particular public procurements, slow (or overloaded) work of the judicial system and even illegal agreements between potential participants in the bidding process. Such agreements feature prearranged agreements on the bidding queue or simply have a number of companies participate in the procurement with incurred costs covered by the eventual (and allegedly predetermined) winner who accommodates for such expenses already within the proposed bid.

c) Public Services Law and Human Resources in the Public Administration

There are signs that political parties do have some influence in the staffing of the public sector. Generally, public servants are recruited through open and public competitions. However, while influence in staffing practices is very difficult to be proved, some could argue that the mechanism of public competitions allows for certain favouritism for selected candidates. The same seems to apply to appointments to higher public positions. Here, it is essential to point out that many of such appointments may come not only as result of political lobbying/protectionism but also personal/nomenklatura ties between various actors involved.

In the same context, a change of government may have a certain influence regarding staffing in the public sector. However, such influence appears to be only relative and affect only certain positions, etc. There are no sweeping changes, though.

Public servants are allowed to have an additional employment if it does not create a conflict of interest (Article 16 (1) of the Statute of Public Service). Such secondary employment is subject to approval from the public servant who has hired that person in question to public service, having been presented with the initial request by the person in question (Article 16 (2)).

There are internal financial control bodies that function both at local municipal level and state institutions. It is important to note, however, that such structures are usually subordinate to the head of that particular organization. This, in turn, raises questions about the independence of such internal financial control mechanisms.

The public administration sector is governed by the Law on Public Administration, the Law on Civil Service (LCS) and the Law on Local Self-Government. The Law on Civil Service lays out requirements for a transparent recruitment and remuneration procedures, career system, induction and in-service training programmes that include anti-corruption awareness raising, and strict liability for breaches of maladministration.

The Law on the Adjustment of Public and Private Interests in the Public Service (LAPP) lays down provisions in regards to prevention of conflict of interest. Together with the Law on Civil Service mentioned above, it establishes a number of limitations for civil servants to engage in practices that could create a conflict of interest as well as provides for the obligation of civil servants to file a uniform annual declaration of private interests.

The ethics of civil servants are addressed in LCS, LAPP and the Rules of Ethics of the Conduct of Civil Servants. Recently, the Parliament approved the Code of Ethics for Elected State Officials, discussed for a number of years. Quite notably, while the Code addresses the conduct of elected state officials, it fails to establish any tangible punishments for breaches of conduct.

Additionally, certain institutions also have their own internal codes of ethics (e.g. the SIS, Financial Crimes Investigation Service, judges, etc.). Usually, sanctions for violations are minor and take the form of a reprimand.

Public institutions are also obliged to set up internal ad hoc or permanent commissions to monitor the observance of the above-mentioned laws.

While there have been quite a few scandals in regards to alleged corruption in the public administration, there have been very few cases that were followed up by the court; one, for instance, was the recent case involving Vilnius mayor Artūras Zuokas.

There have recently been some scandals dealing with privatization that are worth noting. A couple of them include the privatization of a number of liquor and wine processing companies.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The status of Members of Parliament is addressed in the Statute of the Lithuanian *Seimas* (Parliament).

The procedures for the nomination of candidates for the parliamentary election are laid out in the Law on Parliamentary Elections of the Republic of Lithuania (Article 37). A political party can nominate its candidate in single- and multiple-mandate constituencies no later than 65 days before elections.

In a single-mandate constituency, every Lithuanian citizen who qualifies to be elected as a Member of Parliament has the right to nominate themselves as a candidate to Parliament as long as their candidacy/self-nomination is supported by no less than one thousand eligible voters from the constituency in question. In a multiple-mandate constituency, a political party nominates its candidates to Parliament by presenting a party candidate list, which has candidates enlisted in the order established by the party. If a party statute does not provide otherwise, the list of candidates in single-mandate and multiple-mandate constituencies has to be approved by the party assembly or conference. A party list cannot feature less than 25 and more than 141 candidates. Elections can be declared void if the COEC decides that there was electoral fraud involved: Law on Parliamentary Elections of the Republic of Lithuania (Article 91).

The income of a parliamentarian is 9.5 monthly allowances, which is LTL 4.085 (approx. € 1.183), without the premiums, etc.

Apart from that, the MP receives a minimal monthly allowance (MMA) of LTL 600 (approx. € 125). It is important to note that while the MMA is LTL 600, when calculating the salary of a public official it has remained at LTL 430 (which was an earlier figure).

Members of Parliament are also provided with additional finances to cover expenses associated with office, mail, telephone, fax, transportation and other expenditures related to parliamentary work. The size of finances provided is determined by the Parliamentary Board.

Finally, Members of Parliament have the right to free travel with all public transport apart from taxis. They also have the right to an apartment in case they do not have residence in the capital Vilnius, which they are provided with for the period of their tenure in the Parliament.

Members of Parliament have the privilege of immunity according to the Statute of the Parliament of the Republic of Lithuania, Part I (On the Status of a Parliament Member).

According to the Statute of the Parliament of the Republic of Lithuania, Members of the Parliament cannot combine their tenure with any other employment in the public sector, private sector or any business-related employment.

However, Members of the Parliament may continue their membership in the arts and free professions' unions.

In this context, Parliamentarians are not allowed to hold other positions alongside their parliamentary mandate. The only exceptions are in those cases when a Member of Parliament is nominated as a Prime Minister or minister.

There are no provisions prohibiting former MPs from occupying certain professional positions. As a matter of fact, Art. 8 (7) of the Statute of the Parliament of the Republic of Lithuania states that after their tenure, former Parliament Members should return to the position they held in the public sector before elected to the Parliament or a similar office, unless it was an elected office or government. If there is no such possibility due to the liquidation of the position or that particular organization, then they should be provided with a position of similar standing.

b) Additional Incomes of Members of the National Parliament

Members of Parliament do have the right to receive additional income, although to a certain extent. However, such additional income may only come in the form of personal honorariums for subjects of arts and their performance, for publications and books, and hourly pay for pedagogical and scientific work and consultations to those Members of Parliament who hold scientific degrees and academic titles.

At the same time, they have to publish their entire income. The same applies for their husbands and wives. These assets are also subject to reports, which are public and are accessible on the website of the COEC (The Chief Official Ethics Commission).

It may be worthwhile to note that no case of corruption related to additional income of Members of the Parliament has ever been officially raised. Certain inconsistencies in regards to additional income have been found in financial reports of representatives of NGOs and private sector. According to specialists working in the field, the system of identification of additional income could still be perfected.

When talking about sanctions for violations of certain provisions of political behaviour, it is worth noting that the Parliament has recently tried to pass the Code of Ethics for State Politicians. The ratification of the law is pending and subject of approval by the President. The President himself has submitted two amendments, one of which features a greater participation in supervision of ethics by civil society.

The code is generally criticized for its lack of effective tools to sanction politicians for their violations of political ethics.

c) Undue Influence

Members of Parliament are not subject to any special criminal provisions of bribery. The provisions applicable to all Lithuanian citizens apply similarly to Members of Parliament. It may be worthwhile to note that for a criminal procedure to be instigated against Members of Parliament, their immunity would have to be lifted by the Parliament. At the same time, there are no particular sanctions applied to Members of Parliament. In principle, a Member of Parliament may receive a fine or, in grave situations, a maximum imprisonment of five years. No other statutes dealing with relevant matters exist.

No Member of Parliament has ever been excluded by parliamentary groups or political parties for reasons of undue influence. Nevertheless, three Members of Parliament (each from a different party), recently suspected for corrupt dealings, resigned from their tenures to facilitate the investigation process. They were found not guilty by the court.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The status of political office-holders is dealt with in the Law on Public Service of the Republic of Lithuania, which is also generally applied in the case of other public servants.

The political office-holders receive income in line with other state servants. There are twenty categories with income coefficients ranging from 2.35 to 13 of the minimal monthly allowances (MMA). They are not given any additional benefits in comparison to employees of the private sector.

Political office-holders (and all public servants in general) cannot hold more than one public office position. They cannot be employed by or represent the private sector: if this would cause a conflict of public and private interest for their public office; if this causes conditions to abuse the public office for their personal benefits; if this discredits the authority of the state office; if this prevents the person in question to effectively conduct their prescribed functions; if this is employment in an organization, in which a person in question has certain powers or monitors/controls its activities, or is involved in any other decision-making concerning this organization; if there are any other circumstances why the person in question cannot have another job and receive an additional retribution.

Political office-holders cannot be elected into any kind of organizational body, apart from those cases when s/he is delegated for such position by the state/municipal institution. S/he cannot receive any remuneration for such activities. When such remuneration is actually paid, the money is transferred to the state/municipal budget, depending on which administrative institution employs said public servant in question. In light of this, the most common practice for political office-holders is lecturing/academic work in educational establishments.

Finally, there are no regulations restricting (former) political office-holders from particular employment or employment fields after having left the office (cooling-off periods).

b) Additional Incomes of Political Office-holders

The political office-holders do have the right to receive additional income, with the provisions and restrictions that apply for the MPs (see above). They also have to publish their entire income, together with their husbands' and wives', and all their assets are subject to reports.

The reports of political office-holders that fall under provisions of Article 10 (1) of Law on the Adjustment of Public and Private Interests in the Public Service are public and generally accessible on the COEC website mentioned above. The list of officials that have their reports published includes (the entire list) the President of the Republic, state politicians (already addressed Parliament Members), Chairpersons and Deputy Chairpersons of political parties, judges, prosecutors, Heads and Deputy Heads of institutions created or accountable to the Parliament, heads and deputy heads of institutions created or accountable to ministries.

There haven't recently been any cases of corruption related to additional income that are worth noting.

c) Undue Influence

There are no special criminal statutes regarding bribery which political office-holders are subject to. Such cases are subject to the general provisions of the Lithuanian Criminal Code. As in the case of parliamentarians, there are no particular sanctions applied to them. The maximum sanction, applicable for all, is an imprisonment of five years.

Finally, there are no other specialized statutes apart from the ones already mentioned.

While there have been a few allegations of corruption involving high-standing officials in some of EU SF implementing agencies, there have been no court decision on the matter. One such case involved charges against the already-mentioned Vilnius mayor Artūras Zuokas of influencing decision-making of one municipal board member.

4. Political Parties

a) Legal Position within the National Legislation

The Law on Political Parties provides the following definition of a political party: [it is] a public legal body, which has an aim to satisfy political interests of its members, help to express political will of Lithuania citizens, an aim to participate in implementing government of the state and right to self-governance (Article 2).

b) Revenues of Political Parties

The Lithuanian political parties receive state funding. The size of the payment is calculated in the following way: (1) summarizing the number of votes for all candidates of each party that received not less than 3 percent of electoral votes granted for all candidates in a parliamentary or municipal election; (2) the coefficient of one electoral vote is established by having a half of the entire state budget for financing divided by all electoral votes in that particular election; (3) the size of the six-month payment to a political party is established by multiplying one such coefficient by the number of votes the candidates of that party received.

Generally, state funding is considered to be rather small in comparison with the real needs of the parties. Consequently, this means that they continuously look for additional payments, which seem to constitute a considerable bulk of their finances.

The provisions for financing of political parties are laid down in Law on Financing of Political Parties and Political Campaigns (2004). Parties may receive donations from legal and physical entities. A maximum amount of donation is LTL 37.5 thousand (approx. € 10,800). A physical entity can donate a maximum of LTL 37,500 to one political party in the span of one calendar year. If such a donator gives a particular party more than 10 percent of his yearly earnings,

information about such donator should be passed to the State Tax Inspectorate under the Ministry of Finance.

A legal entity can donate the same amount of money during one financial year to one political party. If there is a political campaign that takes place in the same year, the same donor may offer not more than LTL 37.5 thousand to one independent nominee.

A number of politicians have publicly acknowledged that all parties in Lithuania make use of ‘unofficial’ finances and spend more than what they account for.

c) Legislation on Transparency of Political Party Funding

The provisions for political party accountability are laid down in the Law on Financing of Political Parties and Political Campaigns. Political parties are required to submit an annual political party financial activity report that has to be approved by its board. Together with the annual report, a political party has to submit a copy of the accounting journal. On the request of the Supreme Electoral Commission, it also has to submit documents that support the data presented in the declaration of its financial activities. Once reviewed or made copies of, such documents are returned to the party in question.

In the same context, if it has been established that a political party has gravely violated the law, the party in question loses the six-month state funding with the decision by the Supreme Electoral Commission. And its share is distributed among other parties. The political party in question has the right to receive renewed state funding no sooner than a half year after the violation was rectified. At the same time, entities in question also can be reprimanded/prosecuted under provisions of the Criminal Code and Code of Administrative legal violations.

Nevertheless, there have been no proven cases of corruption linked to the questions above. However, it may be worthwhile to note that a number of politicians have been involved in investigations in illicit party financing/shadow accounting/etc, yet none have been convicted for such alleged violations.

V. General Comments

The transitional changes associated with socio-economic developments in the country and the Soviet heritage could be regarded as the main reasons for corruption in Lithuania. The transitional changes in the country also contributed to corrupt practices. With the state only establishing its institutional presence in the society, legal provisions often left loopholes for corrupt behaviour; privatization procedures, with a lack of clear-cut and efficient regulations, were also one of the major sources of corruption.

The Soviet system of '*blatas*' rested on personal connections and subsequent favours. People were used to expressing their gratitude for such favours by other favours or gifts in various forms. All of this seems to have contributed to the development of a particular mentality that saw any action and decision as something that had to be rewarded. With the arrival of the market economy and democratic governance, the system of '*blatas*' appears to have remained in the mentality of the Lithuanian residents. Many are still willing to pay bribes if necessary.

Over the past five years, the Transparency International Lithuanian Chapter has been carrying out research of the perception and experience of corruption by Lithuanian residents and business people, called the Lithuanian Map of Corruption. According to the survey results in 2005, 48 percent of the residents and 37 percent of business people had given a bribe over the past five years. Over the past 12 months 26 percent of residents and 20 percent of business people said they had given a bribe.

According to the corruption indices of the Lithuanian Map of Corruption for 2005, the experience of Lithuanian residents points to the traffic police, state hospitals, local hospitals, automobile technical control centres, and outpatient departments as the most corrupt institutions in Lithuania; at the same time, the experience of Lithuanian business people suggests that the most corrupt institutions are the traffic police, customs, automobile technical control centres, fire prevention and rescue services, and municipalities.

In principle, scandals associated with corruption have had only slight influence on legislation and related amendments. As a possible example of such influence, one could cite the Law on Political Party Financing, which was introduced after a series of scandals associated with party financing. At the same time, it could be argued that such introduced changes were imminent anyway. Most of the time, very little is proven and no legal consequences for those accused or involved are provided. At the same time, scandals of corruption may have a certain effect on the overall stance of state institutions and their willingness to introduce anti-corruption regulations. Recently, there appears to be a concrete case of corruption that has contributed to concrete actions on behalf of state institutions. The case of Mrs. Dalia Budrevičienė, who was paid a part of her salary in an envelope to avoid taxes, has received great publicity and seems to have prompted the State Tax Inspectorate to publicly campaign against such illegal practice and engage in discussions on how to improve the situation and what instruments should be used to achieve that.

In light of that, the State Tax Inspectorate could be regarded as a recent example of good practice in Lithuania. They not only seem to have reacted to the issue of illegal payments in the Budrevičienė case, but also appear to have drastically improved their work and image in the eyes of the public and business people over the last year.

Report Luxembourg³⁷⁰

370 We would like to thank Patrizia Luchetta, research associate of the Luxembourg Chamber of Deputies, for answering the questionnaire and supporting the realization of the Report Luxembourg, written by Florian Eckert.

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I. Sources of Data-collection on Corruption in the Public Sector

The Ministry of Justice is to be mentioned as a relevant public office with respect to the acquisition of data on corruption in Luxembourg. In its annual report, the ministry reports on the number of judgments that are imposed in Luxembourg in connection with corruption scandals. The report is publicly accessible and can be viewed on the Internet.³⁷¹

No national chapter of Transparency International exists in Luxembourg.³⁷²

II. Legislation dealing with Corruption

After Luxembourg signed the OECD Convention on 21st November 1997 that makes the bribery of foreign office-holders a punishable offence, it was accepted by Parliament on the 14th December 2000 and came into force on the 15th January 2001. The OECD Convention forbids the active bribery of foreign office-holders. The OECD criticizes that the Luxembourgian government has not yet undertaken the steps provided in the Convention.³⁷³

Additionally, the Anti-Corruption Act of the 23rd May 2005 is to be mentioned. It converted the measures of the EU Anti-bribery Convention (which was signed on 26th May 1997) stipulated in article K.3 into national law. The protocol obliges the EU member states to criminalize the bribery and corruptibility of civil servants in the individual states as well as those in the community as a violation of duty if their actions damage the financial interests of the community.

In addition to these two laws, articles 310 and 310-1 of the penal code also deal with corruption. Through this, awareness shall be created to that extent that corruption does not only affect the interests of the economy in the business transactions under private law, but also represents a wrong to be disapproved of socially.

The Luxembourgian legal system is based both on the principle of legality as well as on the principle whether prosecution is discretionary for the prosecutor. According to article 23 of the Code of Criminal Procedure, every public authority must first notify the responsible leading public prosecutor in the case of any suspicious actions. After that, it is left to his sole discretion

371 www.mj.public.lu/chiffres_cles/index.html; 7th August 2006.

372 Information issued on 9th January 2007 by: Ms Andrea Priebe, assistant at *Transparency International Deutschland e.V.*, Alte Schönhauser Str. 44, 10119 Berlin, Tel.: 030 - 54 98 980 and by Ms Kate Sturgess, Programme Coordinator for Europe/Central Asia at Transparency International, Alt Moabit 96, 10559 Berlin, Tel.: 030 - 34 38 20-22.

373 OECD: Luxembourg: Phase 2. Report on the Application Of The Convention On Combating Bribery Of Foreign Public Officials In International Business Transactions And The 1997 Recommendation On Combating Bribery in International Business Transactions, 2004: page 6; at: <http://www.oecd.org/dataoecd/22/27/37308306.pdf>; 28th August 2006.

whether to act or to refrain from action. It is to be considered, however, that according to article 70 of the amended law of the 7th March 1980 on the judicial system, the Attorney General of the Grand Duchy has the authority to issue directives to the leading public prosecutors and is in turn subject to the Minister of Justice's authority to issue directives. The legal scholars interpret this authority to issue directives in such a way that the minister can indeed positively arrange to initiate a prosecution, yet cannot prevent one already initiated.

In Luxembourg there is no Freedom of Information Act.

III. Control and Sanctions

There are different administration facilities in Luxembourg that deal with the prevention of and the fight against corruption in the public sector. First and foremost to be mentioned is the management of the budgetary control (*Direction du Contrôle financier*), a control organ that is subordinated to the responsibility of the budget minister as an internal administrative institution. Its function is the ex-ante control of public expenditures and of non-fiscal gains (see also IV.1.b aa)). In addition to this, only the police recognize an internal administrative institution with the objective to control: the general inspectorate of the police (*Inspection générale de la police*). It is an independent control organ and is under the direct responsibility of the Minister of the Interior; the general inspectorate controls the work of the police (see also IV.1.c)).

The Court of Audit can be presented as an external supervisory board. It takes over an important controlling function via the ex-post control of public expenditures and the investigating of the economic efficiency of the budget management (see also IV.1.b bb)).

There has been an Ombudsman (*Médiateur*) in Luxembourg since May 2004; the Ombudsman is nominated directly by the Parliament and is at the same time subordinate to it.³⁷⁴ The main duty of the ombudsman lies in being that of a control instance of the executive powers; however, any private person – regardless of nationality - or any private institution in Luxembourg can contact the *Médiateur*. He does not deal explicitly or exclusively with the fight against corruption, but is in charge of problems presented verbally or in writing which have occurred between a private person or private institution and an office subject to public law. Before that, the respective person or institute must have requested the public authority themselves for the clarification or change of their position. If the ombudsman holds a request (complaint) for permissible, he intervenes by way of negotiation and/or suggestion in order to find an agreeable solution to the conflict; for this job, he has access to documents in almost all of the offices and administrations

374 The legal basis for the appointing of an Ombudsman is provided by art. 8 of the Constitution of the 22nd August 2003; information about the Ombudsman can be found at: www.ombudsman.lu; 29th August 2006.

of the country. The ombudsman summarizes his work in a report to the Parliament that at the same time is made accessible to the public on the Internet.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

The Grand Duchy is political-administratively split into the central and municipal administrations. The country is divided into three districts (Grevenmacher, Luxembourg, Diekirch) with in total twelve cantons and 118 municipalities; the municipalities are autonomous bodies that, however, succumb to the legal supervision of the district commissioners appointed by the Grand Duke.

In Luxembourg, civil servants³⁷⁵ are appointed for life and cannot be given notice, at the same time they have right to strike; civil servant rights were stipulated in the law of 16th April 1979. In addition to these, there are special duties valid for civil servants. They are obliged to act with restraint (*devoir de réserve*), subject to the obligation of neutrality (*devoir de neutralité*) and the obligation of independence (*devoir d'indépendance*).

In comparison to the employees in the private sector, those of the public service have health insurance that offers special coverage; the same is valid for their pension fund. In addition, employees of the public service receive a family supplement on top of their salary.

With reference to the income possibilities for the employees in the public administration, the individual careers must be differentiated. For members of the lower and middle level occupations (for example craftsmen, office workers and/or technicians) the public service normally offers better income possibilities than the private sector does. This cannot be said unambiguously for the higher levels - those positions that require a degree. Employees who are (highly) specialized/qualified in the public sector (for example finance experts, scientists and/or engineers) usually have clearly better income possibilities within the private sector (for example in the finance branch or in the field of advanced technology). However, for those members of the public administration, there is the possibility to compensate for possible salary differences with income from additional activities in administrative boards of public institutions. In general, however, the employees of the administration are not dependent on an additional income in order to be able to earn their living.

375 According to OECD estimates, there are 20,000 workers employed in the public sector in Luxembourg (OECD 2004: 6).

In order to relieve the state machinery and to attain more flexibility, the instrument of the *établissements publics* is often fallen back on in Luxembourg; these are public institutions and/or public bodies. The Federal Government realizes certain tasks through them, as for example in the areas of culture and research. Furthermore, in the course of the liberalization of the energy markets and the telecommunication sector, public tasks were detached from the administrative structure and transferred to private areas.

b) Allocation of Financial Resources

There are four control levels in the public management of financial resources in Luxembourg. The following are to be mentioned: aa) the Department of Finance Control, bb) the Court of Audit, cc) the parliamentary level and dd) the level of the private sector.

aa) the Department of Finance Control.³⁷⁶ Finance inspectors are active in the individual ministries. However, they do not report to the respective departmental minister, but rather to the budget minister; he is in charge of the budgetary control management. Finance inspectors are independent in their exercise of office; the law provides that they do not receive any directives on individual orders of payment or obligations. Every public expenditure must be submitted beforehand to the respective responsible finance inspector and ordered. Should he express any doubt about the legitimacy of an expenditure, the respective responsible minister can nevertheless decide to overrule the inspector's decision - this decision is to be justified by the minister in public, where appropriate.

bb) The Court of Audit. Through the modification of article 105 of the Constitution from the 8th June 1999, the Audit Office was renamed as the Court of Audit. The Court of Audit is entrusted with the control of the tax authorities of the federal government organs, administrative authorities and offices (art. 105 I). It must carry out the ex-post control of public expenditures; it finalizes the invoices of the different administrations of the Federal Government, and in doing so must collect all necessary information and invoice receipts. It examines both the legitimacy of an expenditure as well as the compliance of the income and expenditures. Furthermore, the Court of Auditors examines the economic efficiency of the budget management. It annually creates a budget and assets report; this report is finally presented to the Parliament and represents the basis for the relief of the government by the Parliament. In addition, the Court of Auditors can create so-called special reports on specific areas of the budget and economic management either on demand by the Parliament or on their own initiative. Also on demand by the Parliament, the Court of Auditors can check the annual budgetary law as well as other bills that have a significant effect on the national budget. All reports of the Court of Auditors are publicly accessible. Exceptions do exist with regard to the protection of secrets that serve the external

376 According to the modified budget law of the 8th June 1999.

security of the Federal Government. Information that is regarded as secret is more closely defined by the law of the 30th July 1960. In such cases, the information is passed on solely to the Parliamentary President, the Secretary of State (head of government) and the Budget Minister. The members of the Court of Auditors are appointed on recommendation by the Chamber of Deputies of the Grand Duke.

cc) The parliamentary level. The actual work in the Parliament takes place in the commissions, the committees. The permanent commissions - stipulated by the rules of procedure - and the ad hoc commissions are to be differentiated. The billings commission, the petitions commission and the standing orders commission are amongst those stipulated and are geared towards the respective departments. The boards of inquiries are essential for the control of the public management of financial resources on the parliamentary level; they are the audits and the financial committees. The reports of the respective commissions are public; however, it can be decided through simple majority on keeping the discussions and decisions a secret.

dd) The level of the private sector: the accounting of the afore-mentioned control instances (the *établissements publics*, the Court of Audit, and also of the Parliament, respectively) must be annually controlled and given final approval by private auditors who are bound for a set mandate time.

Although the fight against corruption is not an explicit responsibility of these different committees, one can assume, however, they provide an essential contribution to the exposure and abatement of corruption within the framework of their controlling functions.

At the end of the 1990's, the President of the Audit Office at that time was suspended because he had misused his position in order to attain private advantages; for example, he took up personal credit at banking institutions.

It also turned out that in the 1990's, different ministries transferred unused credit onto other accounts in order to be used for new projects later. This was by no means a question of personal gain or financing of unapproved projects, but rather a *bypassing* of an inflexible mechanism which did not allow the transferring of earmarked funds (art. 105). These incidents led to the reform of the public accounting system and to the setup of the Court of Auditors in the year 1999.

c) Public Services Law and Human Resources in the Public Administration

The task forces in the ministerial bureaucracy of Luxembourg are distinctly small, the amount of politicization is slight.³⁷⁷ Parties exert little influence on the staffing in the public service; this normally occurs according to set universal qualification criteria and is subject to an entrance examination. In the case of an appointment, qualifications and/or professional experience criteria are to be considered. It is also to be mentioned that since 2005, appointments to higher positions in the public administration (for example general manager or senior civil servant) only still occur for a singly renewable period of seven years and not as with the remaining civil servant positions (who have lifetime posts).

A change of government less affects staffing in the public service but does chiefly affect the political level of the ministers and the secretaries of state.

Employees of the public administration may not carry out any additional paid occupation without the permission of the responsible minister. Nevertheless, as already mentioned (IV.1.a)) it is usual in Luxembourg that civil servants of higher-level occupations are active as members of supervisory boards in corporations in which the Federal Government has some share (the satellite operators SES, the steel company group Arcelor or the CFL National Railways are to be mentioned here).

An undue influence on political office-holders of the public administration is a punishable offence and regulated in the *penal code*. Misappropriation (art. 240 *StGB*), the destruction of files and documents (art. 241 and 242), embezzlement (art. 243 and 244), the procurement of advantages (art. 245) as well as corruption and unauthorized influence (art. 246 to 249) and attempts at intimidation (art. 251) are legally registered. The respective sanctions cover imprisonment and/or fines. Should the political office-holder committing an offense be a civil servant, the loss of the civil servant rights as well as the prohibition to carry out functions in the public service in the future are possible as well.

In order to avoid a prejudice or even bribery of employees in the public service, the amended law from the 16th April 1979 to the statute of the civil servants (*GSS*) generally provides that the acceptance or the requesting of material advantages is forbidden (art. 10 par. 3 *GSS*). Furthermore, they are not permitted to pass on any secret information (art. 11 *GSS*). If civil servants have any conflict of interest in connection with decisions they must make, or if the decision affects a personal interest, they must report this according to art. 15 *GSS*; they are subjected here to a duty to inform. In Luxembourg, there are no explicit regulations for employees of the public administration that provide a defense for corruption.

³⁷⁷ Michael Schroen, Das politische System Luxemburgs, in: Ismayr, Wolfgang (Hrsg.), Die politischen Systeme Westeuropas, Opladen 2003, page 421.

The control of on-going and completed administrative processes occurs primarily through the Department of Finance Control already described. Next to this, on request of the Budget Minister, the General Inspection of Finances can additionally check at any time both ex ante and ex post the legitimacy, compliance and the economic efficiency of individual expenditures. The inspections of the General Inspection lead, however, only to a non-binding notification while the results of the finance controllers can basically prevent the payment of an expense.

Next to the Department of Finance Control already mentioned, which is responsible for the supervision of the management of financial resources in the individual ministries, only the police recognize an internal institution that is to be used for the prevention of and fight against corruption - the General Inspection of the police. This is an independent control organ, which is subordinate to the Minister of the Interior and is responsible exclusively for the supervision of the police.

In general there are no internal facilities in Luxembourg, which protect those who report corruption.

2. Members of the National Parliament³⁷⁸

a) Legal Position within the National Legislation

Luxembourg is a unicameral system. In 1988/89, the number of members of the Chamber of Deputies (*Chambre des Députés*) was restricted to 60 due to the constitutional reform. The members are elected in a direct, secret, equal and general election; they are representatives of the whole nation, not bound to tasks or directives and are obliged to the common welfare (art. 50 to 75 of the constitution). The members are elected for a term of office of five years according to the proportional representation system. The citizens are given a number of votes depending on the number of mandates of an electoral constituency.³⁷⁹ When casting a ballot, those citizens entitled to vote are free to evenly distribute their votes over the candidates of several lists, to evenly transfer them to all candidates of a list or to give all the votes to one candidate. In Luxembourg, the tendency to split one's vote has intensified and dissociation from party affiliations has become recognizable. The electoral system favors the individual compilation of candidate lists by the voters but not, however, the formation of strong parties.

During of assumption of office, the members must take a constitutional oath, which makes clear their obligation to democracy. In addition to the constitution, the parliamentary rules of procedure regulate the status of the members more closely. These have legal status.

³⁷⁸ Information on the Parliament can be found at: www.chd.lu/default.jsp; 29th August 2006.

³⁷⁹ There are four precincts in Luxembourg (north, south, west and center).

The electoral law of the 18th February 2003 (art. 135 to 139) regulates the nomination of candidates for the election. The nomination of candidates belonging to a party occurs through the vote at the general meetings of the respective parties; in this case the parties are not allowed to distribute mandates during the creation of the lists.³⁸⁰ However, one or more independent candidates who team up to form one list may also establish lists. An independent candidate needs support from either 100 voters, one member or three councilors, in order to be nominated for election.

Every member is entitled to an office room equipped with computer and internet connection and also to a secretary allowance. Only since 1990 has it been legally regulated that every member is entitled to an aide on a part-time basis; however, most factions have started making these funds available in a pool from which more staff is employed in the faction secretariat. In addition to the faction secretariat, the members also consult certain extra-parliamentary committees and specialists for their work. For their parliamentary activity, the members receive a basic salary of approx. € 5,400 monthly from the state budget according to art. 126 of the electoral law. In addition, there is attendance money for committee sessions and plenary sessions as well. Besides their salary, additional benefits are given to members. So they receive travel expense allowances for domestic parliamentary duties as well as travel money and money for overnight accommodation for official trips abroad according to art. 126-5 of the electoral law. The business trips must have been previously approved by the acting parliamentary organ (the *Bureau de la Chambre des Députés*). A maximum of seven additional parliamentarians belong to this in addition to the president and the vice-presidents. Besides this, factions are provided accommodations and facilities according to art. 126-9 of the electoral law. In addition to the non-monetary resources, loans are assigned according to the size of the parliamentary party.

If the members do not already in some way have compulsory insurance, they will be insured for the duration of their mandate with the health and pension fund of the public service (art. 126.1-1 and 4) and in addition also receive the family allowance valid for public service (art. 126-3). They receive an interim allowance during the first three months after their withdrawal from parliament; furthermore they keep their health insurance coverage and retain their pension plan during this corresponding period (art. 126.-10.).

The members enjoy a status of immunity according to art. 68 and 69 of the constitution and art. 159 of the parliamentary rules of procedure. However, a recent constitutional change allows the

380 The candidates are usually ordered alphabetically, only exceptional candidates are put at the front position - something, however, which does not carry any guarantee of a mandate. Whoever can win the most votes will be chosen. So it is entirely usual that parties put forward known personalities of Luxembourgian society as candidates; at the same time, known politicians change parties if they believe this will better their chances on being elected.

legal accusation of a member and the conduct of a case up to conviction without a cancellation of the immunity.

Luxembourg's constitution recognizes the incompatibility principle. According to art. 54, office and mandate are incompatibly separated from each other, an expression of horizontal separation of powers. It is also forbidden for members to be in the service of the State Council, the City Council, and the Court of Audit or to be district commissioner, bank cashier or a career soldier. Apart from these positions, on the other hand, it is usual that members carry out further activities next to their parliamentary mandate. The background for this lies in the fact that Luxembourgian Members of Parliament are not usually professional politicians. Usually the secondary activities are consultant work, positions in supervisory boards or the practice of mostly former, freelance activities - as for example doctor or attorney. There is no regulation that restricts the activity of members on completion of their mandate, a so-called grace period.

b) Additional Incomes of Members of the National Parliament

The parliamentary office keeps a register in which the individual members must indicate their professional activities as well as other paid functions or activities and the financial supports being granted to them which they receive – be it cash, material goods or through manpower in addition to those third party funds provided by the Parliament. The identity of the third party must also be disclosed.

Persons related or close to the members are not included in this duty of disclosure. There is also no obligation to indicate assets or investments. The register is publicly accessible in the parliamentary office and can be viewed there; register extracts are not given out additionally, however.

c) Undue Influence

In Luxembourg, the bribery of members is a punishable offence; it is contained in articles 246 and 247 of the penal code. Fines and/or imprisonment are sanction measures as provided for within the framework of undue influence, these are accompanied by the respective member's loss of political mandate. However, there are no corruption-relevant regulations, which for example set limitation on presents or prohibit trips paid for by companies. Up to now in Luxembourg, no members were expelled from the party or the faction due to undue influence.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

Art. 81 *GSS* deals with the legal position of political office-holders in addition to articles 76-83 and 116 of the constitution.

The salary level of political office-holders depends in each case on the office held. The Minister of State (head of the government) receives a monthly basic salary of approximately € 13,500.³⁸¹ A Minister receives a monthly salary to the amount of approx. € 11,500.³⁸² Finally, Secretaries of State are paid a monthly basic salary of € 10,500.³⁸³ The salaries contain respective benefits.³⁸⁴

In comparison with employees of private enterprise, political office-holders receive special social insurances: members of the government receive public service health and pension insurance for the duration of their mandate. In the case of withdrawal from office, those who are not entitled to retire receive an interim allowance for two years.³⁸⁵

b) Additional Incomes of Political Office-holders

According to art. 81 *GSS*, political office-holders in Luxembourg are not permitted to carry out a secondary activity or profession in addition to their office, or to hold other positions. This results in the impossibility for political office-holders to receive several incomes from different sources. Duty of disclosure does not exist for their assets or the assets of persons close to or related to the political office-holder (for example spouses).

Legal regulations do not exist which restrict political office-holders any activity upon completion of mandate.

c) Undue Influence

Art. 246 and 247 of the Luxembourgian *StGB* define active bribery and passive corruptibility and unlawful influence in the public sector as follows: according to art. 246, the conditions of corruptibility are fulfilled if a person holding a public office requests or accepts offers, promises, donations, gifts or arbitrary advantages, without having the right to so, directly or indirectly, for themselves or for others. In this case, the Luxembourgian *StGB* distinguishes two possibilities of *modus operandi* for the corrupt act by the office-holder: on the one hand, through undertaking or neglect of a certain action which is connected to the public office (art. 246 I *StGB*); on the other hand through undue influence on the decision of an office or public administration (art. 246 II *StGB*).

Art. 247 *StGB* regulates the bribery of office-holder in the case of which the two kinds of the *modus operandi* are also differentiated.

381 His pay group corresponds to the salary bracket S4.

382 His pay group corresponds to the salary bracket S3.

383 His pay group corresponds to the salary bracket S2.

384 The legal basis of the payments is set according to Title IV – special functions – of the amended law of the 22nd June 1963 for the remuneration of civil servants.

385 Art. 29 *quinquies* of the amended law of 22nd June 1963 for the remuneration of civil servants.

In the case of bribery, fines or prison sentences between five and ten years are designated as sanction measures.³⁸⁶

4. Political Parties

Parties in Luxembourg exist in a legally undefined space.³⁸⁷ Until 1999, parties were not yet mentioned in either the constitution or in laws. For the first time they found a normative observation in the law on the restitution of the election costs from the 7th January 1999.³⁸⁸ Political parties are still not mentioned in the constitution; here, only the lists of candidates (see IV.2.) are referred to. Even without explicit legislative enactment, however, parties perceive different functions in practice. The following apply:

- the participation in elections,
- the government formation and the taking on of government activity, the aggregation of opinions and interests,
- the recruitment of political personnel and
- the stabilization of institutions.

The legal independence of parties provides them maximum freedom. So they are free to shape their internal structure as they wish. Legal provisions with regard to the openness and inner-party formulation of objectives do not exist. It is up to the parties to organize themselves as associations having legal capacity or as not having legal capacity. Most are associations without legal capacity.

The revenue of the parties in Luxembourg consists of membership fees (approx. 20% of the total amount) on the one hand, and of representative duties (approx. 80%) on the other. Parties do not receive any direct state finance allowances. The law of the 7th January 1999 and the electoral law of the 18th February 2003 (art. 91-93) regulate for the first time official party financing in the form of a partial election campaign cost reimbursement. Parties receive only a part of the election campaign costs, which they bore. The reimbursement is linked to concrete conditions, so it is given only to those parties, which composed lists in all electoral constituencies during national Parliament elections. At the same time the party requesting such election campaign cost reimbursement must have achieved at least one seat in the national Parliament. The amounts are calculated by means of the total number of the respective faction mandates as well as the

386 Cp. www.legilux.public.lu/leg/textescoordonnes/codes/index.html#code_penal; 1st October 2006.

387 Fayot, Ben: Die Institution der politischen Partei in Luxemburg, in: D. Th. Tsatsos et al. (ed.), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. Aufl. 2008 (forthcoming).

388 '[U]nter politischer Partei oder Gruppierung versteht man die Vereinigung physischer Personen [...], die im Respekt der grundlegenden Prinzipien der Demokratie zum Ausdruck des allgemeinen Wahlrechtes und des Volkswillens gemäß ihren Satzungen und ihrem Programm beitragen' (article 1 of the corresponding law; quoted after: Fayot, Ben: *Die Institution der politischen Partei in Luxemburg*, in: D. Th. Tsatsos et al. (ed.), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. Aufl. 2008 (forthcoming)).

individual mandates. A party with one to four mandates receives € 50,000 after the election; those with five to seven receive € 100,000; eight to eleven mandates show a restitution amount to the sum of € 150,000; and those with more than 12 mandates receive € 200,000. In addition, € 10,000 is given for every elected party member.

The purpose of the election campaign cost reimbursement is to make individual parties less dependent on the influence of private donations and the economy. Nevertheless, donations from legal bodies are permissible; private donations are not taxably favoured. There is no control of the election campaign cost reimbursement. Since there are no further legal regulations concerning political parties in addition to the mentioned law on the election campaign cost reimbursement, they are not subjected in any way to a legally stipulated duty of disclosure or to the control of their income and expenditures. The only form of publication of party finances is the financial statement presented publicly at the respective party congresses.

V. General Comments

As a small country, Luxembourg has the advantage of transparency; in fact, the great presence of civil servants and mandate holders in society complicates the practice of undue influence. However, the proximity that arises in a small country also contains the danger of a certain nepotism. It seems even more important to elaborate internal guidelines in addition to the legal regulation of corruption in the field of criminality in order to prevent any corruption tendencies - considerations in these areas are currently taking place.

One can mention for example the attempted bribery of a civil servant in the Department of Housing and Urban Development during the end of the 1960's. At that time, there was some distrust expressed by the Parliament to the responsible minister because he had not submitted any judicial complaint against the bribing entrepreneur, although the civil servant had reported to the minister and although the enterprise was excluded from the public allocation. This then led to a government crisis.

There were certainly incidents, which initiated legal intervention and therefore anticipated further attempts of misuse. The reform of the public accounting system and the Court of Audit of 1999 are to be mentioned here.

Report Malta³⁸⁹

389 We would like to thank Prof. Henry Frendo, Full Professor of History, University of Malta, for answering the questionnaire and supporting the realization of the Report Malta, written by Alessandra Di Martino. Sources: GRECO Evaluation Reports, 2002 and 2005 (GRECO, Directorate General I- Legal Affairs, Department of Crime Problems, Greco Eval I Rep (2002), 8E, adopted by GRECO at its 12th Plenary Meeting, 9th to 13th December 2002; Greco Eval II Rep (2004), 14 E, adopted by GRECO at its 24th Plenary Meeting, 27th June to 1st July 2005).

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I. Sources of Data-collection on Corruption in the Public Sector

As for public sources on corruption, data collected by the Permanent Commission Against Corruption (PCAC, see below) are not widely accessible to the public. So, reports of the National Audit Office (NOA), judicial records and parliamentary acts remain the usually available sources. As for private data, it seems that no civil society association is directly involved in the fight against corruption, neither is Malta included in the Transparency International Index.

II. Legislation dealing with Corruption

Maltese law criminalizes the unlawful exaction by public officials or by any person employed by or in the Government; extortion committed by threats, or abuse of authority; active and passive bribery of a public official. It also criminalizes the holding of private interest in adjudications and issuing of orders; embezzlement and malicious violation of official duties. Accounting offences could fall under the definitions of counterfeit or forgery. These offences are mainly punishable with imprisonment of a maximum of three years and interdiction.³⁹⁰

Act. N. III 2002, implementing the European Criminal Law Convention on Corruption and amending the Criminal Code, has extended the application of provisions on unlawful exaction and on bribery in the private sector as well as the provisions dealing with offences of corruption involving a public officer or servant of any foreign State; any officer or servant, any other contracted employee, or any member of a parliamentary assembly of any international or supranational organisation or body of which Malta is a member, or any holder of judicial office or any official of any international court whose jurisdiction is accepted by Malta; or any member, officer or servant of a Local Council.

The Act has also introduced the two new offences of ‘trading in influence’ and ‘accounting offences’ into the Criminal Code as well as separate conspiracy and racketeering (association) offences. It has also provided for corporate criminal liability where the offence is committed by a person who is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence was committed for the benefit, in part or in whole, of that body corporate. Furthermore, it has

³⁹⁰ See also provisions related to the election to Local Councils, according to which any person who, in connection with an election to a Local Council, commits the offence of personation, undue influence or bribery or aids, abets, counsels or procures the commission of the offence of personation, and any candidate who knowingly makes a false declaration on election expenses shall be guilty of a corrupt practice and shall be liable to a fine or to imprisonment.

significantly extended the jurisdiction of the Maltese courts beyond the general grounds of jurisdiction previously applicable.

Money laundering has been a separate criminal offence since 1994. All corruption offences also qualify as predicate offences of the money-laundering offence. Provisions on interim measures (investigation orders, attachment orders and freezing orders) regulated by the Prevention of Money Laundering Act have been extended to serious crimes including corruption.

Criminal proceedings are instituted by the police regardless of whether the case will be tried through summary proceedings, i.e. before the Court of Magistrates or indicted before the Criminal Court. Before instituting any criminal proceedings, the police may seek the Attorney General (AG)'s advice, which is not binding although, in practice, is always followed. The Maltese system is, in principle, discretionary, insofar as there is no obligation for the police to prosecute every criminal offence. If the police decides not to institute criminal proceedings and the case involves a serious criminal offence, the person having reported or complained to the police is entitled to apply to the Court of Magistrates. If, after a hearing, the Court considers that there is a *prima facie* case, it will order the Commissioner of Police to investigate. The AG acts as Public Prosecutor in the highest courts of the criminal jurisdiction. His office may, before or after filing an indictment, issue a *nolle prosequi*, bringing proceedings to an end. In that case, the AG must report his reasons to the President of Malta, but there is no appeal against this decision.

In Malta there is no comprehensive legislation on freedom of information or access to official documents. Nevertheless, a number of legislative enactments such as the Press Act and the Data Protection Act do provide for the possibility of access in a number of cases. Access to information held by local and State authorities may be obtained either directly from the authorities concerned or through MPs. Access may be refused on grounds of confidentiality or secrecy. Article 47 of the Press Act requires the government to establish procedures to enable representatives of the press to obtain the information necessary to fulfil their tasks, with the exception of information which could prejudice pending legal proceedings, received by government in confidence, affecting an overriding public or private interest warranting protection, concerning national security or public safety, or placing a disproportionate burden on public administration.

However, as Malta is a so called 'closed society', a tiny and densely populated group of islands with strong ties between its inhabitants, perception of corruption tends to be low. It is also true that very few cases of alleged corruption led to criminal conviction.

III. Control and Sanctions

Several bodies have the competence to prevent and fight corruption in the public sector.

As a law-enforcement body dealing with corruption, the Economic Crime Unit should be mentioned. It is a unit of the Malta Police Force and mainly concerned with the investigation and detection of corruption offences, which are liable to be prosecuted *ex officio*. The Unit was set up in 1987 and investigates offences of fraud, counterfeiting, copyright violations, smuggling, corruption and computer crime. It is staffed with 28 officers.

In 1988, the Permanent Commission Against Corruption (PCAC) was established under the Permanent Commission Against Corruption Act. The PCAC is a specialised body dealing exclusively with the investigation of allegations of corruption. It is composed of a chairman and two other members appointed by the President on the advice of the Prime Minister, given after consultation of the Leader of the Opposition. They can only be removed from office for inability to discharge their functions or misbehaviour. In the exercise of its functions, the PCAC is not subject to the direction or control of any other person or authority. The PCAC may open an investigation on its own initiative or upon an allegation subscribed on oath by any person. However, it does not charge, convict or acquit. It reaches a conclusion and accordingly adopts a report, which is addressed to the Minister of Justice. It also adopts an annual report which is sent to the President of Malta. Reports may be kept confidential. Its task is to investigate only those ‘corrupt practices’, in the public sector, which fall within Article 6 of the Act, so that, for instance, it has no competence to investigate an embezzlement case.

The PCAC has the right to access any file of the Government or Administration. It works under its own time limits, which are longer than the statutory limitations prescribed by the Criminal Code. Therefore, PCAC investigations may be conducted even if the prosecution is time-barred. The majority of the Commission's investigations were linked to planning permissions and government contracts.

The PCAC shall also facilitate the discovery of corrupt practices and recommend the revision of methods of work or procedures which may be conducive to corrupt practices.

Amongst non-specialized bodies fighting corruption, the following should be mentioned:

- The Ombudsman, an independent institution set up in 1995 and dealing with maladministration, which yearly reports to the House of Representatives;
- the Public Service Commission, established by the Constitution in 1964 and supervising procedures for the appointment and promotion of public officers and deciding on appeal on disciplinary sanctions in ‘grave or serious cases’;
- the Public Accounts Committee of the House of Representatives, which has the power to examine any reports made by the Auditor General and may hold hearings on its contents which are normally public (his chairman is nominated by the Leader of the Opposition).

Finally, the National Audit Office (NAO) should be dealt with. It was established in 1997 and is composed of the Auditor General, who is the head of the Office, a Deputy Auditor General, two

Assistant Auditors General and other audit and support staff. They are appointed for a period of five years (renewable for an additional five years) by the President, in accordance with a Resolution of the House of Representatives adopted by a two-third majority. The mandatory and primary objective of the NAO is to provide independent information, assurance and advice to the House of Representatives on the way Treasury, government departments and certain non-central government entities (including Local Councils) account for and use taxpayers' money. Another objective is to establish whether public money has been expended economically, efficiently and effectively. For that purpose, the Auditor General has access to all books, records, returns and other documents relating to the accounts in the entities audited.

The media seem to play an important role in discussing corruption cases. Several Maltese newspapers and a few English papers are published. In addition, the two main political parties own newspapers, television, and radio stations.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Malta is divided into 2 regions and 68 Local Councils (local self-government was introduced in 1993). There are several public enterprises and other parastatal bodies too. Over the last years, privatization has occurred in several sectors.

A single legal definition of 'public administration' is lacking. However, a distinction is made between the wider public sector (as used for the purpose of the Code of Ethics for Employees), and the public service proper. In practice, most organizations within the public service are under direct ministerial responsibility and are funded directly by the government's annual budget; most public servants are recruited by the Public Service Commission and are classified within a common pay and grading structure; public service organizations do not have a separate legal personality from that of the government, unless they have been established as autonomous agencies.

b) Allocation of Financial Resources

As previously mentioned, the allocation of financial resources is controlled by specific administrative bodies. Apart from those which have been outlined above (PCEC, Ombudsman, PCE, NAO), the following bodies deal with internal control.

As the Public Service (Procurement) Regulations of 1996 provide that the procurement of all equipment, stores, works and services by the government shall be made after a call for tenders in accordance with the same regulations, a form of internal control lies with the Director of

Contracts and the General and Special Contracts Committees. The Director of Contracts is responsible for the Department of Contracts and generally for the administration of the procurement procedures. His tasks are to ensure that tender conditions and specifications do not give an undue advantage or disadvantage to any particular supplier; to ensure that calls for tenders are adequately advertised and that sufficient time is allowed for the submission of tenders; to ensure that complaints regarding the award of contracts made by interested persons are duly dealt with. A General Contracts Committee assists the Director of Contracts in the execution of his duties in accordance with the Regulations. The General Contracts Committee shall evaluate tenders submitted, as well as reports and recommendations made by the respective departments and public organisations, report any irregularities that may be brought to notice or that may be detected in the tendering process, hear and determine disputes arising from public contracts, and formally investigate complaints concerning public contracts and procurements and make recommendations. The members of the General Contracts Committee are appointed by the Prime Minister for no more than three years, subject to reappointment.

The call for tenders procedure may be dispensed with in certain specified circumstances depending on the value involved. The Minister of Finance may, in writing, dispense with any of the provisions in the Regulations. Furthermore, he may, in writing, validate any act done in violation of a regulation or procedure prescribed therein.

Specific provisions deal with Local Councils. Where a Council offers for tender any work, goods or services related to its functions or the transfer of any land, it shall give notice of its intention through publication in the Gazette. The Council shall also make available to any interested person, copies of all tenders submitted and accompanying documents at a reasonable price. The Auditor General shall appoint persons to audit the accounts of a Local Council. These local government auditors shall have access to all books, records, returns and other documents relating to the accounts of Local Councils and may require any person holding or accountable for any such books or documents to appear before them at the audit. They shall submit their reports to the Auditor General. The President shall, upon the advice of the Prime Minister, dissolve a Council upon a report of the Auditor General for persistent breach of financial responsibilities.

c) Public Services Law and Human Resources in the Public Administration

For the selection and recruitment of public officers, a standardised procedure applies. All applicants must complete a standard application form and are evaluated by a selection board, whose members are bound to sign a declaration excluding any potential conflict of interest by indicating that they are not related to any candidate. The selection board is responsible for assessing the eligibility of all candidates and for proposing a preliminary report on their evaluation for further consideration by the Heads of Department and the Public Service Commission - which has the mandate to ensure that recruitments, promotions or appointments

within the public service are made in an equitable and impartial manner, are free from patronage and discrimination and based on the principle of merit.

In the locality within the jurisdiction of a Local Council, law and order are enforced, apart from by the police, also by local wardens with respect to litter, traffic and Planning Authority (i.e. building construction) offences which are handled by ten local tribunals. However, the 70 local wardens, although licensed by the Commissioner of Police and subject to prosecution for bribery, are employed by private companies.

Training programs for public officials include ethical matters and also police ethics according to the European Code on Police Ethics. Codes of ethics have been drafted for several professional activities (Members of the House of Representatives, Ministers and Parliamentary Secretaries, Members of the Judiciary, Accountants and Employees of the Public Sector). The Code of Ethics for Employees in the public sector (1994) specifically indicates that sanctions may be applied in case of infringement of its provisions, depending on the seriousness and nature of the breaches (warnings, suspension without pay, dismissal) and may entail formal disciplinary and/or criminal action. Public officials should not accept any gifts, benefits, or promises of gifts connected to their duties, other than token gifts. This provision also applies to partners or families of the public official.

Public officials are required to report cases of corruption to their hierarchical superior, who is required to take disciplinary measures against any improper conduct. Disciplinary proceedings are normally dealt with by the Heads of Department (see 1999 Disciplinary Regulations), whereas the Public Service Commission has the duty to ensure that disciplinary action against public officers is fair, prompt and effective. It also remains directly responsible for proceedings in cases which could lead to dismissal of the public official.

Relating to conflict of interest, the Public Service Management Code and the Code of Ethics for Employees in the public sector require that public officials avoid any financial or other interest or activity that could directly or indirectly compromise the performance of their duties. They must also disclose any potential or actual conflict of interest to their Head of Department, in writing, within a week of assuming office.

Public officials are free to resign from their posts to join the private sector in principle at any time, so that the potential risk arises that a promise of future lucrative employment may be used to influence serving officials, and that serving officials may abuse their contacts and inside knowledge of their former work areas. Persons who leave the service remain bound by confidentiality.

2.-3. Members of the National Parliament - Political Public Office-holders on the National Level

MPs enjoy a (limited) form of immunity. Article 2 of the House of Representatives (Privileges and Powers) Ordinance provides that no civil or criminal proceedings may be instituted against a Member ‘for words spoken before, or written in a report to the House or to a Committee thereof whether a Committee of the whole House or a Select Committee, or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise’. However, Members of the House of Representatives do not enjoy any immunity for acts of corruption. Moreover, Maltese law does not provide for any special privileges of jurisdiction, constituting an exception to general law.

Specific codes of conduct apply to MPs and political public office-holders. MPs, parliamentary secretaries and ministers are precluded from accepting any gift, favour or benefit which might possibly influence them in the proper fulfilment of their duties. Strict safeguards against conflicts of interest are also provided.

Relating to the government, relevant bodies fighting corruption are the Internal Audit and Investigations Directorate (IAID) and the Internal Audit and Investigations Board (IAIB). The public Internal Audit and Financial Investigations function is independent but established within government to examine and evaluate its own activities and provide it with necessary internal financial investigative services, separate from criminal investigations. The IAIB, which is chaired by the Secretary to Cabinet of the Office of Prime Minister, determines public internal audit and financial investigation policies and provides direction to the IAID. If the IAID becomes aware of a corruption offence, it informs the head of the relevant department/agency. If no action is taken, the IAID refers the case to the IAIB. In case of inaction by the latter or in emergency situations, the case is referred to the police.

However, corruption in the political sector, involving MPs and ministers, has been negligible so far.

4. Political Parties

The party system is dominated by two parties, the Nationalist (Christian Democratic) Party on the one hand and the Labour (Socialist) Party on the other. Both are predominately patronage parties. There is no specific law on political parties in Malta. Parties are legal entities and constitutional organs, with specific constitutional provision in terms of elections to the legislature and parliamentary functions. Maltese parties have tended to set their own rules, with party leaders being exceedingly crucial. In the decision-making process they can be described as top-down organisations. Lower bodies have to obey the directions given by the executive board and have to give account.

There is no public financing of political parties, but they extract money from different sources. Most funding relies on party fund-raising campaigns; members have to pay subscriptions fees, but the amount of these is very low. Additionally, parties hold own companies, such as radio stations, newspapers, travel agencies or publishing companies. And they receive donations by patrons – basically entrepreneurs. Foreign donations are also common. The funding is not disclosed publicly, there are just restrictions on possible expenditure by candidates during election times. But this is not at all easy to be supervised or controlled as it permits various subterfuges.

Report Netherlands³⁹¹

391 We would like to thank Dres. Emile Kolthoff, director of the Bureau Integriteit Nederlandse Gemeenten (BING), Amersfoort, for answering the questionnaire and supporting the realization of the Report Netherlands, written by Florence Tadros Morgane.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

There is an especially established unit within the general state prosecution which deals exclusively with corruption on the national level (*National Public Prosecutor for Corruption*). However, the data assessed there are not automatically made accessible to the public. The 25 regional police units³⁹², the *Wetenschaadijk Onderzoek – en - Documentiecentrum*³⁹³ (a research department at the Ministry of Justice) and the *Rijksrecherche*³⁹⁴ (a national internal police investigating authority) also assess corruption-relevant data. Here, it is regarded that the data are not always published but if so, the data are accessible for everyone.

2. Private Sources of Data-collection on Corruption in the Public Sector

Private organizations which assess corruption-relevant data for statistical purposes are: on the one hand, the nongovernment organization *Transparency International*³⁹⁵, the seat of the Dutch chapter being in Rotterdam; on the other hand, there are also on-campus teams of researchers which publish such data. One deserving special mention is the team of researchers set up at the University of Amsterdam on ‘Ethics and Integrity of Governance’³⁹⁶, in existence since 2003.³⁹⁷ The objective of this team of researchers is to create a long-term network in order to do comprehensive investigations in the field of integrity, ethics and corruption in the public sector (particularly in the public administration) in Europe. In this case, the focus of the investigation is more on the public administration than on politics.³⁹⁸

II. Legislation dealing with Corruption

The Dutch Penal Code contains four corruption-relevant provisions (§ 177, 362, 363, 364). These provisions deal with bribery of civil servants. Furthermore, the additional protocol on the criminal law convention on corruption passed by the Council of Europe was signed and ratified.

After ratification of the OECD Convention on Combating *of the Bribery of Foreign Office-Holders in International Business Relations* in the year 2001, changes in the penal code were

392 www.politie.nl.

393 www.wodc.nl.

394 www.rijksrecherche.nl.

395 www.transparencyinternational.nl.

396 This is a research group set up by the ‘European Group of Public Administration’.

397 www.fsw.vu.nl/Onderzoek/index.cfm/home, 6th September 2007.

398 www.fsw.vu.nl It is especially important to the team of researchers to introduce ‘public ethics and integrity’ as an important field of the public administration of research; this team of researchers annually organizes international conferences concerned with this. The reports published in the Internet also reproduce the lectures held at these conferences and their achieved results.

carried out in the same year and new provisions were introduced according to which the bribery of foreign office-holders is made a punishable offence. However, these law reforms affected not only the penal code, but also other laws and ordinances and/or guidelines. So some provisions of the employment and income tax Law were only changed in this way in April of 2006, so that now the tax deductibility of bribes paid to foreign office-holders is explicitly prohibited; indeed, up to this point in time, the tax deductibility of expenditures related to criminal acts was itself a punishable offence, however, a retroactive writing-off of such 'costs' was forbidden only up to a period of 5 years.

In the Dutch Penal Code, no universal definition of corruption is given, but individual characteristics of criminal offences and/or actions are described.

It lies within the discretion of the police authorities whether or not they initiate investigations. According to the Dutch judicial system, the prosecutor decides whether legal proceedings are appropriate or not; the prosecutors do not act according to the principle of legality. This means that if there is no explicit order from the Attorney General, the Minister of Justice or a court of records, the prosecution is not necessarily obliged to pursue a punishable action. It can decide on expediency and chance of success of the prosecution in the weighing of the individual case according to its own discretion.

The *Wet Openbaarheid van Bestuur* (a law which controls the free access to public records) gives everyone access to public-administrative records. Exceptions exist only if private third party interests are concerned or if the interests of an investigation in relation to this are opposed.

III. Control and Sanctions

The Dutch Constitution laid down the position and the task of a national Ombudsman in its Article 78a. According to this, he can control measures of authorities. Here, he acts either independently on his own initiative or by request. The national Ombudsman is appointed by the parliament.

Furthermore, several administration institutions exist which deal with the prevention and combating of corruption in the public sector. This 'control and disciplinary system' provides that certain authorities are responsible for the exploration, determination, and uncovering of corruption:

- the police,

- an investigating committee for punishable offences related to matters of tax and the economy³⁹⁹,
- and the *Rijksrecherche*.⁴⁰⁰

In addition, there are even more organizations which are entrusted with the prevention and combating of corruption. Thus revision offices, guideline representatives and integrity representatives exist in every public institution.

Internal integrity offices have been especially set up to act both preventively and investigatively. On the national level, Ombudsmen are entrusted with the task of taking complaints from citizens. In some larger cities, local Ombudsmen can also be found.

Due to the new Civil Servant Law of 2006, every public institution and/or authority is now obliged to develop a guideline catalogue on measures of integrity; this catalogue is to contain both a behaviour codex and protective measures.

On the whole, the Dutch Parliament regards itself to be a public forum for political conflict. In addition to its legislative function, the main task of the parliament consists of its control and public function. Among the most important control instruments of the parliament is, first of all, the right of inquiry (small and large inquiry), which is not only concerned with the extraction of information, but also with the critical influence on governmental transactions. This instrument is used in particular by the opposition. According to Art. 68 of the Dutch Constitution, the Members of Parliament can direct an inquiry to the responsible departmental minister and ask for information. The parliament can further decide on appointing an investigation committee; if one is used, the witness examination occurs under oath. Up to now, however, it has rarely resulted in the use of an investigation committee since the control instrument of the right of inquiry has higher priority and is used extensively. In the case of a scandal, the appointing of an investigation committee is used as a last resort. The committee is composed of Members of the Dutch Parliament who carry out the investigation as an ad-hoc commission. Normally these committees are equally represented by Members of the Parliament.

Media, science, nongovernmental organizations and ultimately society play a decisive role in dealing with the perception of corruption and its conflicts. Often the initiation of a state prosecution investigation began through scientific work or journalistic exposure. On the other

399 The investigation authority for tax and economic punishable offences is an office responsible for investigation at the tax and customs authority. This is mainly responsible for the preliminary investigations of economic and tax offences which are reported to it by the tax authorities, as the tax authorities are obliged to inform this authority about suspected cases of corruption.

400 The *Rijksrecherche*, a national internal police investigation committee, concentrates on the exposure of crimes which are inspected by office-holders. This authority is regarded as a 'special police authority' according to § 3 of the Dutch police law.

hand, however, it can be observed that the media is rather hasty to raise accusations of corruption. This results in the reputation of the affected public office or the person being harmed, even if this reproach can later be invalidated.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

In addition to the (national) government, the Netherlands is divided into 12 provinces and 458 municipalities. These three levels have certain areas of responsibility and/or tasks within which they have the right to self-government. The fact that there are 12 provinces in the Netherlands does not mean that this division shows a federal structure. The provinces are basically only in charge of functions of administration and realization; no autonomous legislation competences are assigned to them, also no participation in the entire state legislation. The tasks of the provinces are restricted to the administrative realization of the laws decided on at the central-governmental level. The Dutch municipalities have few self-administrative laws in spite of the municipal reform; so approx. 90% of their budget is assigned by the national government.⁴⁰¹

Since 1993, the Dutch public service has been composed of three government levels (central government, provinces and municipalities) and a residual category, the water associations, as well as of four functional areas (military, education, police and justice).⁴⁰² The water associations are regarded as an autonomous unit within the public service. Since 1995, the employment rate in the public service has been close to approx. 13%.⁴⁰³

According to Art. 3 of the Dutch Constitution, every citizen has the possibility of entering the public service. The public service in the Netherlands is characterized by the civil servants not entering a specific career, but rather being employed in a certain service post. No life-long appointment occurs; nevertheless, it is usual that the employment lasts up to the age of retirement (exceptions are in the case of liability to prosecution and incompetence).⁴⁰⁴

401 The municipalities are publically represented by the mayor who is appointed by the crown (usually the Minister of the Interior).

402 *Jens Ballendowitsch*, Strukturwandel im öffentlichen Dienst, Arbeitspapiere–Working Papers, No. 80, 2004, S. 11.

403 *Jens Ballendowitsch*, Strukturwandel im öffentlichen Dienst, Arbeitspapiere–Working Papers, No. 80, 2004, S. 16.

404 Until 1993, two status groups of public employees were discernable: on the one hand, the civil servants and on the other, the employees. This distinction has fallen away. In addition, there are also employees with special contractual relationships; these include judges, policemen, teachers and regular soldiers. They have a successful career within a certain career group and some are employed for life.

Since 2001, the same national laws apply to the civil servants concerning unemployment benefits, disability benefits, internal company pensions and sick pay as for employees in the private sector.

More and more labour laws which previously applied only to the private sector are now used in the public service as well. Here, the civil servant status was almost completely adjusted to that of employee status in the private sector. In spite of this standardization process, the special position of the civil servant has been maintained to a certain degree. The most significant difference consists in the unilateral employment in the public service. In addition, certain privileges still exist for civil servants and become noticeable for example through additional agreements.

Most members of the public service are organized as members of a trade union; they are also allowed to strike. The strike prohibition was removed from the penal code in 1980.

In comparison with the employees in the private sector, the members of the public service are no longer especially socially protected in the Netherlands.

The income possibilities in the public sector are normally lower than in the private sector, comparing the same age, sex, degree of education and profession. This is valid in particular for higher positions (manager), with which on average the salaries in the private sector are between 20 and 50% higher than in the public service.

In the Netherlands, increasingly more tasks are being outsourced from the administrative structure and transferred to private enterprises. These privatization measures have affected for example banking, the chemical industry, steel, mail and telecommunication, regional transport enterprises, energy enterprises and the Dutch Railroad⁴⁰⁵ since the 1980's.

b) Allocation of Financial Resources

The *Algemene Rekenkamer*, the National Court of Audit, audits the regularity (also the effectiveness) of government revenue and expenditure. The National Court of Audit has existed in its present form since 1814. Its position and tasks are regulated in the Dutch Constitution in Art. 76-78 and the Budgetary Law.

It controls whether the resources given to the ministries are legitimately managed and whether the expenditures are made in accordance with the purposes laid out in the budget. Furthermore, the National Court of Audit monitors institutions and/or corporations which are not part of the government yet receive public funds to carry out 'statutory task' such as medical care, administer social security benefits and provide education. In the same way, the National Court of

405 Correspondingly, the employment relationship (under public law) of employees working in these areas was converted into a work contract under civil law.

Auditors examines whether the government policy is implemented in an effective way and if its policy goals have been achieved. This 'performance audit' is also explicitly laid down in the Government Accounts Act (Art. 85 of the Government Accounts Act). However, the Court of Audit does not regard the evaluation of the respective government program within the framework of this 'performance review' as its task; it rather leaves this to the government and to the parliament itself. Since it is not possible within the framework of the 'performance review' for the Court of Audit to cover the entire dealings of the institutions which it monitors, it restricts these to such fields which the 'public rights' (as laid down in the constitution) would be influenced the most by in the case of missing or incomplete implementation. These are the fields of the public service, safety and sustainable development.

The task of fighting corruption is not explicitly assigned to the National Court of Audit. However, the objective of the 'good governance' strategy pursued by the Court of Audit is to reduce the danger of corruption. Here, the Court of Audit considers it important and one of its allotted functions to take such aspects as transparency, accountability, efficiency and performance capability into consideration as a part of 'good governance'. The Court of Audit has incorporated these aspects into two pillars of its strategy: 'accountability and supervision' and 'policy and implementation'.

Every five years, the National Court of Audit formulates a strategy to put its mission into practice in the coming years. Its strategy for 2004-2009 is described in the brochure 'Effectiveness, Transparency, Performance and Operation of Public Administration'.

The National Court of Audit is an independent organ of both the government and of the parliament. It determines the subject matter as well as the type and manner of its inspection and the contents of its report. The individual ministries and the parliament can confront the Court of Auditors with a request to carry out a certain inspection; however, it remains in its discretion to follow this inquiry.

Within the framework of its supervisory function, the National Court of Audit annually publishes the results of its supervision collected in reports (as a rule between 25 and 30 reports). Before these reports are published, however, the ministers involved in each case receive occasion to comment on these reports. The reports are published on the official website⁴⁰⁶ of the Court of Auditors, provided with a press statement and the respective position prepared by the Minister concerned.

The 'Duivesteijn' Parliamentary Investigation Commission from the year 2002/2003 examined the political decision and planning of the two train lines: *Betuwelijn* (a goods route to the

406 www.rekenkamer.nl.

Rotterdam harbour) and the *HSL-Zuid* high speed passenger train line. The concern here centered on projects of the Ministry of Transport and the Ministry of Regional Planning and Environment. The parliamentary commission was established after a risk guarantee to the amount of € 985 million had to be given by the federal government.

- *HSL-Zuid*⁴⁰⁷

The commission criticized the Ministry of Transport for not adequately having considered profitability and costs during the planning of the line and for having rather attached a greater emphasis on more conspicuous reasons. The parliament was inadequately informed of the planning process; it was said that threats of budget excesses were concealed. It was furthermore said that: the Ministry had not paid attention to the strained situation of the construction industry, in which price agreements between the contractors had resulted in increased costs which the ministry did not expect. The cartel formation process among the contractors had been intensified by the Ministry wanting to agree on a total price with the various contractors. The calling for tenders had to be interrupted and discussion had to be continued on an informal level. Concessions in quality and contracts had become necessary since the Ministry had only been focused on the final price.

- *Betuwelijn*⁴⁰⁸

During the planning of the *Betuwelijn* train line, the commission criticized the inadequate information policy by the Ministry of Transport furthermore reproached it for having used ‘clientele policy’. Between 1995 and 2002, a parliamentary control of the actual pending costs and of the entire budget was not possible. In 2002, the Dutch Court of Audit criticized this practice carried out by the Ministry of Transport and found considerable deficiencies during the realization of the project both financially and organizationally.

According to research by journalists, corruption occurred in at least three cases during the construction of the *Betuwelijn*.⁴⁰⁹ The federal government supposedly paid a sum of 2.08 million € for the rail construction in the Rotterdam Harbour while the actual costs would have amounted to € 1.17 million. Furthermore, an amount of € 225,000 was said to have been paid to four building contractors without having had been issued a task.

407 <http://www.uni-muenster.de/HausDerNiederlande/Zentrum/Projekte/NiederlandeNet/NRW-BeNeLux/duivesteijn.html>, 6th September 2007.

408 <http://www.uni-muenster.de/HausDerNiederlande/Zentrum/Projekte/NiederlandeNet/NRW-BeNeLux/duivensteijn.html>, 6th September 2007.

409 http://www.uni-muenster.de/HausDerNiederlande/Zentrum/Projekte/NiederlandeNet/Dossiers/15/betuwelijn_teurer_spass.html, 6th September 2007.

c) Public Services Law and Human Resources in the Public Administration

The affiliation to a political party is important only for certain offices. Thus the parties have a right to occupy a corresponding part of the available offices - dependent on their sizes; this applies to the office of the mayor or also the Commissioner of the Queen in the twelve provinces.⁴¹⁰ This is valid for high offices in the ministries and for comparable offices in the provincial and subordinate authorities whereas other criteria such as qualification and experience still play a large role. Otherwise, however, a government change does not fundamentally have any influence on the staffing in the public service.

Employees in the public service may generally carry out a further activity. However, every activity is to be indicated whether it is with or without pay. In some authorities, there even exists a duty to obtain a permit for additional professions.

There are several provisions in the Dutch Penal Code which deal with undue influence with respect to employees of the public administration. The (general) bribery of civil servants is regulated in § 177; legal and illegal administrative action and/or decisions are differentiated in § 362 and 363 within the framework of civil servant bribery.

These statutory offences provide for imprisonment up to four years; in the case of imprisonment, the loss of office is automatic.

The control of current and completed administrative processes is carried out through internal revision or a controller. They act independently of the respective administrative authority and must report either to the uppermost employers or to the Provincial Parliaments.

The *Ambtenarenwet* (Civil Servant Law), amended in March 2006, contains new offences which refer to integrity measures in general. According to this law, every public office has to set up a code of conduct with several specific points of view as for example the prohibition of the acceptance of gifts.

Every year these public offices must report to the Provincial Parliaments on their respective '*policy of integrity*' and their manner of operation and success. In the public administration, there is no obligation to create internal facilities used for the prevention of and fight against corruption. In some authorities there are, however, integrity committees, integrity representatives and persons of trust. In general, the dominant view in the Netherlands is that the responsibility for integrity and the prevention of corruption should be the core task of the management. There are internal investigation offices and an office for security and integrity in the police authorities.

410 Vgl. *Elzinga*, Die Institution der politischen Parteien in den Niederlanden, in: Dimitris Th. Tsatsos et al. (ed.), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. edition 2008 (forthcoming); These offices are distributed according to proportionality of the political relationships.

In art. 2 Par. 4, the General Administration Law postulates the principle of independence, according to which employees of the public administration are supposed to make their decisions without any influence.

According to an investigation of the Ministry of Justice from the year 2005, there were 130 internal and 50 police and/or public prosecution investigations in 2005.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The Dutch Parliament consists of two chambers.⁴¹¹ The structure, legal position and the procedure are regulated in the Dutch Constitution⁴¹², the *Grondwet*, in Art. 50–72. In the *Kieswet*, the Dutch Electoral Law, further details of the procedures for the elections occurring in the Netherlands are also regulated.

The First Chamber (Senate) consists of 75 members (Art. 51 Par. 3 NL Constitution). These are elected by all members of the Provincial Councils for four years (Art. 52 Par. 1, 55 NL Constitution). The Second Chamber, the Parliament, consists of 150 members and is elected for four years by the people (Art. 51 Par. 2, 52 Par. 1, 54 NL Constitution). The NL Constitution forbids the simultaneous mandate in both chambers (Art. 57 Par.1). Furthermore, according to Art. 57 Par. 2 NL Constitution, the members of both chambers may not hold the following offices: Member of the Government (Minister), State Secretary, Member of the State Council,⁴¹³ activity in the National Court of Auditors, National Ombudsman (or deputy), judge at the Supreme Court or Attorney General of the Supreme Court.

The Principle of Free Mandate, which is laid down in Art. 50 and 67 NL Constitution, means that political parties in the Netherlands do not have any right to influence the political behaviour of the those elected.⁴¹⁴ However, this represents itself as more or less unrealistic in the meantime since in the first place, the parliament member manifests himself as party representative. This is because candidates for the election to Parliament are nominated in a general meeting within the party, and are then put on the party's list of candidates. Nevertheless, the Electoral Law also provides for the possibility that independent citizens can run for parliamentary office (Chapter H, Par. H 3, 4 of the Electoral Law), if they are supported by at least 30 citizens who are eligible to vote.

411 The Parliament is named Staten-Generaal in the Netherlands.

412 This will be referred to hereafter as NL Constitution.

413 According to Art. 73 NL Constitution, the task of the Federal Government Council consists of for example giving opinions on legal drafts and contracts.

414 Cf. also *Elzinga*, Die Institution der politischen Parteien in den Niederlanden, in: Dimitris Th. Tsatsos et al. (ed.), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. edition 2008 (forthcoming).

The Members of Parliament receive financial compensation⁴¹⁵ for their activity to the amount of € 7,159.23/month. (€ 85,910.76 per year).⁴¹⁶ In addition, the Members receive a health insurance contribution; this health insurance contribution is also paid to the respective spouses and children. In addition, the Members of Parliament receive free travel authorization for first class trips between The Hague and their home, other trips are reimbursed according to the maximum tax allowance for motor vehicle costs (20,000 km/year) according to income tax laws.

In addition, Parliamentarians receive a vocational lump sum (in the year 2003: to the amount of € 2,091.90 net). After the term of office, former Members of Parliament receive compensation for a period of no less than 2 years and no more than 6 years; with a term of office less than three months, compensation is paid only for the duration of 6 months. In the first year, 80% of the Member's income is paid, and 70% as of the second year.

Members of Parliament and the First Chamber enjoy indemnity according to Art. 71 NL Constitution. This is to say, the basic principle of non-liability of the Members for their parliamentary activity. This means that outside of these chambers, they can not be prosecuted or held liable in law for votes or comments in the Parliament or during the sessions of the First Chamber.

b) Additional Incomes of Members of the National Parliament

Dutch Parliamentarians normally carry out their representative activity full-time. Fundamentally, however, there are differences between the members of the First and Second Chamber. The activity in the First Chamber is carried out normally over two days of the week, while that of the Second Chamber is assessed as a full time job. Nevertheless it is not uncustomary that members of the Second Chamber carry out a secondary profession as for example that of an architect, consultant or lawyer. The income which is made by this secondary profession is to be deducted, however; this income is deducted by half if the amount is over € 12,027.51 (that is, 14% of the Member's income) per year. Members are annually obliged to inform the Department Head for Private Persons of the Tax and Customs Administration in The Hague about additional income for the coming year if it exceeds € 12,027.51, and to publish it. The Minister of the Interior is informed by the Department Head for Private Persons of the Tax and Customs Administration about this additional income. Should the Member fall behind in his duty to inform and not provide information about the level of the additional income within six months, the Minister of the Interior is informed of this by this Head of the Tax and Customs Administration. In such a case the Member's income is reduced to € 55,841.88 for the coming year.

415 In the Netherlands, this context is referred to as 'compensation' instead of 'salary'; this is justified in that this 'compensation' supposedly compensates the loss of the other previous activity due to membership in Parliament.

416 The financial compensation of a Member conforms to the highest value of scale 16 in Appendix B on the ordinance concerning the salaries of civil servants and/or employees in the public service.

Furthermore, Parliamentarians have to publish capital values such as stock shares in enterprises. Other personal relations of the Member are not obliged to publish the status of their assets. If there are publications, they are published by several public offices.

After leaving office, Dutch Parliamentarians are free to decide for a new occupation and/or the one formerly carried out. A regulation does not exist which temporally restricts the taking up of new activities by Members on completion of the mandate. The introduction of such a grace period is being publically discussed, however.

c) Undue Influence

In the Netherlands, Members are also subject to the criminal provisions on bribery. According to § 361 of the Dutch Penal Code, the provisions on bribery also apply to persons holding public office. The maximum penalty is 6 years.⁴¹⁷ In addition to such sanctions as fines or imprisonment, the loss of mandate can follow in especially severe cases.

There were exclusions from the party in the case of undue influence; however, the excluded party members still remain Members of Parliament and can found a party themselves.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

The Dutch Constitution (Art. 42-49), the General Administration Law and the Penal Code deal with the legal position of political office-holders. The Prime Minister and the individual ministers receive an annual salary to the amount of € 130,000, the state secretaries to the amount of € 120,000.

Political office-holders are obliged to publish their complete income.

Furthermore they must publish considerable and/or relevant capital values. Other personal relations of the political office-holder are not obliged to publish the status of their assets. The published data can be viewed without restriction by request.

After their term of office, political office-holders receive between 70 and 80% of their former earnings for a period of 2 to 6 years (depending on the term of office).

b) Additional Incomes of Political Office-holders

Fundamentally, political office-holders can have income from other sources and/or from other secondary activities. They must publish the type of secondary activity and the level of income.

⁴¹⁷ 4 years for civil servants.

Despite this possibility, however, it is not usual that political office-holders carry out a secondary activity. Instead they hold honorary positions in non-profit associations.

The fact that political office-holders can carry out a secondary activity stirs public criticism, since it is thought that the office of a political office-holder should not allow time for an additional activity.

A regulation does not exist which temporally restricts the taking up of new activities by political office-holders on completion of the mandate.

Scandal in connection with supplementary incomes of political office-holders

No information except for the fact that there is an ongoing public discussion on supplementary income.

c) Undue Influence

In the Netherlands, political office-holders are also subject to the criminal provisions on bribery. According to § 361 of the Dutch Penal Code, the provisions on bribery also apply to these office-holders. The maximum penalty is 6 years. In addition to such sanctions as fines or imprisonment, the loss of office can follow in especially severe cases.

4. Political Parties

a) Legal Position within the National Legislation

Political parties are not acknowledged in the constitution; this means that no constitutional rank is attributed to the parties. They are regarded as free associations and are subject to the regulations of the civil code valid for associations. In the associations law itself there are no special regulations applicable to parties; the political association does not have any special positions and is shown no preference over other legal bodies in spite of its specific relationship to the constitutional organs. However, the Electoral Law contains several regulations which subjects the association 'party' to certain rules with regard to their participation in elections.

b) Revenues of Political Parties and Legislation on Transparency of Political Party Funding

In the year 1999, the *Wet subsidiering politieke partijen* (law for the subsidization of political parties) was adopted. The annual governmental subsidy is approx. € 15 million.

The number of seats which a party receives in the Parliament (Second Chamber) is basis for assessment for the distribution of the subsidies. The usage of the subsidies is not, however, at the discretion of the parties supported by the government. The parties can use the subsidies for the

following purposes: political science activities, political education/ further education, information facilities for members, contacts to sister parties abroad and activities which stand in connection with political youth work. The financing of election campaigns does not appertain to the intended subsidy usage. Violation of the legal regulations, in particular in the case of inappropriate use of the governmental funds, will result in the subsidies being either reduced or cancelled. Furthermore, the law provides for the cancellation of the subsidization if a political party has been charged with discrimination (any kind of discrimination). The duration of the non-subsidization ranges from one to four years.

In addition, the political parties receive donations and contributions. Donations are tax deductible (cf. Income Tax Law Art. 47), if they exceed more than 1% of the gross income; the maximum is 10% of the gross income. Enterprises can also donate and taxably deduct these donations up to a maximum of 6% of their profit.

Regarding donations to political parties, however, the following has been in force since May 2006: donations by natural or legal bodies exceeding € 25,000 per year are forbidden. All donations above € 3,000 are to be published as is the amount of the governmental subsidies. According to the *Wet subsidiering politieke partijen*, the parties are obliged to prepare a budget and to account for the expenditures which were financed with the aid of the governmental subsidies. The duty to report, however, only comprises part of the party activities; no comprehensive duty of disclosure of the party financing results from this.

In the year 2005, the governmental subsidies to a religious party were cancelled because of discrimination. This party did not accept women into the party.

V. General Comments

Civil servants, employees in the public service and politicians lack awareness of the problem and this is pointed out as being an essential cause for corruption. In addition, the lack of control by the respective leader (department or authority) also plays a role in the causes of corruption.

The areas of building industry and real estate are regarded as especially susceptible to corruption.

The parliamentary investigation committee, employed in the year 2002 due to various allegations of fraud in the building industry, has led to several changes in the law.

All measures aimed at the focussing and promotion of structures of integrity are regarded as being especially important in the fight against corruption. These measures certainly must also observe the special features of the respective authority's and/or organization's culture and take the corresponding protective measures.

Report Poland⁴¹⁸

418 We would like to thank Dr. Jacek Kucharczyk, director for programming of the institute of public affairs (Instytut Spraw Publicznych – ISP), Warsaw, for answering the questionnaire and supporting the realization of the Report Poland, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

There is no institution in Poland – public or private – charged with regular monitoring and gathering comprehensive data on corruption. There are, however, several important sources of information administered both by public institutions and NGOs.

The Ministry of Internal Affairs and Administration publishes semi-annual reports on the implementation of national anti-corruption strategy. The reports include a review of data from public opinion surveys and other reports (including TI) as well as analysis of data related to criminal prosecution of corruption. The report is publicly available on the Ministry of Internal Affairs website.⁴¹⁹ The same website also contains selected bibliography of reports and other publications where data on corruption can be found.

2. Private Sources of Data-collection on Corruption in the Public Sector

The ‘Against Corruption’ Program of the Stefan Batory Foundation publishes annual reports based on public opinion surveys. Every report consists of two parts. The first part is based on general public opinion polls on perceived levels of corruption in different areas of life and provides comparable data on changing public perception. The second part is based on a survey research within a specific target group (doctors, parliamentarians) which changes every year.

The reports are publicly available at: <http://www.batory.org.pl/korupcja/barometr.htm>.

The most often quoted source of relevant data is the annually published index of perception of corruption of Transparency International.⁴²⁰

II. Legislation dealing with Corruption

There is no legislation specifically designed to fight corruption. The Polish legislation *does not have* a definition of corruption either. The key legal provisions can be found in the following acts:

*The Penal Code*⁴²¹ penalizes such acts as: active and passive bribery of a public official in Poland, a foreign state or other international law entity (Article 228§1-6 and 229 of the Penal Code), trading in influence (Article 230), money laundering (Article 299).

419 <http://www.mswia.gov.pl>.

420 <http://www.transparency.pl>.

421 Journal of Laws of 1997, No 88, item 553 with later amendments.

Act of 13th June 2003 on amending the Penal Code and other acts⁴²² – *the so-called Anticorruption Amendment* – has introduced changes making the combating of corruption offences more effective, e.g. forfeiture of items and advantages derived from an offence, enlargement of the scope and degree of criminalising acts of corruption in private-legal and public-legal relations;

One should also mention the act of 21st August 1997 on the limitation of the conducting of economic activity by persons exercising public functions⁴²³, which is often referred to as ‘anti-corruption law’. The government is currently working on a comprehensive review of this act.

Since anti-corruption legislation is included in the penal code, the public authority is obliged to prosecute. Public servants are also legally obliged to inform proper authority (prosecutors’ offices) about instances of corruption.

Regarding the right of access to administrative files for individuals who are not specifically concerned the following law has to be mentioned:

The Act on Access to Public Information of 6th September 2001⁴²⁴ provides that every citizen has the ‘right to public information’. Making public information available is the duty of public authorities and other entities performing public tasks, in particular: bodies of public authority, economic and professional self-government bodies, entities representing other persons or organizational units performing public tasks or managing public property, as well as legal entities in which the State Treasury or units of territorial, economic or professional self-government have a dominant position as defined by regulations on the protection of competition and consumers, as well as trade unions and their organizations and political parties.

III. Control and Sanctions

The key institution charged with fighting corruption is the Central Anti-Corruption Office. This office was established by an act of parliament of 8th June 2006. The institution will have investigative powers, as well as conduct research and analysis in the field of corruption.

Furthermore, there are two types of parliamentary bodies dealing with corruption:

Deputies’ Ethics Committee is charged with the development and dissemination of the provisions of the Deputies’ Ethical Code as well as reviewing the cases where deputies behave contrary to such principles. The committee also deals with all issues arising in relation to the deputies’ ‘declarations of assets’ and ‘register of benefits’.

422 Journal of Laws No. 111, item 1061.

423 Journal of Laws No. 106, item 679.

424 Journal of Laws of 8th October 2001.

There are also *special (ad hoc) investigative committees* to investigate specific issues, vested with special powers. These committees have the right to publicly interrogate witnesses under oath and to submit the report to Parliament.

It has been a regular practice that representatives of the opposition chair the committees in certain sensitive areas such as intelligence services. They should be provided with full information under the condition that they obtain a certificate of security as regards the access to sensitive or classified information. As regards the investigative committee, it has been a practice that the representatives of opposition should have the same number of seats (and votes) as the representatives of the ruling coalition. However, this practice is not always observed.

Considering the general weaknesses of Polish public institutions, including the judiciary and law enforcement agencies, in combating corruption, the media have played a key role in identifying and bringing cases of corruption to public attention. Virtually all corruption scandals in recent years, which have been investigated, have had their origin in media publications. There were some allegations that in some cases media were manipulated by secret intelligence services, but such allegations have never been proved.

With regard to the NGOs, a number of them have been active in different fields such as monitoring of corruption, research and analysis related to fighting corruption as well as educational and awareness raising activities. The role of NGOs in these areas has been hampered by shortage of funds and qualified personnel yet they continue to play a crucial role as partners of media and public administration in preventing corruption.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

There are no significant benefits for employees in the public sector, i.e. they have comparable rights and obligations as other employees under the labour code. However, in practice public sector employees are better protected from dismissal and their work is generally perceived as less demanding and better protected than in the private sector.

Public servants have relatively modest salaries in comparison to private sector employees with the same qualifications. Research demonstrates that they consider low salaries as the key factor of unethical behaviour. The pressure for public servants to obtain additional income in order to afford the lifestyle comparable to their peers in the private sector is thus very considerable.

The public sector is strongly hierarchical and decision-making powers are strongly centralized.

The degree of outsourcing or transferring tasks to private sector differs significantly according to the particular branch of the administration. In some areas, particularly waste management of the local governments or public transport, many services require outsourcing, whereas central administration prefers to do things 'in-house'. Briefly, the public administration structure in Poland would be as follows:

- The central government administration:
 - the Cabinet (government) presided over by the Chief of the Cabinet (Prime Minister),
 - central bodies of the administrative government,
- The voivodship government administration:
 - the voivods who are the representatives of the government in the field,
 - integrated administrative government bodies, acting under the supervision of the voivod and not integrated bodies, subordinated under appropriate minister or central office managers,
- The local administration:
 - in the Gmina; the Gmina Council as well as the voivod, city mayor or major city mayor,
 - in the powiat; the Powiat Council and the powiat Board led by the starost (chief powiat official).
 - the voivodship - the voivodship local assembly and the voivodship headed by a voivodship marshal.

The local administration is independent and this independence is subject to court protection guaranteed by the Constitution. Individual levels of the local administration also function independently (*gmina, powiat* and *voivodship*).

b) Allocation of Financial Resources

The most important constitutional body controlling the allocation of financial resources is the *Supreme Chamber of Control (NIK)*. The most important duty of the Chamber concerning the fight against corruption and prevention thereof is to indicate the occurring of corruption-breeding situations. The duties of NIK also include the control of: the State's budget execution, the diligence and scope of legal activities of the bodies of the government administration, the National Bank of Poland, other State's organizational units, local self-government bodies, other economic units, in which the State Treasury has more than 50% share, and these organizational units and economic entities in the field of their use of the state or municipal funds and their fulfilment of the financial obligations towards the State.

The Chamber's experiences and findings have been recorded in the annual reports on NIK activity. The reports are submitted to the parliament and other public bodies and are publicly available and broadly commented in the media.

Within the *Ministry of Finance* operates the Anticorruption Team, formed in 2003, whose task is to prevent and combat corruption in the fields of interest of the Minister of Finance.

None of the major corruption scandals in recent years directly concerned public tendering but there were numerous instances reported by NIK.

c) **Public Services Law and Human Resources in the Public Administration**

Although there is no systematic research to prove it, the influence of political parties over the staffing in the public sector is considerable. Media are the key source of information in this matter.

Every election brings about a wave of new political appointments within public administration. The most spectacular examples are reported by the media. The present government has used its anti-corruption policy as a pretext for introducing amendments in the civil service laws, which facilitate this practice. The amendment has been specifically designed to include employees of some institutions to obtain the status of civil servants without meeting the criteria specified in the civil service law. Another area where veritable political purge has been conducted is that of the state owned commercial companies.

Numerous categories of public servants have either restricted possibility to have a second job or are obliged to reveal additional sources of income to their superiors or to general public. However, the respective regulations are generally viewed as ineffective. The main law on the current anti-corruption strategy lists the amendment of the law on ‘limitation of the conducting of economic activity by persons exercising public functions’ as one of the urgent tasks.

The 2003 NIK report on the sources of corruption in Poland mentions the weakness of internal audit as one of the key factors conducive to corruption.

*Penal Code*⁴²⁵ - trading in influence (Article 230). The penalties include fines or imprisonment for up to 8 years and forfeiture of assets derived from such acts.

The key document is *Civil Service Code of Ethics* established by Order 114 of the Prime Minister of 11th October 2002 (*Polish Monitor of 14th October 2002*) Some branches of public administration have their internal codes of ethics. They usually provide for no sanctions and thus have educational and awareness-raising purposes.

The most important initiative in this area is the recent establishment of the position of ethical advisors in the public administration.

425 Journal of Laws of 1997, No 88, item 553 with later amendments.

A number of high ranking officials in the ministry of finance have been arrested for allegedly making decisions on tax exemption for companies set up by organized crime.

d) Privatization

The ongoing scandal concerns the privatization of the insurance giant PZU. The presidents of the firm and some of its subsidiaries are accused with various acts of illegal management of the firms' assets and are also blamed for putting their personal interests above the prosperity of the firm. The principally accused of the scandal are said to be connected to politicians of the government of the era when the acts took place (between 1997 and 2000) and, by that, having achieved impunity for many years.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The laws that deal with the status of Members of Parliament (MPs) are:

- the Constitution,
- the law on the implementation of the deputy's and senator's mandate of 9th May 1996,
- the statutes of the *Sejm* and Senate.

Candidates for Deputies may be nominated by election committees of political parties and by voters. The principle of proportionality requests that lists of candidates are submitted.

Voters, being at least 15 in number, may establish an election committee and, then, after having collected at least 1,000 signatures of citizens in support of the setting up of their committee, must notify the National Electoral Commission about this fact. The election committee may perform electoral activities after the National Electoral Commission has made a decision to accept the notification. The function of an election committee of a political party is performed by an organ of the party, authorized to represent it. A list of candidates should be submitted in each constituency, to the constituency electoral commission. A constituency list must be supported, by the signatures of a least 5,000 voters residing permanently in a given constituency. This requirement does not apply to an election committee which has registered constituency lists in at least half of all constituencies (*Act on Elections to the Sejm of the Republic of Poland and to the Senate of the Republic of Poland* of 12th April 2001).

In the case that those provisions are violated, the Constituency electoral commission may refuse to register a list of candidates if no sufficient number of signatures is submitted or if it has 'reasonable doubts' as to the accuracy of the signatures (Act on Elections). Forging signatures is also an offence under criminal law.

The basic remuneration of a deputy is equal to the salary of a deputy minister in the Cabinet. This amount is increased if the deputy serves as a chair of a parliamentary committee.

In addition to this income, Members of Parliament get certain allowances and/or reimbursements for particular expenses:

- per diem equal to 25% of the salary and tax exempt,
- free travel on public transportation,
- special healthcare facilities (the same as for members of government).

Members of Parliament have the privilege of immunity on the basis of the Law on the implementation of the deputy's and senator's mandate of 9th May 1996.

As incompatibilities between parliamentary mandates and other public offices or private positions are concerned, we can note the following: They include employment in the Chancelleries of the *Sejm* and Senate, office of the Constitutional Tribunal, the Supreme Chamber of Audit, Ombudsman Office, and others, including government and local government administration and the judicial system.⁴²⁶

On the other hand, it is common practice for Members of Parliament to hold positions as Cabinet Ministers, university lecturers (giving lectures is an activity exempt from restrictions on additional income).

Ultimately, there are no restrictions concerning the employment of (former) members of parliament in particular working posts after leaving office (cooling-off periods).

b) Additional Incomes of Members of the National Parliament

Members of Parliament do have the right to receive additional income. They also have the obligation, as a general rule, to publish their additional income. The only limitation concerns financial liabilities, which have to be reported up to 10,000 zlotys (2,500 euros). No other persons (e.g. husband or wife, members of the family) are obliged to publish their income. These assets are the subject of reports, which are published on the Parliament's website www.sejm.gov.pl.

Recently, the former Foreign Minister and Presidential Candidate Włodzimierz Cimoszewicz had to resign when it was revealed that he submitted inaccurate declaration of assets as MP.

⁴²⁶ Full list in Art. 30 of the Law on the implementation of the deputy's and senator's mandate of 9th May 1996.

c) **Undue Influence**

Members of Parliament are not subject to any special criminal provisions of bribery, therefore the possible sanctions are the same as for any other citizens.

Nevertheless, *the Law on the implementation of the deputy's and senator's mandate of 9th May 1996*, is one dealing with corruption-relevant questions (e.g. prohibiting travel at the expense of companies or individuals, acceptance of presents).

Therefore, there have been a number of cases of undue influence, where Members of Parliament have been excluded from the parliamentary groups. A recent one, worth noting, is that of a deputy named Andrzej Pęczak who had been arrested, during the last parliamentary period, for accepting a luxury car in exchange for helping a businessman to gain access to the Ministry responsible for privatization of a large state company.

3. **Political Public Office-holders on the National Level**

a) **Legal Position within the National Legislation**

The status of political office-holders is regulated by the *Law on Civil Service* of 18th December 1998⁴²⁷, which defines political and non-political positions in public administration and the *Act of 21st August 1997 on the limitation of the conducting of economic activity by persons exercising public functions*.⁴²⁸

Political office-holders receive a salary plus benefits. They also receive additional benefits in comparison to employees of the private sector as cars with a driver and access to special healthcare facilities.

A political office-holder can also hold another public office position or employment in the private sector, but there are certain incompatibilities. Those are enumerated in the *Act of 21st August 1997 on the limitation of the conducting of economic activity by persons exercising public functions* (Journal of Laws No. 106, pos. 679). Hence, they cannot:

- be members of management and supervisory boards of commercial law companies,
- be employed in such companies if such employment would compromise their impartiality,
- be members of management and supervisory boards of cooperatives, except for housing cooperatives,
- be members of managerial boards of foundations conducting commercial activity,
- conduct commercial activity, except for farming.

427 Journal of Laws 99.49.483 from 31st May 1999 with later amendments.

428 Journal of Laws No. 106, item 679.

Political office-holders usually hold other positions as posts in their political party (e.g. Chairman of a committee), or other type of commonly held positions like those in the boards of charity institutions and NGOs.

After leaving office there are regulations of restricting (former) political office-holders from particular employment (cooling-off periods). The restrictions are regulated by the *Act of 21st August 1997 on the limitation of the conducting of economic activity by persons exercising public functions*.

b) Additional Incomes of Political Office-holders

Political office-holders have the right to receive additional income, with the above mentioned restrictions. High ranking political office-holders have to submit declarations of assets, which also show their income. They also have to publish assets shared with spouses. Such declarations are the subject of reports (see above) and they can be accessed through the web – pages of the government and the presidency of the Republic (www.kprm.gov.pl and <http://www.prezydent.pl>).

Recently, there have not been any cases of corruption related to additional income that are worth noting.

c) Undue Influence

Political office-holders are subject to the below statutes regarding undue influence:

- *Penal Code*⁴²⁹ - trading in influence (Article 230). The possible sanctions include fines or imprisonment for up to 8 years and forfeiture of assets derived from such acts.
- The Act of 21st August 1997 on the limitation of the conducting of economic activity by persons exercising public functions (Journal of Laws No. 106, item 679).

A recent case (2002) of corruption related to undue influence worth noting is the so-called ‘Rywin Affair’. Lew Rywin, a Polish film producer, promised to amend the broadcasting law citing his influence of high ranking political office-holders. Rywin was convicted of push in return for payment and sentenced to two years of imprisonment. The parliamentary investigation committee assumedly named former president Leszek Miller and Aleksandra Jakubowska, former deputy minister of culture, and other officials being involved in the affair.⁴³⁰

429 Journal of Laws of 1997, No. 88, item 553 with later amendments.

430 <http://de.wikipedia.org/wiki/Rywin-Affäre>, 6th September 2007.

4. Political Parties

a) Legal Position within the National Legislation

The status of political parties is regulated on the basis of the Act of 27th June 1997 on political parties (legal body).

b) Revenues of Political Parties

State funding constitutes most of parties' income (at least the official income). In order to receive state funding a party needs to get at least 3% of votes (6% in coalition). The amount of subsidy is based on the number of votes cast for that party. The party receives the subsidy for four successive years after the election year.

c) Legislation on Transparency of Political Party Funding

The Act on political parties allows for donations (up to a certain level) from persons who are Polish citizens. Other donations, including anonymous donations and corporate donations, are considered illegal. Additionally, according to the above mentioned Act on political parties, each party has to submit an annual financial statement concerning the subsidy it has received. The statement has to be accompanied by an auditor's report. The auditor is appointed and paid by the National Electoral Office. Failure to submit a statement or submitting inaccurate statement results in losing the subsidy for the following year.

Recently, there has been a number of allegations related to illegal funding of parliamentary and presidential campaigns run by major parties, but nothing was brought to justice or proven officially.

V. General Comments

The main reasons for corruption in Poland are:

- poor quality, complexity and frequent changes of the law,
- poor enforcement of the existing laws designed to limit corruption,
- toleration of corruption in various spheres of life (e.g. medical profession),
- too much discretionary power of politicians and civil servants,
- low salaries in the public sector.

The main fields where corruption occurs is healthcare, local governments and politics.

Regarding the effect scandals have had on legislation, we could note that, yes, scandals have made corruption a top priority for the main political parties and this has led to a number of legal changes. The most significant change so far has been *the amendment of the penal code* (the so-

called anti-corruption amendment) which introduced changes making the combating of corruption offences more effective, e.g. forfeiture of items and advantages derived from an offence, enlargement of the scope and degree of criminalising acts of corruption in private-legal and public-legal relations. The amendments also enhance the penal liability for perpetrators of passive bribery, while relaxing it for perpetrators of active bribery. An obligatory extraordinary mitigation of the penalty or even a possibility of the court renouncing the imposition thereof in certain circumstances in relation to the perpetrator of active bribery has been introduced. Such a solution aims at breaking the criminal bond between the bribe tender and the receiver.

Speaking in general terms, the anti-corruption strategy of successive governments has not led to any substantial improvement so far, as regards the levels of perceived corruption, although it is also true that more and more offenders are prosecuted. Furthermore, the fight against the corruption has been defined as the top priority of the present government. In order to meet this election pledge, the government called for the organisation of an Anti-Corruption Office . The office focus is on repression rather than prevention, which worries many experts on fighting corruption.

Report Portugal⁴³¹

431 We would like to thank Luís de Sousa, Centro de Investigação e Estudos de Sociologia (CIES-ISCTE), for answering the questionnaire and supporting the realization of the Report Portugal, written by Alessandra Di Martino.

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I. Sources of Data-collection on Corruption in the Public Sector

Public bodies responsible for treating corruption-related information in Portugal are the following: DCIAP (*Departamento Central de Investigação e Acção Penal*: Central Department of Penal Action and Investigation, Attorney-General's Office)⁴³², DCICCEF (*Direcção Central de Investigação da Corrupção e Criminalidade Económica e Financeira*: Special Branch of the Judiciary Police responsible for investigating corruption, fraud and economic crime)⁴³³; GDDC (*Gabinete de Documentação e Direito Comparado da PGR*: Department of International Cooperation, Documentation and Comparative Law, Attorney-General's Office)⁴³⁴, GPLP (*Gabinete de Política Legislativa e Planeamento do Ministério da Justiça*: Department of Legislative Policy and Planning of the Ministry of Justice).⁴³⁵

Data from the aforementioned sources is published and accessible to anyone. Online statistical information is available only at GPLP's website.

Private bodies collecting data on corruption in the public sector are, also for Portugal, the NGOs *Transparency International*⁴³⁶ and *Global Integrity*.⁴³⁷

II. Legislation dealing with Corruption

Traditionally, the criminal offence of corruption was associated with conducts/practices in the exercise of the public office only. Related provisions are art. 372, 373, 374 *Código Penal* (Criminal Code), which give a legal definition of passive and active corruption⁴³⁸; art. 334⁴³⁹; art. 336 to 343⁴⁴⁰; art. 359 to 371⁴⁴¹ art. 375 e 376⁴⁴², art. 378 to 382⁴⁴³ art. 377⁴⁴⁴. With the

432 http://www.pgr.pt/portugues/grupo_pgr/dciap.htm, 6th September 2007.

433 <http://www.policiajudiciaria.pt/htm/direccoes/dciccef.htm>, 6th September 2007.

434 <http://www.gddc.pt/bases-dados/form-pesquisa.html>, 6th September 2007.

435 http://www.gplp.mj.pt/estjustica/justica_penal.htm, 6th September 2007.

436 <http://www.transparency.org>.

437 <http://www.globalintegrity.org>.

438 Corruption. The crime of corruption as dealt in the penal code addresses only public officials (*funcionários*). The definition of public official provided by the Decree-Law 48/95 of 15th March 1995 included civil servants, administrative agents (national and local), those holding a provisional (remunerated or voluntary) public mission, managers (auditing agents and personnel managers) of public enterprises (nationalised companies, companies with majority state capital, any enterprise providing public services). The extension of penal provisions to elective officials is regulated under special law. The Law 34/87 of 16th March 1987 introduced penal provisions for eligible officials. The structure of the crime is similar (Arts. 16 and 17 passive corruption for an illicit or licit act; Art. 18 active corruption), only that active corruption did not comprise the illicit payment for a licit decision and the sanction regime was softer in the case of eligible officials.

439 *Tráfico de influência* – Traffic of influence.

440 *Crimes eleitorais* – Electoral fraud (bribery of voter).

441 *Dos crimes contra a realização da justiça* – Crimes against the due process of justice.

442 *Peculato* – Embezzlement.

443 Abuse of authority (including art. 379, *Concussão* – extortion and 382, *Abuso de Poder* – abuse of office).

444 *Participação económica em negócio* – illicit participation in business.

approval of *Law 34/87 of 16th July 1987 on crimes on the responsibility of elective and appointed officials*, the concept was broadened to elective and appointed officials.

More recently, the offence of corruption was extended to the private sector through the transposition into the Portuguese legal system of a number of provisions adopted through international conventions.

The Portuguese legal system is based on the principle of legality, according to which prosecution of an offence is mandatory for the public prosecutor. In principle, there is no discretion to prosecute or not prosecute. Once the inquiry phase is completed and evidence collected, the P.M. will have to decide whether there is sufficient material evidence to prosecute or not prosecute (*arquivamento*). In practice, there is margin for discretion or, at least, for a selective treatment of cases. The problem of why certain allegations and investigations do not lead to prosecution is not only about discretion, but also about the legal positivist tradition devaluating incentives. Another worrying issue is the promiscuous relationship or socialisation between magistrates and certain political figures, especially at the local level, which can have a damaging effect on impartiality during the inquiry phase.

Access to administrative and governmental files is regulated in Portugal by the *Law of Access to Administration Documents – LADA* (Law 65/93, 26th August 1993, with amendments by Laws 8/95, 29th March 1995 and 94/99, 16th July 1999), according to which citizens have the right of access to administrative and government files, including those which do not concern them directly. In practice, however, access to administrative and governmental files is very uneasy, time-consuming and expensive.

III. Control and Sanctions

Portugal is a special case regarding the adoption of anti-corruption agencies. In 1983 it created one of the first, if not the first, anti-corruption agency in Europe (the *Alta Autoridade Contra a Corrupção (AACC)* – High Authority against Corruption) but decided to extinguish it by parliamentary vote when its European partners were considering and putting in place similar bodies.⁴⁴⁵

445 In 1986, the AACC competencies were reviewed (Law 45/86): the body was given special investigation power over sovereign entities under parliamentary supervision. This ad hoc agency gradually asserted its independence vis-à-vis the political sphere and produced some visible results. In 1992, all major parties represented in Parliament, with the exception of the Communists, voted for its extinction without an elucidating debate on the results produced by this anti-corruption agency. AACC had become expendable, because it had bothered too many people and too many interests. The results of its investigations – all documents and pending cases – were sent to the National Archives and public consultation was forbidden for a period of 20 years.

At present, the ordinary institutional network operates in a way so as to exercise control over the legality and finances of all public, public funded and quasi-public bodies. Control is exercised externally, by the Court of Audit (independent audit body) and, to a limited extent by the Ombudsman (*Provedor de Justiça*) and the Parliament, as well as internally, by a series of *Inspectorates-General* from the various state departments (tax office, welfare, territorial administration, public administration, European Social Funds, justice, enforcement agencies, defence, etc.). In practice, preventive strategy is lacking and coordination between these different bodies on detection is loose and inefficient.

Two bodies are responsible for repressing corruption: the DCICCEF – *Direcção Central de Investigação da Corrupção e Criminalidade Económica e Financeira*, a special branch of the Judiciary Police entrusted to investigate corruption and economic and financial crimes; and the DCIAP – *Departamento Central de Investigação e Acção Penal* of the Attorney-General's Office, empowered with strategic (analysis of criminal patterns, etc) and coordination competencies.

The Assembly of the Republic (Parliament) can constitute *ad-hoc* inquiry committees whenever requested by 1/5 of MPs.⁴⁴⁶ Parliamentary inquiry committees enjoy investigative powers similar to those of any judicial authority (Article 178 para. 5 C.R.P.). Article 39 para. 2 of the Rules of Procedure of the Assembly of the Republic also sets the competences of the Parliamentary Ethics Committee. In general, however, inquiries are not framed to directly investigate corruption affairs.

As for the role of civil society, it could be enhanced. According to a widespread public belief, legal and moral standards governing public life are to be circumvented or subdued, whenever individual or affinity group interests stand higher. Public opinion also tends to be more focused on individual financial impropriety than on collective misconduct. Media exposure and coverage of corruption has increased over the last decade, but investigative journalism is yet to become a reality, since media is further compromised by the degree of promiscuity between the political class and the journalists and editors.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Portugal has a two-tier government: 308 local authorities (municipality) and the central government. There are two autonomous regions which constitute an exception due to their

446 Article 178 para. 4 C.R.P.; Section X and Ch. 4 of the Rules of Procedure of the Assembly of the Republic.

geographical condition: the archipelagos of Azores and Madeira. Autonomous regions have their own government and legislative assemblies. Local authorities have the right of self-government, but their fiscal capacity is very limited. As a general trend, contracting out public functions takes place in many sectors, such as waste management, health care, child care, etc. Many traditionally public sectors of activity have also been privatised or licensed to private investors, such as telecommunications, radio and TV broadcasting channels, transports, etc.

b) Allocation of Financial Resources

The task of controlling the allocation of financial resources lies in the sphere of competence of the Court of Audit (*Tribunal de Contas*), which is the highest body for auditing and assessing the legality, economy, efficiency and effectiveness of public expenditure and for delivering judgment on the liability for financial offences. The Court of Audit is required to draft a report on the General State Account and the separate Social Security Account, analyzing the implementation of the budget, which must be submitted six months before the end of the year (by 30th June). The report is approved by the General Plenary of the Parliament. On the basis of this report, the Parliament approves the General State Account. The Court of Audit issues specific recommendations to the authorities concerned and general recommendations which are also published in its annual report and available online.⁴⁴⁷ In addition to the Court of Auditors, parliamentary committees (standing, *ad-hoc* or inquiry committees) can also control the allocation of financial resources and the financial management of all sectors of the public administration.

Public works tendering processes are a major source of concern. Bid rigging is a regular practice in public markets. Building contractors are known for making ‘secret consortia’ and fixing prices before entering open tendering competitions. Another common practice is the invitation of fake tenders. This is possible thanks to the degree of promiscuity between evaluation committee members and tenders paved by the ineffective enforcement of conflict of interest rules. The most flamed media case of corruption concerning tendering procedures was the *Fax de Macau affair*. A German constructor (*Weidleplan*) claimed to have paid the Governor of Macau (Mr Melancia) DM 606,000 (= € 309,843) in order to obtain a favourable decision concerning the tendering process of the new Macau airport.⁴⁴⁸

447 <https://www.tcontas.pt/index.shtm>, 6th September 2007.

448 The payment was allegedly made following a series of contacts between the company's representative and senior representatives of the mass media holding closely associated to the financial services of the Socialist Party (Emaudio) – and of which Mr Melancia was a shareholder – who acted as intermediaries in that process. The decision taken by the Supreme Court of Justice on the Melancia case proved the difficulty of applying the crime of corruption to elective officials. The active actors to the transaction were convicted separately for corruption, while the passive actor, Mr Melancia, was absolved on grounds that he had not known that the money allegedly offered had a corrupt intent. For an insider view of this case: Rui Mateus (1996), *Contos Proibidos – Memórias de um PS Desconhecido*, Lisboa, Publicações Dom Quixote.

c) **Public Services Law and Human Resources in the Public Administration**

The Disciplinary Statute of the Public Service provides that all public officials must be impartial, neutral and objective while exercising their duties.⁴⁴⁹ Although public officials have a duty of obedience and secrecy, which obliges them to report corruption internally before seeking external help, these duties can and must be breached in cases of corruption or any other illegality of their knowledge. Difficulties may arise when public officials have to report on their superior's alleged involvement.⁴⁵⁰ The Disciplinary Statute of the Public Service sets a very lenient regime in this regard. There is scaled typology of penalties applicable to public officials.⁴⁵¹ Following a conviction on corruption, the Statute provides for the removal of all rights as civil servant. However, this disciplinary sanction does not prevent the convicted from being appointed or recruited (by contract) to a different position in the public administration.

At present, civil servants enjoy modest additional benefits compared to employees in the private sector, such as, for example, a special health service and child and family benefits. Currently, differences reside between workers who hold an employment contract (*dependent*) and those who do not (*independent*). Dependent workers are entitled to unemployment benefits, sickness leave, child care benefits, 14 wages per year (12 wages + 2 holiday subsidies). Independent workers, however, do not have their taxes and social security contributions deducted from their wages hence they are more likely to avoid their obligations. A general rule on the conflict of interest applies to public offices, providing that they must be exercised in exclusivity. However, this general principle is contradicted by a series of exceptions that allow job accumulation to take place. On such occasions, civil servants need to ask their hierarchical superior about the existence or nonexistence of any incompatibility or conflict; otherwise they might infringe their public duties and will be liable of disciplinary sanctions.⁴⁵² Regarding internal revision and the embeddedness of internal audit in the administrative structure, several inspection proceedings scrutinise operations at all sectors of the public administration.

449 Article 3 of the Disciplinary Statute of the Public Service (Decree-Law 24/84, 16th January 1984). See also Article 57 of the Electoral Law (Law 14/79, 16th May 1979 with changes introduced by the Organic Law 2/2001, 25th August 2001), on the neutrality and impartiality of public entities during election campaigns.

450 This was particularly a problem during the 1970s and 1980s, when public resources in many ministerial departments and public institutes were abused for private or party purposes as result of senior offices (directors and sub-directors) being filled through political appointment. In general, public officials are more protected from negative consequences than private sector whistle-blowers who probably face immediate discharge of duties or future difficulties in their careers.

451 Written reprimand, fine, suspension from duties, inactivity for short period of time, compulsive retirement and dismissal from duties.

452 Civil servants: Article 12 DL 184/89 of 2nd June 1989 (with changes introduced by Law 25/98 of 26th May 1998). Appointed senior officials: On impediments while in office, article 22 of Law 49/99, 22nd June 1999, Statute of Appointed Senior Officials; On impediments after leaving office, article 23 of Law 49/99, 22nd June 1999 and article 5 of Law 64/93, 26th August 1993 (amended by Laws 28/95, 18th August 1995; 12/96, 18th April 1996; 42/96, 31st August 1996 and 12/98, 24th February 1998), Regime of Incompatibilities and Impediments Applicable to Elective Officials and Senior Public Officials.

Without a reference scale, it is difficult to assess the income of public servants in comparison to employees of the private sector. Leadership and middle rank jobs are better paid in the private sector, whereas rank-and-file jobs tend to have more guarantees and perks in the public sector.

Undue influence in the public administration is addressed by several legislative provisions, with related sanctions.⁴⁵³ As for non-binding provisions, the code of conduct for the civil service⁴⁵⁴ states that all public officials ought to act with integrity and should never accept or demand gifts, hospitality or offers of any kind, but there are no registers as such. In practice, many citizens offer civil servants small gifts as an expression of gratitude for having helped them to solve their case. Gifts and hospitality are very common in certain sectors, for instance, the pharmaceutical sector. There have recently been several cases of corruption in the public administration reported in the media, only some of which led to prosecution or were investigated by Parliament (see below). No big scandals arose from privatization as such, but there have been debates, inquiries and media coverage about conflicts of interest resulting from the revolving door system.

Political parties still have considerable influence regarding staffing in the public sector both at the national and local levels. The top positions of the administration continue to be filled by political appointees loyal to their respective minister. The new administrative bodies continuously enroll members from the private sector, commendable for their 'entrepreneurial capacity' but without a proper clearance of conflicts of interest. Furthermore, a change in government has consequences on staffing at the direct political level of ministers and state secretaries. Prior to privatization, a change in office not only caused a complete re-shuffling of senior positions in the administration, but also led to new appointments to the board of directors of public companies. Loyal practices are slowly eroding at the national level thanks to the introduction of more and better regulated competitive recruitment and safer career guarantees.

453 *Trading in influence*, art. 335 c.p., fine or prison sentence (up to 6 months, up to 5 years; Voter bribery, art. 341 c.p., fine of up to 120 days, or up to 1 year; *Passive bribery of a public official for the purposes of a lawful or unlawful act*, art. 372 and 373: by lawful act: fine of up to 240 days, or up to 2 years in prison, by unlawful act: 1 to 8 years in prison, discharge for voluntary renunciation of offer or return of advantage; mitigation for assistance with identification of other persons responsible; *Active bribery of a public official for the purpose a lawful or unlawful act*, art. 374 c.p.: by lawful act: fine of up to 240 days, or up to 6 months in prison, by unlawful act: 6 months to 5 years in prison, in both cases: mitigation or discharge if act intended to protect the person or his family from the risk of a sentence or security measure (art. 364); *Passive bribery of a political office-holder for the purposes of a lawful or unlawful act*, Law 34/87, Sections 16 and 17, Law 108/2001, by lawful act, fine of up to 300 days, or up to 6 months in prison, by unlawful act, 6 months to 5 years in prison; *Active bribery of a political office-holder for the purposes of a lawful or unlawful act*, Law 34/87, Section 18 (1) and (2), Law 108/2001, by lawful acts: fine of up to 300 days, or up to 6 months in prison, by unlawful acts: 6 months to 5 years in prison; *Granting of undue advantage by a political office-holder to a public official or other political office-holder*, Law 34/87, Section 18 (3), Law 108/2001, 2 to 8 years in prison; *Active and passive bribery in sport*, Decree-Law 390/91, Sections 2, 3 and 4, passive: up to 2 years (competitor) or up to 4 years (umpire/referee, trainer, manager, etc.) in prison, active: up to 3 or 4 years in prison (according to above distinction); *Active bribery harmful to international business*, Decree-Law 28/84, Section 41-A, Laws 13/2001 and 108/2001, 1 to 8 years in prison; *Active and passive bribery in the private sector*, Decree-Law 28/84, Section 41-B and C, Laws 13/2001 and 108/2001, *Active and passive*: fine or up to 3 years in prison.

454 Deontological Charter for the Civil Service: Resolution of the Council of Ministers 18/93 of 17th March 1993.

Directors-General, Secretaries-General, Inspectors-General and presidents of public agencies and institutes are subject to political appointment, but directors and heads of division do not necessarily have to face a job change following a change in government and they are now chosen through public competition.⁴⁵⁵

2. Members of the National Parliament

a) Legal Position within the National Legislation

Chapter III of the C.R.P. (Constitution) deals exclusively with the Assembly of the Republic (Parliament). According to the Constitution, MPs are elected by constituencies geographically defined by the law. Article 155 para. 1 provides that Members shall exercise their mandates freely.

Constitutional provisions are set in more detail under the Rules of Procedure of the Assembly of the Republic.⁴⁵⁶ Other parliamentary regulations of similar importance are The Statute of MPs and The Statute of the Right to Opposition. Nominations for parliamentary election must be submitted by political parties as laid down by the law (art. 151 CRP). Parties may submit such nominations individually or in coalition and their lists of candidates may include citizens who are not registered members of any of the parties in question. No one shall be a candidate for more than one constituency of the same nature, with the exception of the national constituency, if any, and no one may appear on more than one list. Should these infringements be detected, the elections would be declared non-valid and those who committed fraudulent acts sanctioned.

In relation to their parliamentary mandate, MPs receive a monthly income of € 3,524.85 plus a series of other benefits (12 monthly salaries + 2 holidays subsidies of the same monthly value per year), related to transport.⁴⁵⁷ The income rate is 50% of the President's monthly salary for MPs and 80% for the President of the Assembly of the Republic. In addition to this income, MPs receive additional allowances or reimbursements.

455 Article 21 of Law 2/2004 of 15th January amended by Law 51/2005 of 30th August 2005, following publication of vacancy in the government's public jobs portal (www.bep.gov.pt).

456 Available online for consultation: http://www.parlamento.pt/ingles/cons_leg/regimento/index.html, 6th September 2007.

457 Benefits of MPs while in office: Transport – reimbursement of transport expenses while in the exercise of duties; Representation allowance – 10% of monthly salary (but may increase) for those MPs who declared in the register of interests not holding other outside jobs; Daily & Travel Allowances – MPs are entitled to the daily and travel allowances similar to those applicable to the members of government (vary according to the place of residence); Insurance – personal accidents, health and medical treatment, treatment abroad, travel assistance; Retirement benefits, more than 12 years in office – life subvention, highest rate of pensions applicable to public officials with life subvention; Retirement benefits, less than 12 years in office – reintegration subsidy; plus other minor benefits.

Members of Parliament enjoy the privilege of immunity.⁴⁵⁸

b) Additional Incomes of Members of the National Parliament

Incompatibilities are provided for between parliamentary mandates and other public offices or private positions. Article 20 of the Statute of MPs sets a number of public and elective offices being incompatible with the exercise of a parliamentary mandate, MPs may give lectures and seminars, engage in research activities and participate in the pedagogical, scientific or consultative councils of public bodies without being remunerated and always subject to the assessment and approval of the Ethics Commission. Some governmental appointments might also be approved. As for private jobs/activities, MPs can hold other jobs and interests outside Parliament in general, which is common practice (e.g. as members of management and supervisory board of companies, members of the major law firms and consultants). Nevertheless a small number of impediments is listed by related provisions: MPs are prohibited from appearing or participating in any commercial publicity or advertisement by private entities; MPs are precluded from entering any public tendering or contract with any public or semi-public institution for the supply of goods and services; MPs are prohibited from taking part, as remunerated experts or referees, in any judicial process in which the state or any other public entity are parties; MPs are impeded from benefiting from acts or taking part in contracts celebrated by bodies or services under their direct influence. MPs are requested to register any outside jobs and activities susceptible of creating conflicts of interest, but no regulation provides a cooling-off period, restricting (former) MPs from a particular employment or an employment field after leaving office.

MPs therefore have the right to receive additional income, which is due to be published.

Regarding more specifically assets disclosure⁴⁵⁹, MPs have to submit a patrimonial declaration to the Constitutional Court which is accessible to the public. The only sanctions imposed on ministers concern the refusal to submit their patrimonial declarations. When elective office holders fail to submit their first patrimonial declaration prior to entering office, the penalties range from dismissal from office or loss of mandate.⁴⁶⁰ MPs have also to register their interests with the *Comissão de Ética* (Ethics Commission), including any company in which the elective office-holder, spouse or dependent children are shareholders. The effectiveness of asset

458 Article 157 of the Constitution of the Portuguese Republic; articles 11 and 21 of the Statute of MPs; and article 34 of Law 34/87 of 16th July (with amendments introduced by Law 108/2001 of 28th November 2001).

459 Law 4/83 of 2nd April 1983, Public Control on the Wealth of Elective Officials (with changes introduced by Law 25/95 of 18th August 1995) and Articles 22 and 26 of the Statute of MPs, Law 7/93 of 1st March 1993 (amended).

460 When elective office-holders fail to submit their second declaration – when leaving office – the regime provides for a penalty of one to five years ineligibility proclaimed by the TC. False declarations are also punishable as a crime falling under court jurisdiction.

disclosure rules and the disciplining of conflicts of interest are major sources of concern. MPs and members of government have regularly been untruthful to Parliament and citizens at large about their assets and interests, but have never faced reprimands or been dismissed from office for such conduct.

c) **Undue Influence**

MPs are subject to special criminal provisions of bribery according to Law 34/87 of 16th July 1987, on *Crimes of the responsibility of elective officials* (see above). Gifts and hospitality remain largely unregulated.⁴⁶¹

3. **Political Public Office-holders on the National Level**

a) **Legal Position within the National Legislation**

The status of political office-holders is dealt with by Title IV of the Constitution of the Portuguese Republic, as for members of government, and by Law 2/2004 of 15th January 2004 '*Estatuto do pessoal dirigente da administração central, regional e local*' as for head officials.⁴⁶² All political-office-holders entitled are to 12 months salary plus two holiday subsidies equivalent to two monthly salaries: the first one in June, the second one in November.

Political office-holders are given additional benefits compared to employees of the private sector.⁴⁶³

It is generally incompatible for a political office-holder to hold another public office position or employment in the private sector (e.g. membership of supervisory boards) According to article 4

461 Article 7-A of Law 64/93 of 26th August 1993 provides that all support or benefits, financial or material received by MPs from foreign entities in relation to the exercise of their activities must be declared in the Parliament's Register of Interests.

462 The Prime Minister receives a monthly salary of 75% of the President's monthly salary which is currently approximately € 7,049. Vice-Prime Ministers receive a monthly salary of 70% of the President's monthly salary. Ministers receive a monthly salary of 65% of the President's monthly salary; Secretaries of State receive a monthly salary of 60% of the President's monthly salary; Sub-Secretaries of State receive a monthly salary of 55% of the President's monthly salary; The monthly income of head officials in the central, regional and local administration is variable.

463 Benefits for members of Government: Transport – own vehicle with driver, reimbursement of transport expenses while in the exercise of duties; Accommodation – only the Prime Minister is entitled to an official residence; Representation allowance – up to 40% of monthly salary; Daily & Travel Allowances – PM and ministers are entitled to the daily and travel allowances. The value varies according to the place of residence (inside or outside metropolitan area of Lisbon); Insurances – personal accidents, health and medical treatment, treatment abroad, travel assistance; Injury/incapacitation benefits – PM and ministers are entitled to a life benefit for injury or incapacitation, physical or psychological suffered while in office; Retirement benefits – PM is entitled to a life retirement subvention; Retirement benefits for ministers with more than 12 years in office – life retirement subvention, highest rate of pensions applicable to public officials with life retirement subvention; Retirement benefits ministers with less than 12 years in office – reintegration subsidy.

of the Regime of Impediments and Incompatibilities of Elective and Senior Public Officials⁴⁶⁴, members of government must exercise their mandate in exclusive terms. The same principle of exclusivity applies to head officials (Article 16 of the Statute of Head Officials). However, recruitment of ministers and head officials commendable for their professional experience with certain private sectors (e.g. banking or insurance) is a common and accepted practice. Although a cooling-off period is formally provided for⁴⁶⁵, the application of rules on employment after leaving office for ministers and head officials is deceptive⁴⁶⁶, members of government and head officials are allowed to return to their previous jobs in companies or other activities.

b) Additional Incomes of Political Office-holders

According to the Regime of Impediments and Incompatibilities of Elective and Senior Public Officials⁴⁶⁷ and the Remuneration Statute of Political Officials, all political office-holders should exercise their duties in exclusive terms. This general principle remains wishful thinking, partly because of the broad exceptions, partly because the monitoring and enforcement of incompatibilities is very precarious. As for assets disclosure⁴⁶⁸, ministers have to present a patrimonial declaration to the Constitutional Court, which is accessible for public consultation. The only sanctions imposed on ministers concern the refusal to submit their patrimonial declarations.⁴⁶⁹ Ministers also have to register their interests with the *Comissão de Ética* (Ethics Commission), including any company in which the elective office-holder, spouse or dependent children are shareholders. Unfortunately, whereas public access to patrimonial declarations and public scrutiny of interests held by elective officials are still precarious and non-universal, the control of ministers' interests by an Ethics Commission remains a failed attempt to monitor conflicts of interest at the parliamentary and ministerial levels.

As for salary rates, these vary from one political office to another, but they are known and published in the Portuguese official journal.

464 Law 64/93 of 26th August 1993, amended by Laws 28/95 of 18th August 1995, 12/96 of 18th April 1996, 42/96 of 31st August 1996 and 12/98 of 24th February 1998.

465 A three-year clearance is provided. Members of government and head officials cannot exercise positions in private companies of the same sector which were under their tutelage or that have been privatised under their supervision or that have benefited from financial incentives or fiscal benefits of a contractual nature during their stay in office, article 5 of Law 64/93 of 26th August 1993 with amendments and article 17 of the Statute of Head Officials.

466 Article 5 of Law 64/93 of 26th August 1993 with amendments and article 17 of the Statute of Head Officials.

467 Law 64/93 of 26th August 1993 with amendments.

468 Law 4/83 of 2nd April 1983, Public Control on the Wealth of Elective Officials (with changes introduced by Law 25/95 of 18th August 1995) and Articles 22 and 26 of the Statute of MPs, Law 7/93 of 1st March 1993 (amended).

469 As stated above, when elective office holders fail to submit their first patrimonial declaration prior to entering office, the penalties range from dismissal from office or loss of mandate. When elective office-holders fail to submit their second declaration – when leaving office – the regime provides for a penalty of one to five years ineligibility proclaimed by the TC. False declarations are also punishable as a crime falling under court jurisdiction.

c) **Undue Influence**

Political office-holders are subject to special criminal statutes regarding bribery. Applicable sanctions are imprisonment or fine (see above).⁴⁷⁰ As for MPs, gifts and hospitality remain largely unregulated.⁴⁷¹ A recent case of undue influence of a public office-holder concerns the dubious handling of the former centre-right coalition Ministers of the Environment, Tourism and Agriculture signing a ministerial order four days prior to the anticipated general elections 2005, authorising a private company, Portucale, member of one of the largest banking groups in Portugal (GES – Grupo Espírito Santo) to go ahead with the construction of a golf resort in a rural area in the outskirts of Lisbon containing protected species (cork trees) and valuable water reserves.⁴⁷²

4. **Political Parties**

a) **Legal Position within the National Legislation**

In Portugal, all parties⁴⁷³ – with the exception of the PCP and, to a lesser extent, the PS – are post-1974 creations and their organisational structures seem only to become ‘alive’ during electoral periods. The 1974 Law on Political Parties⁴⁷⁴ gave juridical existence to parties and set some basic rules of financing, accounting and reporting. The C.R.P. confers parties a central role in the functioning of the political system. Art.10 C.R.P. sets the two postulates of democracy: universal suffrage and political parties: ‘Political parties shall contribute to the organisation and expression of the will of the people, with respect for the principles of national independence, the unity of the state and political democracy’ (Art. 10 para. 2). Article 51 C.R.P. then provides a

470 Law 34/87 of 16th July 1987, Crimes of the responsibility of elective officials.

471 Article 7-A of the Law 64/93 of 26th August 1993 provides that all support or benefits, financial or material, received by ministers from foreign entities in relation to the exercise of their activities must be declared in the Parliament's Register of Interests. Registration also applies to the name of any entity from which ministers have received remuneration in relation to services provided.

472 In order to get their project implemented, the investors had to cut down these trees in massive proportions (2605). Since 1992, the investors had continuously pressured the authorities concerned (environment, tourism and agriculture) to have a special authorisation passed, but the investment had been embargoed on various occasions for that same reason. Investors' interests were then mediated by the financial agent of the centre-right party (CDS/PP), Abel Pinheiro, whom besides having direct interests in this sector was also a close friend to the leader of the CDS/PP (Paulo Portas, who had formerly been associated to another PF scandal which involved senior members of a masonry lodge and a private university) and to two of the ministers in questions (Nobre Guedes, Minister of the Environment and prominent lawyer in this sector, and Telmo Correia, Minister of Tourism and ‘second’ to Paulo Portas). Abel Pinheiro had allegedly committed traffic of influence in exchange of expected personal recognition from the GES banking group and an alleged illicit financing of the CDS/PP. Recently the public accusation (Public Ministry) decided not to prosecute the Minister of Environment.

473 At present, the party system is reduced to five major parties (those with parliamentary representation): the Communist Party (PCP), the Socialist Party (PS), the Social Democrat Party (PPD/PSD) and the Popular Party (CDS/PP) and the new-born post-materialist Left Bloc (BE), made of different left-wing radicals (Maoists, Trotskyites, No-Global partisans) plus a dissident group from the Communist party (*Política XXI*).

474 Decree-Law 595/74, of 7th November.

general definition of the legal nature of parties and political associations.⁴⁷⁵ The 2003 Law on Political Parties⁴⁷⁶ sets out in detail the legal requisites necessary to constitute a party and to gain legal status, as well as the goals and guiding principles of parties and their organisation and modus operandi. A party needs to satisfy these requisites in order to be registered by the Constitutional Court.

b) Revenues of Political Parties and Election Financing

The 1974 and 1979 laws on parties and elections set some basic rules on party and election financing, but the first comprehensive regulation on political financing only came to being in 1993. According to the 2003 PF Regime⁴⁷⁷, direct public funding of political parties is of two kinds: direct annual subventions distributed proportionally to votes obtained during the previous general elections (1/135 of the national minimum wage for each vote obtained); and a (partial) reimbursement of electoral expenses, to which parties that have submitted candidate lists to the general, local, regional and European elections are entitled. All parties with parliamentary representation are entitled to the annual public subvention. Parties without parliamentary representation need to obtain a minimum of 50,000 votes. Indirect public contributions include various tax benefits. With the exception of the Communists, most parties rely mainly on the public subvention to finance their daily activities.⁴⁷⁸ The 2003 PF regime explicitly prohibits anonymous donations or donations/loans of a pecuniary and non pecuniary nature from collective entities, public or private (companies, institutes, foundations, local authorities, administrative bodies, public companies or companies with public capital, quangos, etc), national or foreign, the only exception being the possibility of contracting a bank loan with credit institutions. In general, payments from all lawful sources of financing must be made by cheque or bank transfer allowing the identification of the donator and the amount donated. The only exception is of small donation amounts.

475 Art. 51: '1. Freedom of association shall include the right to form or take part in political associations and parties and through them to work jointly and democratically towards the formation of the popular will and the organisation of political power; 2. No one shall be simultaneously registered as a member of more than one political party, and no one shall be deprived of the exercise of any right because he is or ceases to be registered as a member of any legally constituted party; 3. Without prejudice to the philosophy or ideology that underlies their manifestoes, political parties shall not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols. 4. No party shall be formed with a name or manifesto that possesses a regional nature or scope. 5. Political parties shall be governed by the principles of transparency, democratic organisation and management, and participation by all their members. 6. The law shall lay down the rules governing the financing of political parties, particularly as regards the requirements for and limits on public funding, as well as the requirements to publicise their assets and accounts.'

476 Organic Law 2/2003 of 22nd August 2003.

477 Law 19/2003 of 20th June 2003.

478 For a detailed analysis of this proportionality of sources across the different political parties, please consult the annual party accounts available at: http://www.tribunalconstitucional.pt/tc/contas030401_sm.html, 6th September 2007.

The various electoral laws provide for the safeguard of the neutrality and impartiality of public entities during elections by precluding public office-holders from interfering, directly or indirectly, in the course of an electoral campaign and from practising acts which, at any rate, may favour or hinder a candidate/candidacy in detriment or at advantage of others. Despite the ban on donations from collective entities, this principle of ‘neutrality and impartiality of public entities during elections’ has not, however, been properly incorporated into the regime of political financing. The granting of favours and campaigning using state resources is still commonplace in local elections. Furthermore, since mayors can qualify as candidates without having to resign from office, the principle of neutrality/impartiality is rendered ineffective. The Attorney General (*Procurador Geral da República*)⁴⁷⁹ and the CNE's⁴⁸⁰ resolutions on the subject have been permissive, however.

c) **Legislation on Transparency of Political Party Funding**

According to the 2003 PF Regime, the preparation and publication of annual party accounts is based on the general rules of accounting set by the Official Accounting Plan (POC – *Plano Oficial de Contas*). Annual party accounts have to be deposited with the new-born Political Financing Monitoring Agency (*Entidade das Contas e Financiamentos Políticos*) of the Constitutional Court by the end of May of the forthcoming year, in order to be audited. Despite some minor powers of inquiry the new monitoring body has been provided with, investigations or on-site inspections about the nature and provenance of funds cannot take place. The regime also left to parties the initiative to set their own internal means of financial auditing. Although local branches are required to report on their resources to their central/national structures in order for the party to present a consolidated annual account, accounts of regional and local party structures have continuously escaped control. Annual party accounts and related Constitutional Court decisions are made available for public consultation online at the Constitutional Court's website as well as at the Portuguese Official Journal (*Diário da República, 2ª Série*).

Sanctions provided under the PF regime⁴⁸¹ are not regularly applied. The Constitutional Court is responsible for applying fines and the new-born *Entidade das Contas e Financiamentos Políticos*

479 *Despacho PGR 09.12.1993*.

480 *Pareceres da CNE 1440, 1427, 1411, 1382, 1480, 1477*. For more information on the contents of these statements, please consult: <http://www.cne.pt>.

481 *Illicit party financing* (e.g. company donations), Art. 28 para. 2 and 3: Party leaders, individuals and company managers/CEOs that participate directly in obtaining or granting illicit political financing are punished with 1 to 3 years imprisonment. Financial agents and candidates to presidential elections, first proponents of an independent group of elective citizens, party leaders, individuals and company managers/CEOs that do not observe the expenditure limits set under article 20. or obtain funds from illicit sources or by other means not provided for in the PF regime are punished with 1 to 3 years imprisonment; *Non fulfilment of the obligations concerning revenue regulated under Chapter II of the PF regime*, Art. 29 para. 1 and 2, Parties: fine between 10 n.m.w. to 400 n.m.w., the state recovers amounts received unlawfully. Party leaders directly involved: fine between 5 n.m.w. to 200 n.m.w.; *Infringement of dispositions concerning public funding*, Art. 29. 3, Individuals: fine between 5 n.m.w. to 200 n.m.w.; *Company donations (illicit financing)*, Art. 29 para. 4 and 5,

(Political Financing Monitoring Agency) is responsible for presenting complaints to the judicial authorities concerning the application of criminal sanctions.

Since the early 1990s, the issues of corruption, and party financing in particular, have been object of a wider legislative reform to moralise and improve transparency in political life. However, the inadequacy of legislative instruments adopted and, consequently, their continuous revision are evidence that the political class has not yet developed a strategy of control and a serious stance against this type of opportunity structure. The media has continuously failed to establish and explore a close link between corruption and the illicit political financing of parties and electoral campaigns. This was the case with the ‘Fax de Macau/Emaudio’ affair, allegedly linked to the financing of the Socialist Party⁴⁸²; the ‘Felgueiras’ case, allegedly linked to the financing of the local Socialist Party/Mayor-candidate; the ‘Universidade Moderna/Amostra’ affair, allegedly linked to the financing of the leader of CDS/PP and current Minister of Defence Paulo Portas, to mention a few cases.⁴⁸³ On the one hand, libel laws are overall unfavourable to media allegations and whistle-blowing on matters of impropriety by political actors, making it difficult for journalists to play their watchdog role. On the other hand, the media rarely takes the initiative to address an ethical issue before it has assumed relevance at the political level. Of course, this has an impact on the overall perception of the performance of representative

Companies: fine *minimum* double the amount of the illicit donation made and *maximum* quintuple that amount. Company managers/CEOs directly involved: fine between 5 n.m.w. to 200 n.m.w.; *Failure to submit annual party accounts in due time*, Articles 11 para. 1. c) and 29 para. 6, Suspension of tax benefits and annual subvention until obligation fulfilled; Illicit campaign revenues and no compliance with campaign expenditure ceilings, Art. 30 para. 1, Parties: fine *minimum* 20 n.m.w. and *maximum* 400 n.m.w., the State recovers amounts received unlawfully; *No compliance with rules on sources of financing, payment procedures and limits to individual contributions to presidential candidates or independent group of citizens electors and to fund raising activities*, Art. 30 para. 2-4, Individuals directly involved: fine between 10 n.m.w. to 50 n.m.w., companies: fine *minimum* triple the amount of the illicit donation made and *maximum* sextuple that amount. Company managers/CEOs directly involved: fine between 10 n.m.w. to 200 n.m.w.; *Accounting inaccuracies and lack of evidence concerning revenue and expenditure amounts*, Art. 31 para. 1 and 2, Financial agents, candidates to presidential elections, and first proponents of an independent group of elective citizens: fine *minimum* 1 n.m.w. and *maximum* 80 n.m.w., Parties: fine between 10 n.m.w. to 200 n.m.w.; *Failure to submit electoral accounts (infringement of rules set under Art. 27)*, Financial agents, candidates to presidential elections, first candidates of each electoral list and first proponents of an independent group of elective citizens: fine *minimum* 5 n.m.w. and *maximum* 80 n.m.w., Parties: fine between 15 n.m.w. to 200 n.m.w., Suspension of annual subvention until obligation fulfilled.

482 Mateus, R. (1996), *Contos Proibidos – Memórias de um PS Desconhecido*, Lisboa, Publicações Dom Quixote.

483 ‘Portas afasta-se da Moderna’, *Público*, Tuesday, 16th February 1999; ‘Uma triste história em 13 actos’, *Público*, Thursday, 13th April 2000; ‘Os crimes de que são acusados os 13 arguidos’, *Público*, Monday, 7th June 2002; ‘As dúvidas e o que pode acontecer a Paulo Portas’, *Público*, 10th September 2002; ‘Portas admite comparecer ao julgamento’, *Público*, Thursday, 12th September 2002; Eduardo Prado Coelho, ‘Pontos dolorosos’, *Público*, 13th September 2002; ‘MP não acusou Portas porque sócios da Amostra não se queixaram’, *Público*, Friday, 13th September 2002; ‘Portas declarou na TVI que pagou do seu bolso as dívidas fiscais da Amostra’, *Público*, Thursday, 19th September 2002; ‘Os mistérios dos dinheiros da Moderna’, *Público*, Thursday, 19th September 2002; ‘Os projectos de poder da Moderna’, *Público*, Thursday, 19th September 2002; ‘As dúvidas que permanecem’, *Público*, Thursday, 19th September 2002; Vital Moreira, ‘Responsabilidade política’, *Público*, Tuesday, 24th September 2002.

institutions⁴⁸⁴, in general and parties, in particular. A recent international study on electoral behaviour and political attitudes⁴⁸⁵ showed that the majority of respondents do not question the primary importance of parties to democracy, but place strong doubts on their capacity to represent citizens' interests and problems, on the innovation and differentiation of their political projects and (normative) performance.

V. General Comments

Several factors can be indicated as reasons for the development for corruption in Portugal.

First, a still obstructive and cumbersome state intervention in the economy; second, a normative complexity/confusion of regulatory regimes which lead to interpretative 'negotiation' of the law and the disciplinary framework applicable; third, the longevity of mayors in office and an excessive concentration of powers in their hands; fourth, the lack of vertical and effective horizontal accountability in local authorities; fifth, a clientelistic system of political appointments and recruitment of ministers and personnel to ministerial cabinets (a revolving door system operating between political/appointed offices and senior jobs/positions in the private sector); sixth, the persistence of political patronage at the top of the administration, which opens the door to influence trading in view of both the extraction of illicit rents and/or political financing; seventh, the non-contention of electoral expenditure, together with the lack of internal party financial discipline, the inefficacy of monitoring and disciplinary mechanisms; eighth, an uncertain definition of public interest in various administrative practices and policy instructions from above; ninth, the diminishing prestige of the civil service and the lack of a clear civil service mission; tenth, the absence of an active citizenship in this domain. Corruption control laws have been issued as a reaction to scandal or succession of scandals.

It is difficult to make a diagnosis about the main fields where corruption occurs. Potentially affected are, in particular, any licensing activity under the tutelage of town halls as well as, in general, public markets (hospitals, public companies, defence, etc), public works/construction, real estate/property, tax office evaluations (import/export as well as real/estate), migration office (on issues relating to the residence permits of foreigners), etc.

484 The levels of trust in representative institutions are not satisfactory, but that seems more indicative of a global trend of dissatisfaction with the way democracy works than a deficiency of the Portuguese political system. In a recent survey by Gallup International (2003), and commissioned by the World Economic Forum, on the levels of trust in a key number of institutions and organisations, parliaments showed the lowest score: 51% vs. 38% of respondents said they had little or no trust in parliaments.

485 Comparative Study of Electoral Systems, 2002; by the Instituto de Ciências Sociais -ICS, University of Lisbon.

Report Slovakia⁴⁸⁶

486 The Report Slovakia is written by Alessandra Di Martino. Sources: GRECO Evaluation Reports 2000 und 2003 (GRECO, Directorate General I- Legal Affairs, Department of Crime Problems, Greco Eval I Rep (2000), 2E, adopted by GRECO at its 4th Plenary Meeting, 12th to 15th December 2000; Greco Eval II Rep (2003), 2E, adopted by GRECO at its 17th Plenary Meeting, 22nd to 25th March 2004. Most recent data are drawn from G. Meseznikov, M. Kollar, M. Vasecka, Slovakia (2005), Country Report, at www.freedomhouse.org).

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I. Sources of Data-collection on Corruption in the Public Sector

Information on corruption in the Slovak Republic is collected by the Department of Fight Against Corruption (see below IV.1.a)). Further information can be drawn from reports related to the implementation of the National Programme for Fight Against Corruption (2000, amended 2003) and from the Final Report of Monitoring and Legislative Support to the Implementation of the Anticorruption Programme (as a partial activity of Phare Project SK 0008.01). As for private sources, information can be drawn from Transparency International Slovakia (www.transparency.sk).

II. Legislation dealing with Corruption

In the Slovak Republic, no specific law addresses corruption in particular. Corruption is criminalized by the Penal Code⁴⁸⁷, which was amended by Law n. 183/1999 of 6th July 1999 to take into account international instruments in this field. The Slovak Republic signed, among others, the Criminal Law Convention on Corruption on 27th January 1999 – ratified on 9th June 2000 – and the Civil Law Convention on Corruption on 8th June 2000. On 24th September 1999, the OECD Convention on Bribery in International Business Transactions was ratified. Art. 160 to 163 of the Penal Code are comprehensive. They concern passive and active corruption of national and foreign public officials, members of national and foreign public assemblies as well as parliamentary assemblies, judges and officials of international courts, active and passive corruption in the private sector, trafficking in influence.

In Detail: Penal Code, Subchapter III Corruption, Accepting of Bribe or other Undue Advantage:

- Sec. 160: ‘1. Who, in exchange for the bribe or other undue advantage misuses his employment, position or function to provide the advantage to any person or to give priority to any person in relation to others, shall be punished by the imprisonment up to two years or by monetary sanction. 2. Imprisonment for one year up to five years shall be imposed on the offender if he by the offence referred to in para. 1. (a) causes damage of a large extent or if he obtains for himself or anybody else the benefit of a large extent; (b) infringes the specific duty resulting from the law, his employment, position or function or duty to the fulfilment of which he engaged himself’.
- Sec. 160a: ‘1. Who, in connection with providing the thing of public interest, whether directly or through the intermediary, for himself or for a third party, accepts or requests the bribe or other undue advantage or the promise thereof, shall be punished by the imprisonment up to three years or by the ban on activity or by monetary sanction. 2.

487 Reintroduction of the criminal offence of active corruption by the Act 10/1999 had, as a consequence, a substantial increase in the number of cases of corruption prosecuted.

Imprisonment for one year up to five years shall be imposed on the offender who committed the offence referred to in para. 1 as public official’.

- Sec.160b: ‘Who as a foreign public official, whether directly or through intermediary, for that official or for a third party or requests the bribe or other undue advantage or the promise thereof, to act or refrain from acting in connection with the performing of official duties with the intention to obtain or retain business or other undue advantage in the conduct of international business, shall be punished by imprisonment of up to three years or by monetary sanction’.
- Sec. 160c: ‘Who as a member of a foreign public assembly, foreign parliamentary assembly, judge or official of international court whose jurisdiction is accepted by the Slovak Republic or the representative or employee of intergovernmental organisation or body, the Slovak Republic is a member of or has the relationship following from the treaty, or as a person in the similar function, whether directly or through intermediary, for himself or for a third party, accepts or requests the bribe or other undue advantage or promise thereof, to act or refrain from acting in performing his function, shall be punished by the imprisonment up to three years or by monetary sanction’.
- Giving the Bribe, Sec.161: ‘1. Who provides the bribe or other undue advantage or promise thereof to another person, orders that that person misuses his employment, position or function, to provide advantage to any person or to give the priority to any person in relation to others, shall be punished by the imprisonment up to one year or by monetary sanction. 2. Imprisonment for one year up to five years shall be imposed on the offender if he by the offence referred to in para. 1 (a) causes damage of a large extent or if he obtains for himself or anybody else the benefit of a large extent (b) infringes the specific duty resulting from the law, his employment, position or function or duty to the fulfilment of which he engaged himself’.
- Sec. 161a: ‘1. Who, in connection with the providing of an object of public interest, whether directly or through intermediary, gives, offers or promises a bribe or other undue advantage, shall be punished by imprisonment up to two years or by monetary sanction. 2. The offender shall be punished by imprisonment of up to three years if he commits the offence referred to in para. 1 in relation to the public official. 3. Imprisonment from one year up to five years shall be imposed to the offender, if he commits the offence referred to in para. 1 as a member of the organised group or if he obtains the benefit of large extent by such offence’.
- Sec. 161b: ‘1. Who offers, promises or gives a bribe or other undue advantage, whether directly or through an intermediary, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties with the intention to obtain or retain business or other improper advantage in the conduct of international business, shall be punished by imprisonment of up to two years or by monetary sanction. 2. The offender shall be punished by imprisonment for one to five

years, if he commits the offence referred to in para. 1 as the member of the organised group or if he through such offence obtains the advantage of large extent’.

- Sec. 161c: ‘1. Who, whether directly or through an intermediary, to a member of a foreign public assembly, foreign parliamentary assembly, judge or official of international court whose jurisdiction is accepted by the Slovak Republic or to the representative or employee of intergovernmental organisation or body, the Slovak Republic is a member of or has the relationship following from the treaty, or to a person in the similar function, offers or promises the bribe or other undue advantage, to act or refrain from acting in performing his function, shall be punished by imprisonment of up to two years or by monetary sanction. 2. The offender shall be punished by imprisonment for one to five years, if he commits the offence referred to in para. 1 as the member of the organised group or if he through such offence obtains the advantage of large extent’.
- Trading in influence, Sec. 162: ‘1. Who, whether directly or through an intermediary, accepts or requests the bribe or other undue advantage or the promise thereof, in exchange for his influence directed to the fulfilment of powers of persons referred to in sections 160, 160a, 160b or 160c or in exchange for doing so already, shall be punished by imprisonment of up to three years or by monetary sanction. 2. Who, whether directly or through intermediary, gives, offers or promises the bribe or other undue advantage to another person, in exchange for his influence directed to the fulfilment of powers of persons referred to in sections 160, 160a, 160b or 160c or in exchange for doing so already, shall be punished by imprisonment of up to two years or by monetary sanction’.
- Effective Regret, Sec. 163: ‘Giving the bribe under sections 161, 161a, 161b and 161c and trading in influence under section 162 para. 2 is not considered as the offence if the offender has given the bribe or other undue advantage or the promised thereof only because he was requested to do so and he reported it without delay to the prosecutor, investigator or police; instead of this, a soldier can report to his commander or chief’.

Corruption is a preceding offence in relation to money laundering as criminalized under art. 252 of the Penal Code.⁴⁸⁸ Prevention, detection and punishment of money laundering are specifically

488 *Laundering Proceeds of Crime, Sec. 252*: ‘1. Whoever a thing of considerable value which is an income from crime (a) transfers to himself or to another person, hires, loans, lends, imports, exports, moves, disposes at bank account or, otherwise, to himself or to another person acquires, or (b) holds, hides, conceals, uses, destroys, damages, alters, or consumes with intent to hide its existence or to conceal the origin of a crime, or, its intent or purpose thereof from the commission for crime, or to frustrate its seizure or forfeiture for purposes of penal proceedings shall be punished by imprisonment for a term of one to five years or by pecuniary penalty or by prohibition of activity. 2. The offender shall be punished by imprisonment for a term of two to eight years if he commits the act defined in paragraph 1 (a) for gain (b) as a member of an organised group (c) although he was obliged to inform or to report to the legislation of incomes which originated from criminal activity because of his employment, profession, position or office if by such act he acquires for himself or, for another person, considerable profit. 3. The offender shall be punished by imprisonment for term of five to twelve years if he commits the act defined in paragraph 1 (a) as a public agent or (b) as a member of an organised group which is operating in several states or with the junction with this group. 4. The same

dealt with by Act 249 on Combating the Legalisation of Proceeds from the most Serious Forms of Crime, mainly Organised Crime of 19th August 1994 and by a new act on the fight against money laundering (n. 367/2000).

In the Slovak Republic, the investigation of criminal offences is carried out in accordance with section 2, sections 157 to 167 and sections 174-175 of the Criminal Procedure Code. Prosecutors have the duty to prosecute all criminal offences that come to their knowledge and supervise investigation, its legality and temporal cycle. According to sec. 2 of the Act n. 234/1998 on Public Prosecution, the Prosecution Office is an autonomous and independent state body headed by a Prosecutor General. The latter is appointed and removed from office by the President of the Slovak Republic upon proposal of Parliament (the National Council of the Slovak Republic). He is accountable before the Parliament. Within the Prosecutor General's Office, an *anti-corruption unit* with five prosecutors was established in 2000.⁴⁸⁹ Previously responsible for anti-corruption activity was the International Department of the Prosecutor General's Office. The unit dealt with important corruption cases and local prosecutors deal with small, 'every-day' cases of corruption. The unit also assists and coordinates prosecutors at lower levels in the field of corruption, narcotic crimes, organized crime and money laundering.

In the framework of a broader program against corruption (see below IV.1.a)), a Special Court of Justice and a Special Prosecutor's Department, both of which with focus on combating corruption, have been established in October 2003 (Act. n. 458/2003).

The status of judges is governed by the Constitution and Act n. 335/1991 on Courts and Judges as amended in 2000. When performing their duties, judges are independent and bound only by law. They are elected by Parliament on the government's proposal for the initial period of four years. After the expiry of this period, they are elected by Parliament on the government's proposal for life. Presidents of regional and district courts are appointed by the Ministry of Justice and presidents of panels are in turn appointed by the presidents of regional courts (in practice the presidents of regional and district courts have been elected by judges since 1998).

Act. n. 211/2000 on Free Access to Public Information regulates the conditions, the procedure and the scope of the access to information. The bodies obliged to make information accessible include state bodies, municipalities and higher territorial units and all other legal and natural persons who are entrusted by the law to decide on rights and duties of natural persons or legal persons in the field of public administration within the limits of their decision-making authority. Except for information protected by the law as secret and information touching the personality and privacy of natural persons pursuant to Act n. 52/1998 on the protection of personal data in

punishment as in paragraph 3 shall be imposed if by the act defined in paragraph 1 the person acquires for himself, or for another person, extensive profit.

489 Prosecutor General's order n. 1/2000 of 30th March 2000.

information systems, all public information is available to the public and public authorities are obligated to provide it on request. Service charges are minimal to cover costs only; information management is free of charge.

III. Control and Sanctions

Amongst the institutions involved in combating corruption, the *Department of Combating Corruption* should be mentioned. This is a specific body within the Ministry of the Interior specialised in the fight against corruption, established in September 1998 as a part of the *Bureau of Combating Organized Crime* within the Criminal and Financial Police Administration of the Presidium of the Police Force. It is responsible for the detection of corruption offences, notably cases of organized crime using bribery, cases in which members of central authorities, the judiciary, and the prosecution services are involved as well as cases relating to privatization. It has 18 members and three offices (*Bratislava, Zilina, Kosice*).

Crimes committed by policemen (including corruption) are detected and handled by the Bureau of Control and Inspection Service, which is also within the Ministry of the Interior. Victims can also take legal action. The Ministry of the Interior has played a key role in the fight against corruption, being involved in the establishment of a general policy against corruption as well as the drafting of relevant legislation and having the overall responsibility for the detection and investigation of corruption cases. An important role in the elaboration of legislation in this field as well as in the request of international mutual and legal assistance has also been played by the Ministry of Justice.

The *Supreme Audit Office of the Republic of Slovakia*, an independent body (see below IV.1.b)), and the Public Procurement Office, created by Act n. 263/1993 in order to assist the organisation of public tenders and control public procurements, also deal with controlling corruption. Interagency cooperation was favoured by the adoption of the FISH programme under the PHARE programme, at the beginning of 2000. This programme proposes to establish a network between the General Prosecutor's Office, Ministry of Interior and Ministry of Justice for exchanging information on combating corruption and is aimed at setting up a joint database, operative information exchange, creating a training centre for prosecutors and other activities that are oriented towards enhancing technical equipment and making combating corruption more effective.

The issue of combating corruption in Slovakia is a primary focus of media, political parties and NGOs. For several years, the cabinet and government agencies have been trying to implement legislative and administrative measures to reduce the opportunities for corruption. In 2002, the government adopted a program manifesto pointing out the inevitability of combating corruption,

including provisions from the Anticorruption Minimum, a document elaborated by Transparency International Slovakia.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

A legal definition of public administration is lacking in the legislation. This is understood to be the administration of public matters which is realised by virtue of executive authority. So, public administration in the Slovak Republic is subordinated to the executive power and is composed of the central state, the territorial administration (local and regional authorities) and other public bodies established by law.

Apart from the two basic types of control of public administration - the inner (hierarchical) and the outer (mainly judicial) ones - a further control is performed by the Public Defender of Rights - Ombudsman (art. 151a Const.). According to the Act n. 564/2001 on the Public Defender of Rights, his competence applies to the organs of state administration, the organs of territorial self-government and to legal and natural persons who decide on the rights and duties of natural and legal persons in the field of public administration.

The GRECO report (2000) on Slovak Republic refers to surveys, according to which, at the end of the 1990s, two thirds of adults had personally encountered corruption within at least one central authority of the state administration or institution. Relating to that, corruption appeared to exist within the health system, central and local administration authorities, government offices, the judiciary, customs services, state property fund and the police. It was a common practice that citizens pay 'additional fees' to augment the fees legally due to persons who provide basic public services, such as health care and education. Such additional fees appeared to constitute the crime of bribery. Furthermore, the way in which licences (amongst which export licences for natural resources), authorisations and state subsidies were granted was problematic, especially because many of them were not given on the basis of objective criteria. On the one hand, important steps forward have been made; on the other hand, corruption is still regarded as a major problem from civil society as well as government.

The transition to a market economy has also created opportunities for corruption, since the increase in economic activity and capital movement was not paralleled by necessary safeguards and control mechanisms, notably in the privatization process involving the public economic sector, e.g. banks and telecommunication services.

Given that corruption was perceived as a systemic problem entailing negative effects both in the economic and political life, the Slovak government has been focussed on anti-corruption policies since 1999, also asking international organizations for assistance in mapping corruption in the country. An in-depth survey of corrupt behaviour was carried out among public officials, enterprises and households. An *Anti-Corruption Steering Committee* was established in November 1999 within the Government Office, which worked under the direct auspices of the Prime Minister and includes representatives of several ministries, state administration offices, law enforcement agencies as well as representatives of international administration and non-governmental agencies. After the elections of 2002, the new government adopted the Government Decree 1359/2002, where the Central Coordination Unit of Fight against Corruption and the Steering Committee of Fight against Corruption were replaced by the *Department of Fight against Corruption* at the Office of Government under direct leadership of the Deputy Prime Minister for legislation and the Minister of Justice. The authority for combating corruption was therefore transferred to the Minister of Justice.

The general framework of anti-corruption policies was provided for by the *National Programme for the Fight against Corruption* (NPFC), adopted by Governmental Decree n.461/2000, on whose basis a detailed draft plan of action was provided for (whereas the *Clean Hands Programme*, launched in 1996, had allowed no significant achievements, lacking a detailed analysis of the causes and consequences of corruption as well as a list of concrete actions to be carried out). In addition, a report on the fight against corruption was made by the Coordinating Unit of the Office of the Government in 2000 and has been regularly updated. The report indicated that the Action Plan ensuring practical implementation of the NPFC set out 1,684 concrete tasks for all public administration bodies. Every executive body had its own anti-corruption strategy. In May 2003, the Director of the Department of the Fight Against Corruption submitted to the government a 'Report on Prepared Draft Acts, Prepared Legislative Intentions and Other Measures Aimed at Fight against Corruption based on the Declaration of Programme of the Slovak Government'. Several legislative measures have been adopted since then.

b) Allocation of Financial Resources

The general allocation of financial resources in the Slovakian administration is controlled by the *Supreme Audit Office of the Republic of Slovakia* (SAO, composed of approx. 180 auditors, out of a total staff of 250), an independent body defined in some detail directly in the constitution, whose chairman is elected by the Parliament. It is in charge of the audit of the government budget and state assets management. In this context, it evaluates the value of state owned companies. The SAO carries out this control competence towards the government, ministries and other organs of central state administration and their decentralized authorities, state organs and such legal persons whose founders or establishers are the organs of the central state

administration or other state organs; and towards municipalities and higher territorial units and legal persons established by them. As control mechanisms and public finances are central to increasing transparency and securing public support for reforms undertaken in the public sector, the SAO plays a key role in this respect. Although the SAO cannot detect corruption itself, it can point out corruption-sensitive fields, inform the Ministry of the Interior thereof and submit its suspicions of corruption to criminal authorities. Auditors have reporting obligation towards the Financial Police. According to the GRECO Report (2003), from the total number of 90-110 controls per year, ten reports concern a suspicion of corruption.

c) Public Services Law and Human Resources in the Public Administration

Relating to public officials, two relevant acts should be mentioned. The Act on Civil Service n. 312/2001 and the Act on Public Service n. 313/2001. The Act. n. 212/2001 applies to employees performing state administration service (civil service) in ministries and other state administration bodies at both central and territorial levels. They stay in a public law relation to the state. Act n. 313/2001 regulates labour relations of public service employees – performing public service different from state administration tasks – with their employers (not with the state) in ministries, state administration bodies, budget organisations, subsidised organisations or employees of municipalities and higher territorial units, teachers, etc. as defined in the act. Other employees are under the jurisdiction of some special acts, e.g. members of the police force, Slovak Intelligence Service, prison wardens, railway police and customs officers.

In general, to be admitted to the civil service, a citizen must have been successful in a selection procedure, meet certain qualification requirements and not have been legally sentenced for a deliberate crime.

A Code of Ethics for the Civil Servants was adopted in 2002 by the Civil Service Office as mandatory service regulation. It applies only to the civil servants under the jurisdiction of the Civil Service Act, not to all public officials. Special Codes of Ethics apply to special servants, e.g. policemen, judges, employees of the National Bank of Slovakia or of the SAO. Some territorial self-government units have also adopted Codes of Ethics. Sanctions to the act and the codes are provided for in the Civil Service Act (artt. 60-66 on the Disciplinary Liability in the State Service). Breach of the code could therefore be punished with (a) written reproof, (b) reduction of service salary, (c) recall of superior officer, (d) dismissal from civil service. Civil Servants may appeal against the imposition of sanctions to the Disciplinary Committee of Appeal established within the Civil Service Office.

Civil Servants have an obligation to report misconduct, suspected corruption and breaches of duties or Codes of Ethics (art. VI § 2 Code of Ethics)⁴⁹⁰. In addition, an amendment to the Labour Code was passed in 2003 concerning whistleblower's protection against discrimination in labour relations. State authorities are obliged to notify such infringements according to art. 8 Code of Criminal Procedure.

Some rules apply to the receiving of gifts. According to art. IV on 'Gifts and other advantages' of the Code of Ethics and art. 53 par. 1 lit. h) Act on Civil Service, civil servants are obliged in connection with the performance of public services not to accept gifts or other advantages, other than those authorised by the employer in accordance with these rules.

No measure aims at limiting the moving of public officials into the private sector, possibly abusing their contact networks and knowledge of administrative mechanisms and decision-making process.

The new constitutional law on conflict of interest, went into force in 2004, bans supreme state officials from employment in the private sector, receiving compensation for brokering deals between the government and private corporations, or other income generated by a contracted business relation that exceeds the minimum wage. Moreover, the law introduced post-employment restrictions that ban ex civil servants from being employed by legal entities that either received state assistance based on the civil servant's decision or participated in public procurement for the agency where the civil servant worked. The ban lasts for two years after the individual leaves the civil service.

Before that, conflicts of interest of civil servants were solved through restrictions on entrepreneurship and similar profitable activities.⁴⁹¹

490 Art. VI § 2 Code of Ethics: 'a state official shall draw the attention of his/her superior to the infringement of the general binding norms, official standards or of this Code made by other state officials without delay after he/she becomes aware of such infringement'.

491 Art. 59 Act n. 312/2001 of Civil Service states that '...(2) a civil servant may not be a member of managing, control or supervisory bodies of legal entities. This does not apply in cases where the civil servant is appointed in such a body by the Governor or by the Service Office pursuant to a special regulation. A civil servant, in connection with such membership, may not be remunerated by such legal entities. (3) Restriction pursuant to par. (1) shall not apply to providing health care in state or non-state health-care facilities established by a municipality, to scientific activity, pedagogic activity, teaching activity, lecturing activity, publishing activity, literary activity or artistic activity, activity of the children and youth camp leaders, his/her deputy for management affairs and deputy for medical matters, a group leader, educator, instructor or health worker in a camp for children and youth, to activities as intermediary or arbitrator in collective bargaining, and to administration of his/her own assets or the assets of his/her dependent children, to activity of civil servant in governmental advisory body or to activity of a member of a dissolution commission. Appraiser opinion and interpreting activities can only be performed by a civil servant in cases where such activities are performed for a court, other state body or a municipality. (4) Breach or restrictions pursuant to par. (1) and (2) shall be regarded as a serious service offence.'

Since the executive power is very much involved in the nomination of judges (see above B), the judicial system seems to be unsatisfactory as far as independence and autonomy are concerned. According to public opinion, as reported in the GRECO report (2000), the judiciary is, together with the health care system, the most corrupted area in the republic. The reasons mentioned to explain this situation were insufficient social guarantees for judges (especially regarding health insurance and retirement) and the possibility of reallocation of cases among judges giving the possibility to choose the files that they would try.

2.-3. Members of the National Parliament and Political Public Office-holders on the National Level

Members of the National Council enjoy immunity from prosecution. According to art. 78 of the Constitution of the Slovak Republic, no member of the National Council shall be prosecuted either during her/his term of office or at any other time in relation to opinions expressed during the work of the National Council or its committees. Members of Parliament (MPs) are subject to disciplinary powers of the National Council for any statement made in the Council or its committees while holding mandates. Furthermore, no member shall be prosecuted or sanctioned by any disciplinary measure or held in pre-trial detention without the approval of the National Council. Immunity, however, is not absolute, since it can be lifted with a majority decision of the plenary of the National Council, on the basis of a proposal made by the Mandate and Immunity Committee. In the period 1998-2000 covered by the GRECO Report (2000), there have been 20 requests for lifting of the immunity of MPs (two of which regarded respectively economic crime and verbal offence, all other requests related to the abuse of official public powers) and two extra requests to take MPs into custody. The Committee met the vast majority of the requests, since there was only one case (verbal offence), where the Committee agreed to lift immunity whereas the plenary did not agree and three cases where the Committee found no sufficient grounds for lifting immunity but the National Council nevertheless accepted lifting the immunity of the MPs concerned. More recently in 2003, an opposition MP was prosecuted for bribery and the Parliament lifted the immunity. A draft amendment to Art. 78 of the constitution presented in 2003, whose scope was to review and limit immunity, to put MPs on a more equal footing with the rest of the population concerning civil and criminal infringements, was rejected by Parliament.

After rejection by Parliament in 2002, a new constitutional law on conflict of interest was approved by Parliament in 2004, which supersedes the constitutional Act n. 119/1995. It regards conflicts of interest and incompatibilities of officials with constitutional functions: e.g. the President of the Republic, leading politicians as enumerated in the Bill, such as MPs), judges of the Constitutional Court and highest positions in the judiciary, ministers, state secretaries, the General Prosecutor, the Ombudsman, the chairman and vice-chairman of the SAO and the elected functionaries of municipalities and higher territorial units. These subjects are banned

from pursuing any business activities, receiving pay for brokering deals between the government and private entities or corporations, or receiving income generated by either a side job or a contracted business relation that exceeds the minimum wage. Asset disclosure, property declarations of close relatives and new deterrent sanctions are also provided for.

Report Slovenia⁴⁹²

492 We would like to thank Dr. Bojan Dobovšek, University of Maribor, for answering the questionnaire and supporting the realization of the Report Slovenia, written by CECL.

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I. Sources of Data-collection on Corruption in the Public Sector

Public sources of data-collection on corruption in the public sector are the following:

- Commission for the Prevention of Corruption,
- Police,
- Ministry of the Interior,
- Ministry of Finance and its offices,
- Office for money laundering prevention,
- the Budget Supervision Office,
- Commission of Auditors,
- Tax Administration Office,
- Courts,
- Public prosecutor's office.

The following research institutions are collecting data on corruption:

- Gral_Iteo, Climate of Corruption, Ljubljana, 25th October 2001,
- General and direct survey on corruption in the Republic of Slovenia, conducted in July 2002, 2003, 2004, 2005,
- A survey about the industrial and business environment, business ethics and unofficial payments in Slovenia, conducted in October 2002.

Some main data concerning corruption in Slovenia are open to public. They can be found in different papers, articles, police reports etc., for example: <http://www.kpk-rs.si>, www.mnz.gov.si, www.policija.si. More specific data can be found on faculties, research institutes and state institutions responsible for collecting and analysing these data.

II. Legislation dealing with Corruption

The general legal framework is determined by:

- Resolution on Prevention of Corruption in Republic of Slovenia, 16th June 2004,
- Prevention of Corruption Act, 15th January 2004,
- Penal Code of the Republic of Slovenia.

The regulations of the Republic of Slovenia do not officially define the notion of corruption in a broad sense. Criminal offences involving corruption and the punishment thereof are, however, stipulated in the Penal Code of the Republic of Slovenia in seven articles dealing specifically with the punishment of offences of corruption pertaining to official duties and public authorisations: Acceptance of Bribes (Article 267), Giving of Bribes (Article 268), Unjustified Acceptance of Gifts in the business sector (Article 247), Unjustified Giving of Gifts (Article

248), Undue Influence concerning human rights and freedoms (Article 269), Obstruction of Freedom of Choice (Article 162) and Acceptance of Bribes in Elections or Ballots (Article 168).

Some of the characteristic offences listed in the Penal Code of the Republic of Slovenia which in one way or another emerge as corruption-related offences are Abuse of Office or Official Duties (Article 261), Forgery or Destruction of Official Books, Documents or Files (Article 265) and Disclosure of Official Secrets (Article 266).

- Public Procurement Act

In addition to the penal legislation, other regulations also reveal that corruption is substantially overlooked. For example, the Public Procurement Act, which deals with the economic relations of the state with legal persons, includes an 'anti-corruption clause', the intention of which is to deter users from corruption in public tenders. But the fact is that in practice, this clause is ineffective because users who have to observe the law escape both, supervision and criminal responsibility in various sophisticated ways. Unfortunately, in most cases the problem of corruption is evident only in the statistics on those criminal offences that have been dealt with in court.

The efficiency of detecting corruption-related criminal offences can be undoubtedly improved by having adequate procedural legislation which would allow the police to resort to special methods and means as defined in the Police Act and the Criminal Procedure Act in the case of the investigation of the most serious criminal offences, including corruption.

- Money Laundering Prevention Act

The Prevention of Corruption Act, 15th January 2004, defines corruption as: 'Corruption shall be any violation of due operation of functionary responsible person in the public or private sector, as well as operation of persons investigating violations or persons who can take an advantage of the violation through directly or indirectly promised, offered or given or required, accepted or expected benefit for themselves or for another person'.

The Slovenian legal system has the principle of legality, according to which prosecution of an offence is mandatory for the public prosecutor. There are, however, some statutes regarding certain criminal offences which prosecution is within the discretionary of the public prosecutor.

Access to administrative and governmental files is regulated in Slovenia by the Office of the Information Commissioner. The Information Commissioner is a new body, established from the merging of two bodies; the Commissioner for Access to Public Information and the Inspectorate for Personal Data Protection. The Information Commissioner was established on the basis of the

Information Commissioner Act on 30th November 2005.⁴⁹³ This office performs its duties on access to public information and guarantees the right of access to administrative files to people who are authorized.

III. Control and Sanctions

The administrative bodies that have the prevention and fight against corruption in the public sector in Slovenia as a main task are:

- Commission for the Prevention of Corruption,
- Office for Money Laundering Prevention,
- the Budget Supervision Office,
- Commission of Auditors,
- Tax Administration Office.

Cases of corruption in the public sector are subject to parliamentary control mechanisms. Specifically, the Commission for the Prevention of Corruption is accountable to the permanent Parliamentary Commission for Preventing Corruption.

Regarding major questions on corruption, parliamentary opposition can propose the establishment of special commissions or the appointment of a board of inquiry. Parliamentary opposition also has a majority in the Parliamentary Commission for the Prevention of Corruption which is monitoring the work of the Commission for the Prevention of Corruption.

Additionally, one should assess the role of the media and non-government organizations in Slovenia regarding the control of corruption. Their role is very important in disclosing corrupt cases and educating the general public on corruption. Media reports exposed corrupted groups of people operating at the local level in Slovenia. People had to make a statement or issue a press release just to point out that there hadn't been enough done to fight corruption. It can be stressed that if the media in Slovenia would take action, they could influence politicians and start a public discourse on corruption.

Currently, Slovenia has so many different laws which do not enable institutions to exchange information or to cooperate in a more proper way. The government would also have to implement the institute of political accountability. The NGOs and the public must also become involved.

Insofar as the academia is concerned, society and the media are taking different standards into account.

493 Available on line at: <http://www.ip-rs.si/index.php?id=519>.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Public servants have many legal obligations referring to the state body; for example, one could mention the fact that if they are permanently employed, strikes should be organised according to laws. Except from the obligations regulating their work, public servants have a number of privileges – formal and informal. Some of the formal ones are: immunity, house and car provided by the state, extra benefits and monetary rewards etc. As for informal privileges, public servants are not charged for minor offences, for example, or they have more opportunities etc.

Regarding additional benefits, public servants hardly have any. An exception is in some sectors of police and state service where officials may receive some benefits when retiring.

Comparing the income of public servants to the employees of private sector, one would find that the income in the latter is remarkably higher. For instance, a lawyer working in a company/group makes more money than a lawyer in the public sector.

In the public sector, the highest body is the government and the lowest level is local community with mayors. Lower levels have decision-making power only for their local community; on the other hand, the government and Parliament has it for the whole state. Local community mayors must work under plans of government but they have a free hand in how to do it, and also, as mentioned, plans for their communities are in their own hands.

During the last years, Slovenia has been undergoing a process of privatization of public companies. Examples are transports, waste management and telecommunication companies, which are transferring tasks to private companies.

b) Allocation of Financial Resources

This process of allocation of financial resources is controlled by a number of public bodies. Above all, there is the Law on Public Procurement and the Policy Paper on Public Internal Financial Control. According to the latter, internal control in general covers the whole system of financial and other controls (accounting and administrative controls) and comprises organisational structure, methods, procedures as well as internal audit, and is established and maintained by management. The primary objectives of internal control are to ensure compliance with laws, regulations and procedures, and integrity of documentation and information, safeguarding of assets, economical, efficient and effective use of resources. Internal control covers commitments, tendering and contracting, disbursements as well as recovery of unduly paid amounts. The Budget Supervision Office of the Republic of Slovenia is responsible for

development, harmonisation and supervision of the financial management and internal control system as well as internal audit of direct and indirect budget spending centres on the central and local level. The Commission for the Prevention of Corruption has control over financial reports of high state servants.

These controlling bodies report to the Parliament and the government. These reports are publicly available.

Recently, there were a few indices on corruption cases concerning tendering in health care (medicine, technical equipment etc.); these are still under investigation, however.

c) Public Services Law and Human Resources in the Public Administration

Staffing of the public sector in Slovenia is potentially subject to influence by political parties. Slovenia is a very small country and everybody knows each other. So, if one person holds a high state position or is the member of a leading political party, then s/he could have influence regarding staffing in the public sector. Although this is not always the case, it can be argued that there are cases where political parties can favour public sector employment.

A change of government has an impact on staffing in the public sector. It is not unusual that a new government tries to appoint its 'own' people to high positions. Although the situation is by and large the same at every ministry, the most typical example is that of the Ministry of the Interior. Whenever there is a governmental change and a new minister undertakes his/her duties, s/he will change the current staff to employ his/her associates.

In general, public servants cannot have a secondary job. In cases where they are allowed to, this second job is subject to approval. But they are permitted to be employed as teachers in faculties, research workers, or in cultural, scientific and publicist fields.

Regarding current and closed operations, there are bodies charged for internal revision. Those bodies are the state institutions, courts and local institutions. Procedures can be monitored by courts or by Parliament.

The sections of the Criminal Code mentioned below address undue influence in the public administration:

- Section 267 of the Criminal Code: Acceptance of a bribe;
- Section 268 of the Criminal Code: Granting a benefit, bribe;
- Section 269 of the Criminal Code: Acceptance of gifts for illegal intervention;
- Section 271 of the Criminal Code: Blackmailing.

The statutes dealing with relevant questions concerning corruption in Slovenia are:

- Resolution on Prevention of Corruption in Republic of Slovenia, 16th June 2004;

- Prevention of Corruption Act, 15th January 2004;
- Penal Code of the Republic of Slovenia, 17th June 2004.

According to those statutes, the sanctions for proven cases of corruption are: fine or imprisonment, while in some cases public servants may also lose their rights of public servants.

The internal regulations dealing with the fight against corruption addressing the employee in the administration are Article 11 of Public Servants Act⁴⁹⁴, where the restrictions and duties in respect of acceptance of gifts of public servants are stated, and the Codes of Ethics.

In order to prevent and fight corruption, Slovenia is in process of forming 'Integrity Plans' for the creation of internal bodies in each state institution as provided in the Prevention of Corruption Act.

A recent example of corruption in the public administration was this of the State Secretary of the Ministry of Economy, who was dealing with funds for developing private sector.

d) Privatization

There have been some scandals recently in reference to privatization in Slovenia. Privatization is still largely in process and there remain two major capital elites, Capital Society (KAD – Main Pension Fund) and Slovenian Society for Indemnity (SOD – State Money from privatization), which are owned by the state. KAD and SOD have nearly 25% of all stock in major Slovenian corporations, and they exert great influence on all Slovenian shareholder corporations. Many scandals are described in the media in connection with this.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The laws dealing with the status of Members of Parliament are:

- Constitution,
- Election of Members of Slovenian Parliament Act⁴⁹⁵,
- Public Administration Act⁴⁹⁶,
- Civil Servants Act⁴⁹⁷.

494 See <http://unpan1.un.org/intrdoc/groups/public/documents/NISPAcee/UNPAN012613.pdf>.

495 See: http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_slike/english/zakon_o_volitvah_angl.doc.

496 http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_slike/english/Public_Administration_Act.doc.

497 See http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_slike/english/civil_servants_act.doc.

The procedures for the nomination of candidates for the parliamentary election are described by the 'Election of Members of Slovenian Parliament Act'⁴⁹⁸ (Articles: 10, 11, 12, 13, 14, 15, 16, 17, 18):

Political parties determine candidates pursuant to the procedure stipulated by their rules. The list of candidates is determined by secret ballot. A political party may submit the list of candidates if it is supported by signatures of at least four deputies of the National Assembly or by at least one thousand voters. Two or more political parties may submit a joint list of candidates if it is supported by signatures of at least six deputies of the National Assembly or at least 1,500 voters. On the list of candidates, neither of the genders may be represented by less than 40 percent. Every list must be composed in such a way that at least one candidate of each gender is placed to the upper half of the list. The lists of candidates which do not comply with the provisions of the previous paragraph are considered null and void. The list of candidates can be submitted by voters if it is supported by signatures of at least 3,000 voters. The same conditions with regard to gender representation apply. These provisions do not apply for the two candidate lists containing only one or only three male or female candidates, whereby on the list containing three male or female candidates at least one representative of each of the genders is included.

Candidates for Members of Parliaments (MPs) can be proposed by political parties and voters. A list of candidates can only contain the number of candidates equalling the number of MPs. The deputies are elected according to the principle of proportionality.

The distribution of Member of Parliament (MP) posts among the lists of candidates is carried out at the level of the entire state. MP posts are allocated to the lists of candidates pursuant to the sequence of the highest quotients attained by dividing the number of votes for each list of candidates by all numbers from one to the number of deputies being voted for (the d'Hondt system). The candidates who acquired the highest number of preferential votes shall be elected. Preferential votes for individual candidates are to be taken into account if the number of preferential votes allocated to an individual candidate exceeds the quotient calculated by dividing the number of all votes to a certain list by the twofold of the number of candidates on the list. If, pursuant to this rule, not as many candidates are elected as deputies' terms of office are allocated to the individual list, candidates are elected to the remaining MP posts on this particular list according to the order of candidates on the list of candidates.

In case these provisions are violated, there are only political sanctions as those mentioned before.

The income of a Member of Parliament starts from 4,000 euros (with taxes per month) and an extra premium can be added for being a member of commission etc.

498 See http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/mju_slike/english/zakon_o_volitvah_angl.doc.

According to Article 29 of the Member of Parliament Act adopted on 30th November 2005, Members of Parliament have the right to free travel and reimbursement of travelling expenses, costs for telecommunications, daily allowance and overnight expenses during official trips etc.

According to the current legislation, there are no additional benefits for Members of Parliament in comparison to employees of the private sector.

Members of Parliament have the privilege of immunity by virtue of articles 20 and 21 of the Member of Parliament Act adopted on 30th November 2005. By virtue of Article 83 of the Constitution of Slovenia, adopted on 23rd December 1991, (Immunity of Deputies), no deputy of the National Assembly can be criminally liable for any opinion expressed or vote cast at sessions of the National Assembly or its working bodies. No deputy can be detained nor, where such deputy claims immunity, can criminal proceedings be initiated against him without the permission of the National Assembly, except where such deputy has been apprehended committing a criminal offence for which a prison sentence of over five years is prescribed. The National Assembly can also grant immunity to a deputy who has not claimed such immunity or who has been apprehended committing such criminal offence as referred to in the preceding paragraph.

According to Article 20, a professional functionary may not conduct the activity of management, supervision or representation in companies, undertakings, economic interest associations, chambers implementing public authorisations, institutes, cooperative societies, funds or agencies. Notwithstanding the provision of the preceding paragraph, a professional functionary may, as a representative of the body, be a member of a board of a public institute or public agency or a member of the supervisory board of a public undertaking, public fund or company where the state or local community holds a business stake, shares or other rights on the basis of which it participates in the management or capital.

Members of Parliament in Slovenia are able to hold other positions. For example they can work as a lawyer or a consultant, a professor in faculties etc., but there are limitations according to Article 10 of the Member of Parliament Act. Members of Parliament cannot work in other functions or jobs in other state boards. Also they cannot do profitable work or jobs which is not permitted by the law.

The limitations, according to Article 10 of the Member of Parliament Act, are only applicable to the full time Members and not to former Members of the Parliament, who can do any job they wish. Members of Parliament cannot work in other functions or positions in other state boards. They also cannot do profitable work / jobs which are not permitted by law.

b) Additional Incomes of Members of the National Parliament

Members of Parliament have the right to receive additional income. This income must be published or reported to the Commission for the Prevention of Corruption. This obligation only refers to the Members of Parliament themselves and not to their family members. However, if there are allegations of corruption, the Commission for the Prevention of Corruption can also monitor the incomes of family members of the suspected Member of Parliament.

Assets are subject to reports as well. Access to these reports can be gained through the Commission for Combating Corruption.

Since the Commission for the Prevention of Corruption has been in operation for a short period of time, there has only been one case of corruption related to additional income which is still under investigation.

c) Undue Influence

According to the Articles 267, 268, 269, 269a of the Penal Code of Slovenia, Members of Parliament are subject to special criminal provisions on bribery. The possible sanctions would be imprisonment and fines.

As for the statutes dealing with relevant questions concerning corruption, according to Article 24 to 26 of Prevention of Corruption Act, 15th January 2004, a functionary shall not accept gifts or other benefits relating to the holding of the office, except for protocol gifts and occasional gifts of low value. Gifts from representatives of other countries and international organizations given in the course of visits or other occasions, and other gifts given in similar circumstances, shall be regarded as protocol gifts. Gifts not exceeding the value of 62.76 euros or gifts whose total value in a year do not exceed 125.52 euros, if they are received from the same person, shall be regarded as occasional gifts of low value. The functionary shall record the accepted gifts and their value in a list of gifts kept with the body where the functionary holds office.

Up to the present, there have been no cases of undue influence where a single Member of Parliament has been excluded by the parliamentary groups or political parties. However, there have been cases of resignations of Members of Parliament which were not properly justified. Regarding these cases, there are suspicions that the reason of resignation was for not reporting their gifts, bribes, financial reports etc.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

Political public office-holders are politicians who are appointed by the acting government and are therefore public office-holders only for the duration of their mandate. The laws dealing with the status of political office-holders are in the Constitution of Republic Slovenia in Articles 110, 112, 114, 115, 116, 117, 118, 119.

The incomes of political office-holders are regulated in laws (they are almost the same range as for Members of Parliament) and are published from time to time in newspapers. Political office-holders are not given additional benefits in comparison to employees of the private sector.

A political office-holder, such as the President of Government and ministers (political office-holders) cannot simultaneously have functions in state organs, judiciaries, on local level of government and they cannot perform any activities which are prohibited by the law. According to the law, many jobs are subject to approval. But political office-holders can work as lecturers, research assistants and can also work in cultural, scientific and publicist fields.

Although there is this possibility, holding a second position is not a common practise for political office-holders. If they do hold other positions, the majority are as professors at universities.

At the moment there is no legislation of restricting (former) political office-holders from particular employment or employment fields after leaving office.

b) Additional Incomes of Political Office-holders

It is generally accepted that the political office-holders receive additional income, provided that they report it to the Commission for Preventing Corruption. Their formal income is announced by the law that defines it. Apart from political office-holders, other persons related to them (e.g. husband and/or wife, members of the family) are not obligated to publish their income.

As for assets disclosure, according to Article 35 of Prevention of Corruption Act, within one month after commencing office, the functionary must submit data on the following to the Commission: the office s/he holds professionally or not professionally, other offices s/he holds or activities s/he performs, the activity he/she performed directly prior to the commencement of office, his/her financial situation. According to Article 36 of the Prevention of Corruption Act, data on the financial situation of the functionary shall contain data on his/her entire property and income, i.e.: on real estate, on movable property of high value, on business stakes and shares in companies and other securities, on funds deposited in banks, savings banks and credit and

savings institutions, on debts, assumed guarantees and other liabilities, and on annual income which is the basis for personal income tax.

The reports can be accessed by the Commission for the Prevention of Corruption.⁴⁹⁹

c) Undue Influence

Criminal statutes regarding bribery which political office-holders are subject to can be found in the following sections of the Criminal Code:

- Section 267 of the Criminal Code: Acceptance of a Bribe;
- Section 268 of the Criminal Code: Granting a Benefit, bribe;
- Section 269 of the Criminal Code: Acceptance of gifts for illegal intervention;
- Section 271 of the Criminal Code: Blackmailing.

The sanctions foreseen in case of offence of the above-mentioned provisions are imprisonment and fine.

The statutes dealing with relevant questions concerning corruption (e.g. statutes prohibiting travel at the expense of companies or individual, acceptance of gifts) are the Resolution on Prevention of Corruption in Republic of Slovenia (16th June 2004), the Prevention of Corruption Act (15th January 2004) and the Penal Code of the Republic of Slovenia (June 2004).

4. Political Parties

a) Legal Position within the National Legislation

The legal status of political parties in Slovenia is that of the civil law societies.

b) Revenues of Political Parties

In Slovenia, political parties can be funded in many ways. State funding, membership fees, donations of individuals, incomes from properties, gifts, legacies, and through state budget are some of those without any provisions for the amount of funding.

c) Legislation on Transparency of Political Party Funding

The provisions for financing of political parties are laid down by the Law on Political Parties, Article 21. According to this law, it is prohibited to obtain donations from foreign private companies or private individuals, foreign formal and informal individuals, gifts from foreign countries and all other donations from foreign countries.

⁴⁹⁹ For more information, please visit <http://www.kpk-rs.si/>.

Political parties must give annual financial reports of all revenues and disbursements (for the year passed) to the National Assembly by the 31st March. The report should include financial data, money sources, origins, bills etc. The President of the National Assembly examines the correctness of the form and content of the submitted statement of account (Article 24 of the Law on Political Parties).

Generally, in case of violation of political party's financing, Article 28 of the Law on Political Parties states that it will be punished with a fine of € 4,166. Recently, some cases of corruption linked to minor offences of transparency of political party funding occurred during elections.

V. General Comments

After Slovenia's declaration of independence, ownership structures changed. The transition and the changes leading to a market economy definitely had a great influence on the spread of corruption in a broad sense. Moral, ethical and other values were pushed aside in the race to greater profit by individuals and society as a whole. The figures on corruption-related criminal offences dealt with in court do not represent a complete picture of the situation in the transition period, which points to the fact that there is a large grey area in the detection of offences.

These general social conditions caused a similar situation in state bodies. One of the reasons for this situation can be found in the state administration and in the incomplete strategy of the struggle against corruption in state bodies. Other external reasons are connected to the effects of the transition process in the country. Although the ultimate goal of the programmes of the state administration is to build a modern state administration, legal provisions for measures which would prevent negative consequences of this kind of organisation have been largely ignored. Racing against time, the state administration is attempting to achieve its goal of good organisation as quickly as possible, whereas at the same time, it is ignoring the functioning and self-preservation of further operations. It is true that through numerous measures, the state is trying to prescribe accurate procedures, but this ultimately leads to very complicated and time-consuming procedures in public administration, which forces individuals and officials to act illegally.

The analysis of the status of corruption in Slovenia identifies problems related to the problems of institutions that have to deal with corruption, focusing on the police, public attorney's office, the courts, the Office for Combating Corruption, and some other state institutions. A weak role of the media and non-government organizations that could do more in educating the general public in corruption-related issues has now been established, and some current problems are expected to be solved in the future.

Corruption in Slovenia can be classified in three branches on the basis of the role they play in this criminal activity: the public branch, the private branch and the political branch. We can also

classify these three branches into internal or international activities. Persons involved in corruption could be civil servants at all levels of hierarchy, individuals from corporations, companies or members of organised criminal groups. The number of criminal offences of corruption is very low. Even if, after the independence of Slovenia, the change of property ownership – privatization – brought along a large number of irregularities detected in the changed property ownership, this has not been reflected in the increased number of detected offences of corruption. This is most probably the consequence of very liberal economic legislation and lack of practice.

As regards its structure, corruption does not represent a major problem either – the largest portion belongs to the so-called petty corruption: bribing of state officials on the lowest levels (traffic and border police officers, customs officers), only a couple of cases where bribing of state officials of a higher rank is involved are recorded annually (so far the highest level has been the State Secretary); the most exposed fields are certainly the field of public procurement (especially construction work) and medical care. So far, operative data has not provided too large a reason for concern either, as on their basis it cannot be inferred that the problem of corruption is large or important.

Already in its basic characteristics, corruption is an act that in its most serious forms has all the features of organized crime and is therefore only one of its phenomena. So far, Slovenia cannot claim that organized criminal associations who deal with other criminal offences as their basic activities also deal with corruption. It would be more accurate to say that groups of perpetrators which associate in order to perpetrate the offences of corruption increasingly operate according to the principles that apply to organized criminal associations.

The first general and direct survey on corruption in the Republic of Slovenia, conducted in July 2002, showed that public opinion regarding the extent of corruption (44.2% of those polled believe that public servants accept bribes) is more negative than experience shows (32.3% of those polled or their acquaintances have had such an experience); the most important causes of corruption in the country are believed to be insufficiently high penalties (25%), inefficient law enforcement (19.8%), and inadequate legislation (17%); according to respondents, the institutions most credited with contributing towards the war against corruption are the media (3.43 on a scale of 1 to 5), the Office for the Prevention of Corruption (3.03), and medical institutions (2.99); most respondents first experienced corruption whilst visiting their doctor (14.4%), in educational institutions (7.9%), and in the state bureaucracy (7%); the survey also shows that the opinion of most respondents is formed by media reports (32%), other sources of information (22.1%), and personal experience (19.7%).

Scandals can be used as pressure to changing legislation, especially if the media is owned or pressured by politicians.

In the long run, more democracy and free market will help to reduce corruption, but time is pressing, especially for countries in transition. In the short term, official discretion needs to be clarified, transparency enhanced, the probability of having perpetrators caught increased and the penalties raised. To do this, one must punish some major offenders in order for people to believe in politicians and chief executives. Then the people must be involved in diagnosing corrupt systems, and people must learn to say no to the request for bribes. Because of fallen public sector wages in countries in transition, incentives also need to be improved. Further, preventive measures need to be adopted together with anti-corruption efforts.

Knowledge of the history of Slovenia could also provide some answers for the real situation of corruption in Slovenia. A number of people are afraid to talk openly about corruption. Slovenia is a small country and it is easy to trace who is reporting what. People avoid talking about personal experiences; they rather talk generally or about experiences of friends. In the previous system, many things worked through connections. Each individual had a small network of people and everything was accessible only through connections. So people think that using connections in a corruptive way is not wrong. They will be more attentive to the problem in the future.

Report Spain⁵⁰⁰

500 We would like to thank Miguel Azpitarte-Sánchez, Profesor Ayudante Doctor, Departamento de Derecho Constitucional, Facultad de Derecho, Universidad de Granada, for answering the questionnaire and supporting the realization of the Report Spain, written by Andrea De Petris.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

The public body responsible for treating corruption-related information in Spain is The ‘Ministerio Fiscal’ (public prosecutor), which has a special office to fight against corruption. Its collection of data results in a judicial action. The work of the public prosecutor, who can be helped by the police, is kept secret until he or she decides to start an action before the courts. The data is then available in the judicial acts.

2. Private Sources of Data-collection on Corruption in the Public Sector

Private sources of data on corruption are available from the Spanish Chapter of Transparency International: www.transparencia.org.es.

The Spanish Chapter of Transparency International publishes an annual general report.

II. Legislation dealing with Corruption

The fight against corruption is structured in two levels:

- The first level regulates the penal punishment of the proved acts of corruption. In this point the relevant law is the ‘Código Penal’ (Penal Code).
- The second level tries to avoid corruption with a system of incompatibilities and a system of transparency. The system of incompatibilities denies the possibility of developing private enterprises while having a public office. The system of transparency tries to shed light on the patrimony of the public officers to control increases not related to his or her office.

On this second level, the relevant law is LOREG 5/1985 (Electoral Law), *Reglamentos Parlamentarios* (Parliamentary Rules) and LO 5/2006 (Good Government Code).

The public prosecutor and the judge (‘Juez de instrucción’) are responsible for the prosecution concerning the penal punishment level. Both authorities act following any fact that indicates a suspicion. Their work has ‘no discretion’ in a political sense, but only a ‘judicial analysis’ of the relevant facts.

On the second level, incompatibilities and transparency, there are two dimensions. For public officers on a high level (for example ministers), the identification of illegal acts can move towards political responsibility. On a lower level, it can open an administrative responsibility, i.e. a sanction.

The legal system provides the right of access to administrative files for individuals who are not concerned in that particular case, but only if the administrative procedure has been completed

and always with the protection of private data (art. 37 LPA 30/92 administrative procedure statute).

III. Control and Sanctions

As already said, the public prosecutor (*Ministerio Fiscal*) has a special office to fight against corruption. On another level, the Ombudsman and the Courts of Auditors have a more general function, which allows them to develop a control over actions that can reveal some corruption. These two administrative bodies have a correlation in every *Comunidad Autónoma*.

The Court of Auditors basically controls the execution of the budget in the public sector (this being a broad concept that takes public businesses into account). They also control the budget of political parties.

The Ombudsman controls the function of the public administration, with a special eye on the violation of human rights. In this control, the Ombudsman can reveal that the malfunction of the administration is a consequence of corruption.

The cases of corruption in the public sector are subject to parliamentary control mechanisms, through the so-called 'Comisiones de Investigación' (Boards of Inquiry), which have the following characteristics:

- They are ad hoc boards.
- They have a special right to call anyone into the process of inquiry. Those called have the obligation to assist to the Board of Inquiry, but he or she does not lose the constitutional right to remain silent about any fact that can have criminal consequences.
- The Board of Inquiry ends with a report which is published. The public prosecutor can take a judicial action following the report. In practice, the public prosecutor usually has already taken action before the Board of Inquiry.
- The Board of Inquiry is controlled by the majority in Parliament that supports the government. Only the majority can create a Board of Inquiry and the report must be assisted by the majority (but the minority can annex a dissenting opinion).

The parliamentary opposition has access to the information through the administration. This right is recognized as a constitutional right. The law allows the use of parliamentary tools such as the so called 'question period'.

The media in the Spanish democracy has been the strongest instrument in denouncing cases of corruption. Their constitutional right to protect the identity of the informer gives them an important position to act as a controller. On the other side of the coin, the media has sometimes created false cases of corruption, seeking to weaken the government. There have been some

cases where a public officer had to step down because of the media pressure, but later the courts did not identify responsibilities.

The academic world and the NGOs do not develop a stronger position in the discussion of corruption.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Special legal obligations of public servants:

- A more limited freedom of expression. Legal servants must express their opinions related to their administrative area with a proper prudence, trying not to put the orderly development of the public service at risk.
- The public servants have the right to negotiate labour conditions with the administration as any other worker. But the administration has the right to exclude some areas from the negotiation and to prescribe the labour conditions in case an agreement is not reached.
- Public servants have the right to constitute labour unions. The police can constitute labour unions to defend their interests, but they cannot join the general labour unions. Judges and public prosecutors do not have the right to constitute labour unions; they can only constitute 'professional associations'. Soldiers have no right to constitute labour unions.
- Public servants have the right to strike, except: the police, judges, public prosecutors, soldiers and workers in the military.

Special privileges of public servants:

- The status of public servants avoids a free dismissal. The dismissal must be the result of a sanction.
- The public servant can leave the position for several years without justification, keeping a right to come back to the public administration.

Public servants only have the privilege of a more strict control of work hours and holidays.

If the public servant is a non-qualified worker (i.e. a secretary), his/her income is more or less on the same level as in the private sector, but with much more labour security and less working hours. If the public servant is a qualified worker (economist, lawyer, engineer) he/she earns a much smaller income than in the private sector.

The public sector is structured according to the classic French Law structure, with a hierarchical system; although in the last ten years, one could notice the creation of some 'independent

bodies'. Nonetheless, in the administration we can distinguish three levels which correspond with the three levels of political autonomy: central administration, regional administration and local administration. In these three levels of administration, a strong separation between politicians that hold a public office and public servants can be found.

The public servants develop the technical work, while the politicians take the decisions. Lower levels of the public administration can only have some influence in the decision-making in small towns. The most ordinary public tasks (transport, waste management, electricity, water supply, etc.) are transferred through an administrative concession to private companies. The public task is developed by a private company; the administration keeps the faculty to revoke the concession. Only the health and education systems are still primarily developed by public institutions: public schools, public universities and public hospitals; although private enterprise is allowed in these two areas.

b) Allocation of Financial Resources

In every administrative body there is an 'intervenor', that is a public organ whose function is to authorize every payment. Any payment without the proper justification must be denied. In the internal administration at the state level and at the regional level, we find the Court of Auditors whose functions are to control the proper execution of the budget of the public administration. The Court of Auditors has the obligation to elaborate an annual report that is sent to the Parliament. This annual report will be published. It can as well elaborate special reports at any time that will be send to the Parliament. These special reports must be published.

c) Public Services Law and Human Resources in the Public Administration

Referring to the influence of political parties regarding staffing in the public sector, it has to be specified that most of the public officers have the right to build a small staff: he or she decides who will work with him or her. On the other levels of the administration, the several employments must be covered by public servants. In this context, two factors related to the 'staffing' have to be indicated. A) The free designation posts (those chosen freely by the public officer) have grown to the point that a parallel administration could be created. B) In the ordinary administration, many positions are not covered by public servants but by workers with a normal labor contract. Some opinions consider that this way of covering posts in the public administration with ordinary workers (which happens especially in the regional and local administration) is a way of staffing. But in general, a change of government has an influence only on the personal staff of the public officers.

Concerning avocation of public servants, as a general rule a public servant has an incompatibility to do the same job outside the administration or to work for companies in the area of his/her

responsibilities. At any rate, every public servant who wants to have a second occupation needs express authorization.

There are five basic rules in the Criminal Statute addressing undue influence in the public administration:

- ‘Prevaricación’: to take an illegal decision knowing the illegality.
- ‘Cohecho’: to take a decision for an exchange of money.
- ‘Tráfico de influencias’: to influence someone else, for an exchange of money, to take a decision.
- ‘Malversación’: to steal any kind of public patrimony.
- ‘Abuso en el ejercicio del cargo’: to use the public office to advise a private company, to use secret information, to facilitate the connection with a private company.

There are no statutes dealing with relevant questions concerning corruption. Small activities like travel at the expense of companies or individuals, or the acceptance of gifts can be punished as ‘an abuse of the public office’ to receive gifts.

There is no special regulation dealing with the fight against corruption addressing employees in the administration. Acts of corruption must be put under the criminal justice or the administrative control, but there is not a special control only for acts of corruption. There are no internal bodies aimed at preventing and fighting corruption: as already mentioned, corruption is fought through ordinary channels of the criminal and administrative punishment.

There has been a large privatization movement during the 1996-2000 legislature. The government at that time used its power to build ‘groups of reference’ in the social capital of each ex public company and it also tried to have someone in the presidency with their political sensibility. The new government in 2004 tried to change some of the presidents in large companies, but without much success.

2. Members of the National Parliament

a) Legal Position within the National Legislation

The LOREG 5/1985 (Electoral Law) and the *Reglamentos Parlamentarios* (Parliamentary Rules) deal with the status of Members of Parliament.

For the congress, the selection of the candidates is composed of a double step. The parties nominate a ‘closed list’ of candidates in each constituency (for example, 10 candidates in the constituency of Granada). The procedure to choose these candidates is an internal process within the party. It is truly a vertical procedure where the direction of the party in each constituency

chooses the candidates. Once the list has been completed, the voters must vote for one list in the election, without having the possibility of choosing between different candidates.

For the senate, every party nominates 'an open list' of four candidates. Again, every party chooses their candidates in an internal procedure. The voter can choose four candidates, picking from the different lists.

There is no sanction for violations of the internal procedure. Even the central direction of the party can change the proposition made by the provincial direction of the party.

The income the Members of Parliament receive for their parliamentary mandate depends on the different positions they have in Parliament. The basic income is from € 2,918 up to approximately € 6,000.⁵⁰¹

In addition to this income, they receive travel expenses that cover not only the trips to the constituency but all travel expenses within the country. They also receive € 1,702.59 monthly to cover the housing expenses for the Members out of Madrid, and € 200 monthly for taxis.

The Members of Parliament receive an additional pension if they have been Members of parliament for seven years. They receive a transition payment after leaving the Parliament.

Concerning their privilege of immunity, the Members of Parliament hold juridical responsibility for the opinions expressed in the Parliament. They can be retained by the police only if they are caught in the act of committing an offence. They can be submitted to a criminal procedure only with the consent of the Parliament (which has never been denied, as the Constitutional Court requires that any denial proves that the judicial action only has the intention to alter the composition of the Parliament). The parliamentary mandate is incompatible with every other public or private position, except the position of a minister of the government. Holding other positions is an incompatibility which results in the sanction of leaving the Parliament. There is no restriction on particular employment or an employment field for MPs after leaving office.

b) Additional Incomes of Members of the National Parliament

Members of Parliament have the right to receive additional income only in very few activities related to their intellectual capacity (i.e. the benefits of writing a book, giving a conference, etc.). Once they are elected, and before they take their seat in the Parliament, they must declare their patrimony. There is no similar obligation for anyone related to the Members of Parliament.

There are no reports on the patrimonial evolution of the Members of Parliament.

501 See www.congreso.es and www.senado.es.

c) **Undue Influence**

Members of Parliament are subject to special criminal provisions of bribery:

- ‘Cohecho’: to take a decision in exchange for money.
- ‘Tráfico de influencias’: to influence someone else to take a decision in exchange for money.

Possible sanctions for these crimes are fines, the loss of the political mandate, the impossibility of having again a political mandate and imprisonment.

There are no statutes dealing with relevant questions concerning corruption. Following the Spanish Constitution, this question should be ruled internally by the Parliament.

It counts as a case of undue influence of a Member of Parliament when a Member chosen by one party votes against this party. In this case, the Member of Parliament moves out of the parliamentary group but does not lose the seat.

Concerning peculiar examples of corruption related to undue influence in this area, three years ago in a regional parliament, two members of the Socialist Party did not vote for the candidate for the Presidency of the Regional Government. Much was said about the reasons that moved them in this direction, there was even talk of corruption, but in the end there were no facts to consolidate these rumours.

3. Political Public Office-holders on the National Level

a) **Legal Position within the National Legislation**

The laws which deal with the status of political office-holders are the recent L 5/2006 (Good Government Code), but also the L 50/97 (Government Law).

The income they receive is different: The president receives € 7,296 monthly, a minister receives € 6,457.

There are no additional benefits for political office-holders as compared to private employees. A private employee on a similar level to a minister of the government (for example, a member of the Board of Administration of a bank) earns much more. Also, the pension and other benefits relating to the salary are higher.

A political office-holder of the rank of minister has a strong incompatibility system, that does not allow him to work in other public or private offices. The only exception is a seat in the Parliament. On the other hand, it is very common that a minister is also a Member of Parliament.

In a time period of two years, a former political office-holder must not work in any private company with a direct relationship to the former office. A direct relationship exists when the former politician took a decision that affected the company.

b) Additional Incomes of Political Office-holders

Political office-holders can get additional income only from activities of intellectual creation (conferences, books, etc). They have the obligation to make a declaration of their property. This declaration is published. Anyone with an affective relationship similar to a marriage does not have the obligation, but can declare his/her property. There is an office that has the responsibility to receive all the information about their income and property. This office will make a report every six months which has to be sent to the government and to the Parliament. There is no special rule to access to those reports. But as they must be sent to the Parliament, it could be said that they are made public in the end.

c) Undue Influence

There are five basic rules in our Criminal Statute regarding bribery which political office-holders are subject to:

- ‘Prevaricación’: to take an illegal decision knowing the illegality.
- ‘Cohecho’: to take a decision in exchange for money.
- ‘Tráfico de influencias’: to influence in someone else, in exchange for money, to take a decision.
- ‘Malversación’: to steal any kind of public patrimony.
- ‘Abuso en el ejercicio del cargo’: to use the public office to advise a private company, to use secret information, to facilitate the connection with a private company.

The possible sanctions are ordered in three levels: an economic punishment, an inability to have any other public office and imprisonment.

The recent L 5/2006 (Good Government Code) tries to give a strong answer to the problem of relevant questions concerning corruption, such as travel at the expense of companies or individuals, acceptance of gifts, etc.

The media recently published that ex Prime Minister Aznar had important contracts with the media manager Murdoch, while at the same time receiving a pension as ex Prime Minister as well as receiving an income as member of the ‘Consejo de Estado’. Recently, a large bank with very important corporate interest in the industrial area granted credit to a political party whose leader was the Minister of Industry.

4. Political Parties

a) Legal Position within the National Legislation

There are several definitions; all of them say that the political parties are not public organs, but neither are they plain private associations because of the function they have. The last definition given by the Constitutional Court says: political parties are ‘legal and political institutions, an instrument to communicate society and state, which makes possible the integration between the people and the government’. (STC 48/2003)

The main thing in this subject is not the definition, it is the juridical consequences. Following jurisprudence under constitutional law, the difference between a political party and an ordinary association is set in the functions that the Constitution puts in the hands of the political parties: ‘the expression of the political pluralism, the formation and expression of the will of the population and a fundamental instrument for the political participation’ (art. 6 Spanish Constitution). These special functions guide the Constitutional Court in affirming that the law can limit the freedom of a political party in the strongest way.

b) Revenues of Political Parties

The political parties obtain state funding in three ways:

- An annual funding related to the number of seats and votes obtained in the congressional elections. This funding is uncommitted. This funding will is provided in the annual public budget.
- An annual funding related to the number of seats given by the congress and the senate. This money does not go directly to the political party but to the parliamentary group (the party in the Parliament). As well, it is known that every party takes an amount from the personal earnings of every Member of Parliament.
- In the elections, political parties obtain a funding limited to paying the costs of the campaign. The funding is related to the number of votes they obtain.

The private funding comes from:

- A periodical payment made by the members of the party.
- Private donations with four limitations: 1. The anonymous funding cannot be higher than 5% of the public funding. 2. No person can donate more than € 60,000. 3. The payment must always be made through a bank. 4. No foreign government can donate money.

The economic structure of a political party is sustained basically by the public funding.

Any donation made under one of the following circumstances is illegal (LO 3/1987):

- A donation higher than € 60,000.

- A donation from a foreign institution.
- A donation not made formally through a bank.

c) **Legislation on Transparency of Political Party Funding**

Concerning provisions by which political parties are required to render account of their total revenues and expenses, the law states that in the first six months of every year, the parties must send their accounting to the Court of Auditors. Two things must be stated about these obligations:

- The Courts of Auditors make reports every year. These reports always make the strong claim that the accounting is not submitted on time.
- Any wrong-doing of the accounting is conducted through the ordinary penal responsibility.

There is no responsibility for the party if provisions on political party financing in general are violated. The responsibility is individualized to the persons that allowed the illegal funding.

A recent example of struggles in this area came from one regional party (*Esquerra Republicana*), part of a coalition in the Regional Government of Catalonia, who asked its members who were part of the staff of public office-holders (they have the right to choose their staff) to give part of the salary to the party. This is not an illegal act, but was put under discussion in the media.

V. General Comments

Like every country, Spain has had and will have cases of corruption. The important thing is to have a system that identifies these cases and put an end to them. The big difference and the big problem occurs when corruption in a state is not a singular phenomena of cases. The problem begins when corruption is systemized on some level of the political and social structure. And Spain appears to have one of these situations. In the last ten years, the economic explosion in Spain was inflamed by the construction sector. Building is a big business. But the control of the land capable of being developed is in the hands of the local administration. And here is where corruption has found a place as a systematic process. In the last years, we have seen several cases where the local politicians acted as if the public land was their private business, and private businessmen treated local politicians as employees.

As already stated, the main field is the local administration; we can find small towns in this area with land of a strong value for development. Local politicians, usually without full dedication to the administration, probably without a strong education and with a small salary, will be tempted to take decisions to favour private interests in the exchange of money.

On the legislation level, there are some ambiguous proposals to change the laws that put the power to regulate the use of the land in the hands of the local administration.

The parties, as an internal rule, usually expulse a member when a criminal action is raised against him or her. But it must be said that the expulsion from the party does not result in the loss of public office.

The risk of corruption can be found in following areas:

a) Funding of political parties: In this area the legislation need not to be improved. It is not a bad legislation in an abstract sense. It opts for the public funding restricting the private funding; this political option can be discussed but it is not an untenable option. The problem is the effective control of the accounting of the parties. Almost every year, the Court of Auditors states its difficulties in developing a clear control on the spending (and parallel on the funding) of a party.

b) The actual problem, as I have already explained, is in the local administration and its control of the land development. Every local government must approve a General Plan of the city explaining which areas can be developed and which areas cannot be developed. Then it could happen that the local government decides to change some aspects of the General Plan; this singular decision requires the same majority as the approval of the General Plan. In this context, the General Plan has no rigidity and can change almost constantly. This singular change is an open window to admit private pressure on the local government. A solution could be to forbid the singular changing of the General Plan within, for example, ten years. But it could happen as well that the local government plainly violates the General Plan and permits construction where it was prohibited. It happens that when the courts decide that the construction is illegal, the houses are already finished and inhabited. And faster judicial control with effective measures should be developed.

Report Sweden⁵⁰²

502 We would like to thank Dr. Lars Korsell, chief legal officer, and Monika Karlsson, researcher of the Brottsförebyggande rådet (BRA) for answering the questionnaire and supporting the realization of the Report Sweden, written by LS Ridola.

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I. Sources of Data-collection on Corruption in the Public Sector

1. Public Sources of Data-collection on Corruption in the Public Sector

The National Council for Crime Prevention, an agency responsible for the official criminal statistics, collects and presents statistics on corruption in general, not only on the public sector, offences as taking bribes and giving bribes. The statistics show reported suspected offences and convicted persons to the law enforcement agencies. It does not show any dark figures, only known and reported offences. The statistics are available on the Internet; www.bra.se and in publications. The Council will also publish reports about corruption in the future, which are also available on the Internet.

The principle of public access to official records gives everybody the right to have access to public data, which are not secret according to certain decisions.

2. Private Sources of Data-collection on Corruption in the Public Sector

The Institute Against Corruption, a privately owned foundation, collects data and gives information about corruption (<http://www.institutetmotmutor.se/imm/startside/>).

Transparency International has a Swedish office and also collects data and gives information (<http://www.transparency-se.org/>).

Private data as well as public data (see 1.) are available for everybody. Authorities and organizations undertake great effort to disseminate information to the public.

II. Legislation dealing with Corruption

There is no specific legislation addressing corruption. Instead, corruption is dealt with as other offences in the general legislation, such as:

The Criminal Code (1962:700):

Chapter 17, paragraph 7 : The offence is '*bestickning*', to give bribes.

Chapter 20, paragraph 2: The offence is '*mutbrott*', to take bribes.

Other offences can also be linked to corruption, such as official misconduct and breach of trust, but the two mentioned offences on bribes are the obvious crimes.

There is no definition of corruption in the law. Therefore, it is not obvious which crimes could be seen as corruption.

According to the Criminal Code (Chapter 17, paragraph 7), '*bestickning*' (to give bribes), the prosecutor can only prosecute if the employer (of the employee who has been 'the target' of the bribe) 'allows' the prosecutor to prosecute if this is not necessary from a public point of view. However, the prosecutor must prosecute if 'the target's' employer is the state or the municipality, or if there also is the offence of '*mutbrott*' (to take bribes). Almost the same rule deals with '*mutbrott*' (taking bribes), according to Chapter 20, paragraph 5. Generally speaking, according to this legislation the prosecutor is obliged to prosecute in all cases where the public sector is involved in one way or another.

The police and the prosecutor are obliged to investigate and prosecute an offence according to the legislation. The legislation gives not much space for discretion. In practice however, the possibilities of discretion are far wider.

Sweden has a unique legislation with roots in the 18th century, which states that all files are accessible for the general public, if the file is not under the legislation of secrecy. Most of the files are accessible. There must be certain legislative conditions to make a file secret. This means that most of the information in public agencies is available for anyone.

The legislation is the Freedom of the Press Act (2002:908), chapter 2 on public files publicity, and the Law (1980:100) on secrecy, chapter 15.

III. Control and Sanctions

The National Audit Office is responsible for the fight against corruption in the public sector. At the moment, the office is carrying out several performance audits in state owned corporations and agencies.

The Attorney General and the Swedish Parliamentary Ombudsman also have a role to play in the fight against corruption and other misconducts in the public sector.

Under the Prosecutor's office, there is an expert unit, the *National Unit Against Corruption*, with prosecutors working on criminal investigations and prosecutions. This unit is working all over the country and investigates and prosecutes all major cases on corruption.

Cases of corruption are treated as other offences with criminal investigations and prosecution in the ordinary criminal courts. From time to time, there can be hearings in the Parliament or other mechanisms but there are no permanent bodies. The standing committee on the constitution at the Parliament has the political power to question how the ministers conduct their duties. These inquiries could also deal with corruption. Traditionally, new and changed legislations are prepared by certain committees, only established for a specific task. A committee can work for a

year or so in order to investigate the problem and propose new rules or routines. The committee's works are published in a series of reports. Corruption can be a field for one or more committees.

The opposition in the Parliament can ask questions to the responsible minister in the government in order to get political attention on certain fields. The opposition can also submit a motion to the Parliament. The parliamentary committees can hold hearings in order to shed light on different questions. As mentioned earlier (2), the standing committee on the constitution at the Parliament has the political power to question how the ministers conduct their duties. On the proposition of ten per cent of the Members of Parliament, a minister or the whole government can be dismissed if 175 Members of Parliament give their vote of no confidence. The right for a minority to propose a vote of no confidence is a political against all forms of negligent behaviour.

Corruption has been an important question in Sweden, especially since many high-profile cases have been passed through the courts during the last years. One series of cases concerned the Swedish state monopoly on selling alcohol and wine (*Systembolaget*) where a lot of shop managers have been charged for taking bribes from importers of liquors. The background was that the importers wanted the managers to expose their products in order to increase the selling. The media pay cases of corruption a lot of attention. There are several researchers working on the field of corruption and the *Swedish National Council for Crime Prevention* (Brottsförebyggande rådet – Brå) also has projects on corruption. Transparency International has established a Swedish office several years ago. The National Audit Office is carrying out several performance audits on corruption in state owned corporations.

IV. Actors

1. Public Administration

a) Legal Position within the National Legislation

Public servants in general have no certain obligation to avoid striking. Only special occupational groups have such obligations and only because of health and security matters. They usually do not even have additional benefits compared to employees of the private sector. Some benefits could however be more favourable for public servants, who typically have longer vacations than employees in general. But in other fields and for other occupational groups, the benefits could be better on the private market. Public servants do not need to have additional income to make a living. The income for public servants is very much akin to that of employees in the private sector. Some differences do exist, for example, employees with an academic degree often have a higher salary if they work in the private sector.

The public sector is structured with the government and the ministries on the top, different agencies and authorities under the ministries and a general regional representation with the

county administrative board. There are also some state owned corporations and government boards. The lowest level has decision-making power. There are also county councils and municipalities which have the power of decision-making.

b) Allocation of Financial Resources

The National Audit Office is auditing the state agencies according to the Code of Instruction for the National Audit Office (*lagen (2002:1023) med instruktion för Riksrevisionen*), chapter 12 paragraph 7 of the Swedish Constitution (*regeringsformen*) and the Code of Auditing of State Activity (*lagen (2002:1022) om revision av statlig verksamhet m.m.*). The National Audit Office writes a report about the audit and gives it to the audited agency. The National Audit Office also writes a yearly report on the most important audits. The office also publishes its performance audits in reports. All reports are available to the public: the performance reports are often referred to in the media and they can be downloaded from the Internet (www.riksrevisionen.se).

Many of the cases of bribery that are reported to the police yearly concern tendering procedures. It is often one of the parties' employers that reports the incident to the police after suspicions being cast from either results from audits, or by information from someone involved. The illegal influence in these cases is often 'vague' and it is difficult to bring them to prosecution, but generally it regards payments or other rewards with monetary value, such as trips, dinners etc. from the contractor to the client, either before or after the tendering procedure is closed.

c) Public Services Law and Human Resources in the Public Administration

Political parties have influence on lay assessors in the court system and as members of the board in various agencies. The idea is that politicians on different levels, from the municipalities to the Parliament, should act as public representatives in decision-making and as organs of public control as a balance to the power of public servants.

Public servants are non-political. They do not change their work because of changes in political power. Only under the secretary of the state, the highest person under the Minister, political advisors and media secretaries at the ministries are political public servants. About 200 political public servants in the ministries must leave their office if the political power changes. Public servants may have a secondary job if it is not in conflict with the legislation on secondary employment (the Law 1994:260 for public servants, paragraph 7). A public servant may not have secondary employment which competes with his/her primary occupation or could question the occupation.

Agencies could have internal revision or auditing by controllers. Many agencies found it necessary to closely follow the economic situation. An agency could let an auditing firm and a

law firm make a revision if there are signs of misconduct such as corruption. The National Audit Office carries out the external auditing of the agency, as earlier mentioned.

The employer is obliged according to the law to report suspicions of crime, expressly the offence of taking bribes (the Law 1994:260 on public servants, paragraph 22). The employer must also report suspicions of other crimes if punishments other than a fine could be the case.

The norm which addresses undue influence in the public administration (e.g. bribery of public servants) is the Criminal Code (1962:700), chapter 20, paragraph 2: The offence is ‘*mutbrott*’, taking bribes. The offence is also punishable in the private sector. The punishment is fine or prison. If a public servant is charged for taking bribery, he/she will be dismissed from duty and lose his/her job, in most cases. Other offences could also be linked to corruption, such as official misconduct.

What is illegal or against the morals of the public administration is described more in detail in the internal guidelines which for example forbid public servants to let others pay for vacations, expensive dinners and so on. These guidelines are important tools in preventing corruption and all public servants are quite familiar with them.

Internal guidelines and education on implementation are the practices of preventing corruption in the administration. Violations of the guidelines could be sanctioned with loss of salary and, in serious cases, dismissal from duty. If the violation is against the law (for example taking bribes), the employer will also report it to the law enforcement agencies.

Concerning internal bodies aimed to prevent and fight corruption, Sweden does not have much knowledge on these kind of structures, but the authors of the questionnaire do know that certain auditing systems to check purchasers and other occupations at high risk for corruption do exist. There could also be ‘whistle-blowing’ systems or routines which are quite close to these systems.

There have indeed been cases of corruption in the public administration worth mentioning. One series of high-profile cases concerned the Swedish state monopoly on selling alcohol and wine (*Systembolaget*), where many shop managers had been charged with taking bribes from importers of liquors. Another scandal is the case of high ranked directors in the insurance company *Skandia*, which renovated their own private flats at the expense of the company's money.

2. Members of the National Parliament

a) Legal Position within the National Legislation

Laws which deal with the status of Members of Parliament are mainly the following: *Lag 1994:1065 om ekonomiska villkor för riksdagens ledamöter* (Law 1994:1065 on economical

conditions for Members of Parliament); *Lag 1996:810 om registrering av riksdagsledamöters åtaganden och ekonomiska intressen* (Law 1996:810 on registration of commitments and economical interests of Members of Parliament); *Riksdagsordningen 1974:153* (The Parliament Act).

Candidates running for election to the Parliament must have the right to vote in the parliamentary elections, which means that they have to be 18 years old and Swedish citizens, and be or have been registered as a national in Sweden. They also have to be nominated by a political party. The field of activity of political parties is divided into 29 constituencies. Each constituency elects a certain number of candidates depending on the constituency's size. This is regulated by a specific statute, the Election Law (*Vallagen SFS 2005:837*). The same law also affirms that a party must register its nominees with the county administrative board at a certain time before the election. The nominee must also at the same time register a certificate that he or she has agreed to be nominated. It is up to each party to decide the process of nominating their candidates for the Parliament. They have generally decided on this process in their party regulations. The Social Democratic Party proceeds as follows:

- An election committee is appointed where special working committees may be formed.
- Suggestions of candidates are sent to the district board which notifies all subunits of the party. All party members, organisations connected to the party, as well as the party's trade union representatives can propose candidates. All suggestions are open and public.
- The election committee proposes candidates for the parliamentary election. The list is presented to the district board when an election conference is held.
- Votes are cast on the election conference according to standard voting procedures.

The gross basic income of the Members of Parliament is SEK 48,000 (ca. € 5.180) per month. They receive reimbursement for the expenses related to their service, according to the same conditions as all civil servants, for example for business travel. Until the 1st October 2006 they also received a monthly reimbursement for equipment needed in their work, an amount of SEK 3,771.50 (ca. € 400). This included secretary services, postage, mobile phone calls while in service, newspapers, journals and books not available in the Parliament Library, as well as costs for representation. Now they will only be reimbursed for their work-related phone calls and nothing else. Apart from a room at the House of Parliament with the necessary technical equipment, they also receive subscription on computers and telephones in their private residence, a portable computer, telephone, mobile phone and combined printer/ fax/ scanner/ copy machines, also in the private residence. Members of Parliament pay the expenses for their mobile phone themselves, except those calls that are connected to their work. A Member of Parliament whose main residence is more than 50 km away from the House of Parliament can receive a reimbursement of maximum SEK 4,400 (ca. € 475) per month for an apartment in Stockholm. *Lag (1994:1065) om ekonomiska villkor för riksdagens ledamöter* – (Law (1994:1065 on economical conditions for Members of Parliament).

Concerning additional benefits in comparison to employees of the private sector (e.g. health care, pensions and debentures, income), Members who have served more than three consecutive years and have resigned are guaranteed income pension. How long they can receive the income pension depends on their age when they resign and how long they have served in the Parliament.

Members of Parliament have the privilege of immunity: as a consequence, prosecutors must apply to the Parliament for permission to prosecute a Member of Parliament for acts committed during duty. For acts committed at other times, prosecution may be allowed if the MP admits the crime, is caught in the act, or if the crime has a prescribed sentence of more than two years in prison (*Regeringsformen, 4 kapitlet, 8 § första stycket* – the Constitution, 4th chapter, 8th paragraph, 1st section).

For what concerns incompatibilities between parliamentary mandates and other public offices or private positions, Members of Parliament are allowed to maintain other forms of reimbursed employment such as working in their own private company, working in other forms of government service, holding membership of supervisory boards or working as accountant in companies or organisations of foreign status. According to a newspaper article in 2005, 49 out of the Parliament's 349 members had other sources of income which exceeded SEK 100,000 (ca. € 10.800) per year. The information was collected from the Tax Authority and the Parliament. Examples of their positions are: maintaining regular employment, for example as a lawyer, holding positions in supervisory boards and other commissions of trust, holding lectures and writing books. The most common is the position in supervisory boards.

The Swedish legislation does not have any restrictions regarding the chance for (former) Members of Parliament to take particular types of employment or an employment field after leaving office.

b) Additional Incomes of Members of the National Parliament

Members of Parliament can receive additional income, since there is no restriction concerning this. The publication of their own additional income is voluntary, but strongly recommended. There is a special and public register, managed by the Parliament, where MPs can register all their other positions and incomes. In April 2006, 261 of the 349 Members of Parliament had published their incomes and assets in the register. It is also voluntary to publish the spouses income and assets in special report.

Each of the MP's voluntary information in the register is open for all citizens according to the principle of public access to official records, but the database where it is compiled is not open to the public according to the freedom of the press act. The information has to be demanded from the Parliament for each of the MPs, and there's a small cost per copy.

The MPs' extra income has generally attracted some attention in the media, and single cases of MPs sitting in chair positions in certain interest organisations has been scrutinized. Lobbying is common, but since there are no restrictions for the MPs regarding their extra income today, there haven't been any cases of corruption reported to the police.

One case has been reported to the police where a political party's youth organisation accused a Member of Parliament for being challengeable due to his position in a lobby organisation, but there was no investigation commenced due to the legal circumstances.

c) Undue Influence

Members of Parliament are subjected to special criminal provisions of bribery: Bribery, according to the 17th chapter, 7th paragraph in the Criminal Code, and the Taking of Bribes, according to the 20th chapter, 2nd paragraph in the Criminal Code.

Possible sanctions in these cases, except those determined in the Criminal Code, which are fines or imprisonment, are ruled in the 4th chapter, 7th paragraph and 3rd section of the Constitution, which states that an MP can be forced to resign from his or her position if he or she has committed a crime above the protection that the MP's immunity gives.

There are no specific statutes regarding corruption within the Parliament. An internal policy and ethical guidelines do exist, but they concern the employees of the Parliament, not the MPs. However, there have been recent discussions going on about whether to set up specific guidelines for the MPs, their representation etc. In cases of undue influence, anyway, a Member of Parliament cannot be excluded by the parliamentary groups or political parties.

The issue of MPs and undue influence has attracted some interest in the media on occasions, but there hasn't been any police case involving any MP and undue influence.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

There are some general rules in the Constitution. There is also an ordinance (1996:1515) with instructions for the Cabinet Office and the ministries. There is also a special 'personnel agreement' for politicians (RK 1999, *Politikeravtalet*), which is an agreement on employment for the political advisors in the Cabinet Office and the ministries.

The Cabinet Office and the ministries employ individual salaries depending on experience and tasks. The Cabinet Ministers have a salary of SEK 97,000 (ca. € 10.500) per month. The Prime Minister has a monthly salary of SEK 121,000 (ca. € 13.000).

The political office-holders do not have any security of employment. When the government changes, they will be unemployed. As a compensation for this, they have the right to a guaranteed salary for 12 months, if they have been working for the government for longer than 6 months. Apart from this, they have the same conditions as for all state employees.

They are not allowed to have other employment or positions that may harm the confidence of their objectivity in their work or harm their principal employer's reputation or legitimacy. This is the same as for other civil servants, which is regulated in the law (1994:260) on public employment, 7th paragraph, regulating that a civil servant is not allowed to take other positions that may harm the legitimacy or credence of the principal employer. The Constitution, in the 6th chapter and 9th paragraph, states that the ministers are not allowed to hold any other forms of employment during the duration of their service. They cannot either take any tasks or practise any form of business that may harm confidence in them. It is relatively common that undersecretaries of state have positions in supervisory boards.

When they leave the government, ministers are also obligated to leave the positions they have acquired due to their position as political office-holders. But there are no regulations limiting the other types of positions they may take.

b) Additional Incomes of Political Office-holders

Political office-holders have the right to receive additional income, according to the above mentioned rules. They can publish their income only by voluntary agreement. This is not valid for ministers, who are obligated to report their possessions of financial instruments and the changes in these possessions. This information is compiled in a register run by the Cabinet Office. This information is not public according to the law, but the ministers have reached an agreement to make the information concerning the own possessions public. The information is given out on demand to the Cabinet Office.

In general the publication of income and assets of relatives of political office holders is also voluntary, except for the close relatives to the ministers, who are also obligated to report their possessions of financial instruments to the Cabinet Office. This is also in agreement with the law (2000:1087) on obligation to report certain possessions of financial instruments, that states that the close relatives to a person in a position of insight may also be obligated to report their possessions of financial instruments. The information given by the political office-holders by voluntary agreement is a public document, but it must be demanded from the Cabinet Office according to the same procedure as regarding the MPs register.

The media implied certain forms of undue influence at occasion due to additional income, but there have been no illegal cases so far.

c) Undue Influence

Criminal statutes regarding bribery which political office-holders are subject to are: 17th chapter, 7th paragraph of the Criminal Code (Bribery), and 20th chapter, 2nd paragraph of the Criminal Code (Taking of Bribes). Except the sanctions prescribed by the Criminal Code, there are no official regulations concerning the political office-holders. But the result would be that they would be forced to resign from their post. The Cabinet Office publishes guidelines in a memo form. A handbook for politicians is published on the intranet of the Cabinet Office and the ministries. It contains a section concerning ethical issues covering objectivity in relation to other employment and positions (except the political), reports of their income and possessions of financial instruments, rules regarding gifts and other benefits, meals, participation in diverse events, and trips. There are no known cases of corruption related to undue influence.

4. Political Parties

a) Legal Position within the National Legislation

Political parties in Sweden count as non-profit associations. They can count on public funding: the support from the state and Parliament is their largest source of income. The state provides support for the parties' general activities, and the Parliament provides support for the political parties' work in the Parliament. Together, the state and the Parliament give support of approximately SEK 360 million (ca. € 38.844.000) per year to the political parties. County councils and local authorities have the right, but not the obligation, to provide support for the political parties. The political parties have the right to decide what the support should be used for. The Social Democratic Party, for example, receives approximately SEK 55 million (ca. € 5.935.000) in support from the state and Parliament yearly; but because of the organisational structure of the party, as it is divided into many independent units, there is no information on the amount of income from membership fees *centrally*.

b) Revenues of Political Parties

The state gives support in two parts: to parties already in the Parliament (where it is distributed as one allowance per seat in the Parliament, and as a lump sum per party regardless of size), and to parties outside the Parliament if they received at least 2.5% of the votes during the last two elections.

The Parliament gives support in three parts: a base support which is a lump sum plus one allowance per seat in the Parliament, support to the Members of Parliaments' political secretaries, and support to the Members of Parliaments' trips abroad.

There are also possibilities to give private support to the political parties, for example from organisations, private companies, trade unions, etc.

Since the introduction of vote based on personality, there are chances of supporting separate candidates. In most cases, these must be registered at the nominating organisation, and it is not always allowed to accept private contributions.

There is no regulation of illegal party donations: the parties themselves decide from where and whom they can accept donations.

c) Legislation on Transparency of Political Party Funding

In order to receive financial support from the state and the Parliament, the political parties must submit an annual financial report. According to *Lag (1972:625) om statligt stöd till politiska partier* – (Law (1972:625) on state support to political parties), it must be checked by an approved auditor and it must be detailed. There is no law stating the parties' obligation to report the sources of their funding, but most of the parties have set up their own policies that this should be made public. The political parties have the right to decide how to use the financial support from the state and from the Parliament. The state and the Parliament no longer control how the parties use the official funding except that their annual financial report follows the guidelines for financial reports in general.

There are no recent cases of corruption connected with party financing, but the issue has attracted a lot of attention in the media and the society in general. There is presently a government motion that moves for the introduction of a law making the visibility of the parties' funding obligatory.

V. General Comments

As we see it in Sweden, the reasons behind corruption can be divided into three categories: reasons found in the individual, reasons found in organisations, and reasons found in society.

The reasons for the individual can be economical; that is, an urge to earn money or other financial benefits. It can also be emotional, for example an urge to help someone close, perhaps to reach a certain position in work. It can also be because of a lack of knowledge – that is, that the person is not aware of which acts might be defined as bribery, taking a bribe or assisting in a situation of bribery. There has not been any known case of bribery or of taking a bribe because of coercion.

The reasons found in organisations can be because of the culture in a certain organisation – that important decisions are taken informally, contracts are made by shaking hands, business is made between people you trust instead of formal rules, etc. The internal structure of the organisation can contribute to the facilitation of corruption, but can seldom be a direct cause. In some organisations, the underlying structures of salary based on incentives to sell can be a cause of

corruption, but this has also seldom be seen as a major cause in Sweden. The most important reason in the Swedish cases that have been reported to the police is probably a lack of control of the employees and the contracting processes, and a lack of education of the employees regarding bribery. This often works together with a certain culture of informality and a lack of internal communication to create situations where corruption can occur. Less important reasons are the work environment regarding how employees are happy in the workplace and their jobs and tasks, and the sanctions available within organisations for employees that violate the internal guidelines.

On the societal level, there are reasons that relate to the difference between formal and informal norms. Within the private sector, there is for example a lack of agreement around the situations that should be defined as corruptive. In their ‘way of doing business’, a relatively large account of representation is often included, which can cause problems in the meeting with the public sector. Another reason for corruption that can be traced back to factors in the society is the competitive climate for private entrepreneurs. There is a quite harsh competitive climate in Sweden regarding many areas that are also susceptible to corruption in general, for example the construction sector. Societal reasons that do not have a large influence in Sweden are: transparency, since this is very well developed and basically all documents within the state are public; the structures of salaries, since we have a relatively high minimum salary compared to many other countries, and a well developed welfare sector which can provide economic security; the influence of organised crime, which has at least been non-existent in the cases reported to the police. For grey zone areas, the structure of political power relationships between for example the private and the public sector can be of importance, but this is not visible in the tangible cases of corruption reported to the police except for one or two exceptions.

The main fields where corruption seems to occur are the public sector, the real estate sector, the construction sector, and the health care sector.

The legislation around bribery has not been amended for many years although there have been demands for clarifications and other amendments to it. However, scandals have had an effect on the control mechanisms, the policy documents and internal guidelines of the organisations that have been scrutinised – which have as a result been improved. On the political level, there have been some government bills proposing more transparency regarding for example the funding of political parties and single candidates running for election, and regarding the transparency of the MPs’ and political office-holders’ incomes and financial assets. The increased attention from the media regarding corruption has also resulted in the establishment of a special prosecution unit handling only cases of corruption.

Concerning best practices against political corruption in Sweden, developing mechanisms for transparency is one of the best ways to limit the occurrence of corruption. Sweden is well ahead

in this regard, where most documents produced in the state are made public. There are also well-developed routines for revision and control — all state authorities, for example, are obligated to follow strict guidelines for accountancy, on detailed levels, and these documents are also revised thoroughly by the state. Many organisations have developed well-functioning routines for the circulation of employees on certain sensitive posts, for example in the units of purchasing. This is a control mechanism for avoiding the forming of organisations from relationships between sellers and buyers. Another best practice that is generally well-developed in Sweden is the ‘four-eyes-principle’ on signing and controlling important contracts – that at least two persons are always responsible for the signing of contracts worth more than a certain sum.

Report United Kingdom⁵⁰³

503 We would like to thank Prof. Paul M. Heywood, Dean of the Graduate School, Sir Francis Hill Professor of European Politics, School of Politics and International Relations, University of Nottingham, for answering the questionnaire and supporting the realization of the Report Estonia, written by Alessandra Di Martino. Sources: C. Nicholls QC/ T. Daniel/ M. Polaine/ J. Hatchard, *Corruption and Misuse of Public Office*, Oxford 2006; GRECO Eval I Rep (2001) 8E, Directorate General I - Legal Affairs, Department of Crime Problems, Adopted by GRECO at its 6th Plenary Meeting, 10th to 14th September 2001; GRECO Eval II Rep (2004) 2E, Directorate General I - Legal Affairs, Department of Crime Problems, Adopted by GRECO at its 20th Plenary Meeting, 27th to 30th September 2004.

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I. Sources of Data-collection on Corruption in the Public Sector

Data on corruption in the public sector is collected by the following institutions:

- *The Committee on Standards in Public Life*
(<http://www.publicstandards.gov.uk/publications/index.asp>).
- *The Committee on Standards and Privileges*
(http://www.parliament.uk/parliamentary_committees/standards_and_privileges/standards_reports_and_publications.cfm).
- *The Law Commission*
(<http://search.lawcom.gov.uk/kbroker/dca/lawcom/search.lsim?qt=corruption&sr=0&nh=10&cs=iso-8859-1&sc=lawcom&sm=0&mt=1&to=0&ha=486>).
- *The National Audit Office* (<http://www.nao.org.uk/dtSearch/dtisapi6.dll>).

II. Legislation dealing with Corruption

In the British context, there is specialised legislation dealing with the fight against corruption, as corruption offences are dealt with by both statutory laws and common law as well as internal regulation. The principal legislation dealing with corruption in force today is to be found in the package of measures passed between 1889 and 1916, that is, the *Public Bodies Corrupt Practices Act* (1889), the *Prevention of Corruption Act* (1909), and the *Prevention of Corruption Act* (1916), which are known under the joint name of *The Prevention of Corruption Acts 1889 to 1916*.

In addition, there are many overlapping common law offences. These include misconduct in public office, specific bribery offences, attempts to bribe a councillor, and attempts to bribe a police constable, among others.

Moreover, and together with those legal means to control political corruption, other mechanisms are to be found in the British context, such as codes of conducts, internal systems for the declaration and registration of specific interests in public bodies, and systems supported by independent scrutiny and monitoring.

The recent *Corruption Bill* (published in 2003) seeks to replace the common law offence of bribery and most of the statutory offences contained in the *Prevention of Corruption Acts 1889 to 1916*, mentioned above. However, the Bill faced criticism when it received pre-legislative scrutiny by a Joint Committee of both Houses appointed on 24th March 2003. In its report, many adverse comments on the approach adopted in the Bill and its clarity and comprehensibility were expressed. Although the Government adopted a number of those comments, disagreements between both institutions still exist, specifically concerning the central issue of defining corruption.

Regarding the legal definition of corruption, relevant provisions are included in the above-mentioned *Prevention of Corruption Acts* 1889 to 1916. By tradition the legal side has focused on bribes rather than corruption in broader terms.

It is within the discretion of the authority whether or not to prosecute corruption-related crimes, which is consistent with the British legal tradition.

As for individual access to administrative files, the *Freedom of Information Act* (2000) that came into force in 2005 gives a general right of access on request to information held by public authorities. Any person, including legal entities, is entitled to request information and to do so without stating a reason for it. But there are several exceptions to this right which are either absolute or qualified i.e. the public authority decides if disclosing the information would benefit public interest more than not giving access. Applicants who have been turned down and think they were treated unfairly can appeal to the Information Commissioner, who has the power to demand disclosure. But such a demand could in turn be appealed to a specialist tribunal. In some instances the government can also overrule a decision by the Information Commissioner. However, such orders can be appealed to a specialist tribunal (the Information Tribunal) and in some circumstances the government has the power to override orders of the Information Commissioner.

III. Control and Sanctions

Several specific administrative bodies have specific competence on preventing and fighting corruption in the public sector. Related tasks are briefly described below:

- *The Serious Fraud Office*, a government department, investigates and also prosecutes serious and complex fraud crime (<http://www.sfo.gov.uk>).
- *The National Audit Office* scrutinises public spending on behalf of Parliament and reports to Parliament on the economy, efficiency and effectiveness with which public authorities have used public money. This concerns all central government departments and agencies, and a broad range of other public bodies (<http://www.nao.org.uk/dtSearch/dtisapi6.dll>).
- *The Audit Commission for Local Authorities and the National Health Service* in England and Wales, audits financial statements of local governments annually and also monitors financial aspects of corporate governance and performance management, taking into account local risks and general risks including corruption (<http://www.audit-commission.gov.uk/>).
- *Local Government Ombudsmen* can investigate complaints of injustice arising from maladministration by local authorities and certain other bodies (http://www.lgo.org.uk/work_lgo.htm).

Furthermore, parliamentary inquiries have traditionally been established on an ad-hoc basis. Measures have been put forward concerning codes of conducts, internal systems for the

declaration and registration of specific interests in public bodies, and systems supported by independent scrutiny in connection to official inquiries of allegations of fraud or political misconduct. The most important amongst such inquiries were the 1974 Redcliffe-Maud inquiry concerning local government rules of conduct, the 1974 Commons inquiry into MPs' financial interests, and the 1976 Salmon inquiry related to the standards of conduct in public life – as a consequence of local government scandals concerning housing and development. However, these recommendations were mainly ignored until the 1990s. But since the Committee on Standards in Public Life, which is not a parliamentary committee, was set up in 1994, it has proactively discussed public ethics, reported on measures to improve ethics, accountability and transparency in public life. The likelihood of actually getting proposals implemented also seems to have increased. The parliamentary committees in the 1960s to the 1990s often produced clear recommendations but they were more seldom implemented.

As for the role of the media in the discussion of corruption, it is a very active one in the UK. The national quality papers have both revealed corruption and conflict of interest matters. They have also been key players in reporting and discussing the most recent scandals concerning Cabinet Ministers and also in the cash for peerage scandal, where they have raised questions whether peerages in the Upper House of Parliament, the House of Lords, were for sale to big donors to political parties. In general, tolerance of corruption is very low in the UK and also stories of misconduct that would be regarded as minor in other countries are given a lot of attention. Academia is increasing its interest in corruption, although traditionally the debate has been more about standards in public life than about corruption. NGOs have not had an important role although recently the chapter of Transparency International in the UK has raised its profile.

IV. Actors

1. Public Administration

The United Kingdom has been a unitary and centralized polity over the last centuries, with a rooted tradition of local government. Political efforts towards devolution, developed in Scotland and Wales since the 70s, have eventually found official recognition with the New-Labour devolutionist commitment. In 1998, after referenda were held in the relevant territories, the *Scotland Act* and the *Government of Wales Act* were passed. The devolution process also included Northern Ireland (*Northern Ireland Act* 1998) and Greater London (*Greater London Authority Act* 1999). In each region, a unicameral representative assembly has been elected, with a directly accountable executive. Whereas in Scotland and Northern Ireland legislative competences have been devolved, devolution in Wales and the Greater London (as for England, see the *Regional Assemblies Preparation Act* 2003) has been merely executive.

The civil service is constituted by administrative, professional, technical and other officials who staff the departments of central government. They can serve successive governments and the requirement of political impartiality is an important part of their code of conduct. Traditionally, they are appointed by the Royal Prerogative, although their terms of employment are regarded as legally enforceable. As for local government, the *Local Government Act 2000* only covers local government in England, since responsibility for local government in Scotland and Wales had been devolved in 1998. However, it empowers the Welsh administration to regulate its authorities along similar lines to those in England. The Scottish Parliament has passed the *Ethical Standards in Public Life (Scotland) Act 2000*.

British Public Administration also comprehends the so called *Quangos* (Quasi autonomous non governmental organisations), including Executive Non-Departmental Public Bodies and National Health Service Bodies.

In the United Kingdom, all government spending must be authorised by the Parliament in Westminster. Local authorities are mainly financed by grants from the central government, although some local taxation is allowed. The Scottish Parliament was also given limited tax-levying power, which it has not exercised so far.

All spending by central government and a wide range of public bodies in England and Wales are subject to audit by an officer of the Westminster Parliament, the Comptroller and Auditor General. This function is exercised through the National Audit Office. The local authorities in England and Wales (as well as the National Health Service Bodies) are subject to the Audit Commission. The National Assembly for Wales has its own officer, the Auditor General for Wales, who is assisted by the National Audit Office. Scotland has its own Auditor General, who audits the Scottish Executive, and the Accounts Commission, which commissions and receives the audits of local authorities. Both are supported by Audit Scotland. The audit authority for Northern Ireland is the Comptroller and Auditor General for Northern Ireland who heads the Northern Ireland Audit Office. Local authorities are audited by the Department of the Environment in Northern Ireland. The work, management and conduct of public sector organizations is additionally scrutinized by various independent and respected committees and advisory bodies at national and local level, including the Select Committee of the House of Commons and the Committee on Standards in Public Life.

The scope of audit conducted by such authorities includes regularity (whether public money has been used for the purpose intended and in accordance with applicable laws and rules) and propriety (whether public business has been conducted in a proper, even-handed and fair manner). Recently, a movement exists on extending this scope to cover the adequacy of the mechanisms that the audited have put in place to ensure the proper conduct of their financial affairs. In the case of local authorities, it is the law that prescribes such an audit. Elsewhere, the

extension of the scope of the audit is achieved through the phased introduction by the Treasury of applicable aspects of the Combined Code to the public sector.

The introduction by the *Police Reform Act 2002* of the Independent Police Complaints Commission (IPCC) should be mentioned related to the fight against corruption within the police administration. This is a non-departmental public body⁵⁰⁴ whose primary function is to ensure that effective and efficient arrangements are in place for addressing the handling of police complaints, the recording of conduct matters, and the investigation/handling of both. Its further functions provide for the IPCC's role of guardian of the police complaints system and give it a duty to raise public confidence in that system.

As mentioned above, criminal investigations rest with the police force⁵⁰⁵ and the Serious Fraud Office⁵⁰⁶, an independent government department headed by its own director, but superintended by the Attorney General.

As soon as by the mid-nineteenth century, the British civil service was well-provided with codes of behaviour and detailed rules of conduct. From 1854 to the late 1960s, it developed greater uniformity and tighter control. In the 1980s, the position was reversed with the establishment of executive agencies and the delegation of many management responsibilities, while the issue of standards was not much considered and pre-eminence was given to the need for efficiency and effectiveness.

Recent developments in the field of the fight against corruption in Public Administration followed several reports adopted by the Committee on Standards in Public Life (CSPL). As mentioned above, the CSPL was established in 1995 to examine current concerns about standards of conduct of all public office-holders and to make recommendations as to any changes that might be required to ensure the highest standards of propriety in public life. The CSPL has published ten reports up to January 2005 which have covered every aspect of public life. CSPL's recommendations were radical and far-reaching. The first general recommendation was that the principles underpinning standards in public life should be restated. These principles have become known as the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. The CSPL's second recommendation was that

504 The IPCC is headed by a chair and deputy chair, along with (presently) sixteen other commissioners (appointed for 5 years). The chair is appointment by the Crown on the recommendation of the Home Secretary. The deputy chair and other commissioners are public appointees, appointed by the Home Secretary.

505 Since the United Kingdom does not have an all embracing national police force, the 43 local police forces in England and Wales, together with their Scottish counterparts, each have a role to play in the investigation of allegations of corruption.

506 The SFO was established by the *Criminal Justice Act 1987*, following the 1986 Fraud Trials Committee Report (the Roskill Report). Under the 1987 Act, the task of the SFO is to investigate and prosecute cases involving serious or complex fraud in England, Wales and Northern Ireland. It is also expected to contribute to deterring such fraud. The SFO's aims and objectives are reducing fraud and the cost of fraud, the delivery of justice and the rule of law, maintaining confidence in the United Kingdom's business and financial institutions.

all public bodies should draw up codes of conduct incorporating the seven principles of public life. The third was that internal systems for maintaining standards should be supported by independent scrutiny; and the fourth, that more should be done to promote and reinforce standards of conduct in public bodies, particularly through guidance and training, including induction training.

In its first report in 1995, the CSPL concluded that standards of behaviour in the service remained high and that cases of outright corruption and fraud were rare (Sir Richard Scott's Report on the sale of arms to Iraq was published in 1996). It welcomed the introduction of a new Civil Service Code and recommended that it should be brought into immediate effect. It also recommended changes to make appeals to the Civil Service Commissioners relating to the Code more effective and open, including a requirement that the Commissioners should report all successful appeals to Parliament. It recommended that the Cabinet Office should continue to survey and disseminate best practice on maintaining standards of conduct to ensure that the basic principles of conduct are being properly observed.

The new Civil Service Code was published in 1995, and formally incorporated in the Civil Servant Management Code (Chapter 4, Annex A). It came into force in 1996, but was revised in 1999 in response to the establishment of the Scottish and Welsh Assemblies. In its sixth and ninth report, as well as in its 2004 annual report, the CSPL made a call for the passing of a statutory instrument, a Civil Service Act. As a consequence, several draft bills have been presented to Parliament.

The code is an essential statement of the role and responsibilities of civil servants and provides a direct line of appeal to the Civil Service Commissioners, who are independent of government and responsible for the conduct and discipline of civil servants. Observance of the Code is monitored by the Cabinet Office. The Prime Minister is Minister for the Civil Service and is supported by the head of the Home Civil Service.

According to chapter 4.1.1. Annex A Code, civil servants are required to give honest and impartial advice to ministers, to act according to law and to the principles set out in the Code, recognizing ethical standards governing particular professions. They must not misuse their official position or information acquired in the course of their official duties to further private interests, and they should not receive benefits of any kind from a third party which might reasonably be regarded as compromising their personal judgement or integrity. Regarding the reporting of corruption, the code provides that a civil servant should report any evidence of criminal, unlawful, improper or unethical activity by others in accordance with procedures laid down in guidance or rules of conduct for his or her department. In the event of not receiving a reasonable response, he or she may report the matter to the Civil Service Commissioners.

Standards of propriety have also been fixed: Chapter 4.3, Annex A provides that departments and agencies must require their staff to report relevant business interests, and that unless the civil servant has fully disclosed the measure of his or her interest in the contract and senior management has given permission, they must not enter into contracts to (1) any civil servant in the department or agency, (2) any partnership of which a civil servant in the department or agency is a member, or (3) any company where a civil servant in the department or agency is a director, except as a nominee of the department or agency.

Furthermore, chapter 4.3.3, Annex A provides that departments and agencies must not sell surplus government property to civil servants who have been able to get special knowledge about the condition of the goods because of their official duties; or have been officially associated with the disposal arrangements; or at a discount that would not be available otherwise. Departments must also require staff to seek permission before accepting any outside employment which might affect their work either directly or indirectly and must take appropriate arrangements, which reflect the Business Appointments Rules and any local needs, for the handling of such requests. Departments and agencies must inform staff of the circumstances in which they need to report offers of gifts, hospitality, awards, decorations or other benefits and of the circumstances in which they need to seek permission before accepting them. In drawing up such rules, departments and agencies must draw the attention of the staff to the provisions of the *Prevention of Corruption Acts* 1906 and 1916. Breaches of the procedures for the awarding of contracts and the disposal of surplus property are subject to investigation by the Comptroller and Auditor General who may report them to the Public Accounts Committee of the House of Commons.

A general Business Appointment Rule now requires civil servants to seek advice from the advisory Committee of Business Appointments before taking up a business appointment after leaving office. This Committee is appointed by the Prime Minister and comprises persons with experience of the relationships between the civil service and the private sector. Approval is required for the initial appointment and any further appointment within two years of leaving Crown employment.

In 1998, guidelines were issued relating to civil servants' contacts with lobbyists. Since lobbying is seen as a feature of the British democratic system, contact to civil servants should be permitted in principle, but controlled.

Rules on local government were considered in the CSPL's 3rd report (1997). At that time, the conduct of councillors was subject to the National Code of Local Government Conduct, which was first drafted in the 1970s and then revised in 1990 and has a statutory status.

The Code laid down standards of conduct for councillors and included such matters as when to declare pecuniary and non-pecuniary interests, when to seek advice from officers, and related issues. Failure to observe the Code's requirements could result in criminal prosecution and in

most cases a fine will be imposed by the District Auditor with or without disqualification from office. The Code of Conduct for Officers was issued by the Local Government Management Board, together with the local authority associations.

The CSPL found local government to be far more constrained by rules than any other part of the public sector and warned that attempting to enforce good conduct through detailed rules could itself contribute to wrongdoing, since lack of clarity over standards of conduct persisted in local government. In addition, the CSPL found it particularly unsatisfactory that the District Auditor should not only formulate and prosecute the case against individual councillors but should also determine guilt or innocence and, in the first case, the penalty on the basis of his or her own calculation or financial loss. In CSPL's view, the courts should be involved in imposing penalties for misconduct. However, despite some instances of corruption and impropriety, the CSPL concluded that the vast majority of councillors observed high standards of conduct.

Following the CSPL's recommendation of a fundamental restructuring of the framework of standards of discipline for councillors and officers, the Local Government Act was passed in 2000, covering any local government in England.

Civil servants, councillors and officers are subject to the common law offence of bribery and to the *Public Bodies Corrupt Practices Act* 1889, both limited to public sector corruption, and the second one particularly to the officers and employees of public bodies. Also applicable is the *Prevention of Corruption Act* 1916, which extended the meaning of public bodies and introduced a presumption of corruption where money has been received by employees of public bodies in connection with public contracts. However, most corruption cases coming before the courts are for offences under the *Prevention of Corruption Act* 1906, concerning corruption by agents and covering both public and private sector corruption, rather than under the 1889 Act or for the common law offence.

Finally, the common law offence of misconduct in a public office is confined to persons who are public office-holders. It is committed when the holder of that public office acts, or omits to act, in a way which is contrary to his or her duty (*R. v. Bembridge*, 1783).

2. Members of the National Parliament

Each British citizen older than 21 and mentally not disabled is allowed to become a candidate for Parliament. Besides this, candidates are not allowed to be member of the House of Lords, of the church, to be a judge, soldier, policeman or civil servant. To underline their earnestness to run for office, each candidate has to deposit 500 British Pounds. If they gain more than 5% of the votes, they receive their money back.

MPs receive a salary of 48,371 British Pounds (approx. € 71,544.09) each year. In addition to this income, MPs are given reimbursement, e.g. travelling expenses or accommodation expenses for their flat in London.

A pension scheme for MPs was first introduced in 1965. The present scheme, the Parliamentary Contributory Pension Fund, is governed by legislation made under the *Parliamentary and Other Pensions Act 1987*. Members' pensions are currently based on their salary in the year prior to leaving the House of Parliament.

The House of Commons has rights and immunities to protect itself from obstruction in carrying out its duties. These include the freedom of speech, the first call on the attendance of MPs, who are therefore free from arrest in civil actions and exempt from serving on juries, or being compelled to attend court as witnesses, and to access to the Crown, which is a collective privilege of the House. However, an offending MP may be reprimanded, suspended, or in extreme cases, expelled from the House.

Members of Parliament have the right to receive additional income, they are allowed to hold a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House of Parliament. They are also allowed to be sponsored by a trade union or any other organisation, or to hold any other registrable interest, or to receive hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad.

In the 1990s, after the 'Cash for Questions' affair, the Committee on Standards in Public Life (1995) recommended tightening the regulations on what information MPs are required to submit to the *Register of Members' Interests*. Since then, the Register contains greater detail about the type of outside service that the MPs provide and the amount of money they receive for this work. Specifically, MPs are required to declare in the register the sources of any extra income or gifts which they receive, and they must declare any relevant interests that might be connected to the issue debated before taking part in a debate. The purpose of registration is openness, that is, to give other Members and the public the opportunity to know about the interests which might influence a Member's action in its parliamentary duties. The MPs are also subjugated to a *Code of Conduct* created after recommendations the Committee on Standards in Public Life. Its purpose is to assist Members in the discharge of their obligations to the House, their constituents and the public at large. The Code of Conduct requires MPs to act in the interest of the public; to strengthen confidence in Parliament, not to bring the House or its Members into disrepute; to observe the seven principles of public life as set out in the first report of the Committee on Standards in Public Life; not to accept bribes or act as paid advocates.

There are two bodies in Parliament, created in 1995, charged with monitoring these mechanisms. They are an important channel for complaints that can be used by MPs as well as the public. The

Parliamentary Commissioner for Standards was set up by the House of Commons after recommendations by the Committee on Standards in Public Life. It carries out two kinds of duties. On the one hand, the Commissioner plays an important role monitoring the performance of the system, and investigating any specific complaint concerning aspects of the propriety of an MP's conduct. In this sense, the main duties of the Commissioner are overseeing the fulfilment of the Register of Members' Interests and other registers of interests for Members' staff, journalists and All-Party groups; monitoring the operation of the Code of Conduct; and investigating specific complaints from MPs and from members of the public in respect to the registration or declaration of interests, or other aspects concerning misconduct by MPs. But it also provides a guide on how to lodge a complaint against an MP and can act on such complaints from the public. The *Committee on Standards and Privileges*: This parliamentary select committee replaced the Committee on Member's Interests and the Committee on Privileges, after recommendations by the Committee on Standards in Public Life. It has a central role in establishing the culture of ethical behaviour in the House, being the embodiment of self regulation, that is, members judging the propriety of other members' conduct. The Committee supervises the work of the Parliamentary Commissioner for Standards regarding the maintenance of the registers of interests and the conduct of members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Commissioner. In addition, it recommends necessary modifications to the Code of Conduct and considers parliamentary privileges matters referred to it by the House.

The acceptance of a bribe by a Member to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any bill, motion, or other matter submitted, or intended to be submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament (The Code of Conduct for Members of Parliament, prepared pursuant to the Resolution of the House of 19th July 1995).

3. Political Public Office-holders on the National Level

Political public office-holders are politicians who are appointed by the new acting government and are therefore public office-holders just for the duration of the election period.

Political office-holders have the right to receive additional income, but they should report to the Register of Members' Interest. The entries in the members' register is publicly accessible.

Recently, there have been some cases of corruption related to additional income in the UK.

4. Political Parties

Concerning the legal status of political parties in the UK, there have traditionally been different situations depending on each specific case. As far as the Labour Party is concerned, the national party and the constituency parties have traditionally been considered as law unincorporated associations. However, in the Conservative Party's case, not all of its constituent parts have traditionally been considered unincorporated associations. This situation has changed after the *Registration of Political Parties Act 1998*, which grants legal status as legal bodies to all political parties in the same way.

Regarding state funding and compared to other systems, British political parties receive just a tiny portion of state support, which is both direct and indirect. These range from the free use of civic premises, mail shots of literature and party broadcasts during elections to financial support for opposition front benches in the form of what is called Short (at the House of Commons) and Cranborne (at the House of Lords) moneys. Similar party funding arrangements are in place in the devolved legislatures. More recently (since the *Political Parties, Elections and Referendums Act 2000*), Parliament has initiated a scheme to provide policy development grants to parties sitting at Westminster. The sum of £2m is distributed annually by the Commission on the basis of a scheme approved by the House of Commons.

According to the *Political Parties, Elections and Referendums Act 2000* (PPERA), there are no limits on the size of donations received by a political party. However, anonymous donations to parties in excess of 200 pounds, as well as donations from foreign sources without a sufficient UK connection are banned.

Political parties are required to render account of their total revenues and expenses. According to the *Political Parties, Elections and Referendums Act 2000*, each registered party has to submit an annual statement of accounts with a financial year ending on or after 31st December of the given year to the Electoral Commission. Parties whose total income or gross expenditure is £250,000 or less are required to submit a statement of accounts within 3 months of their year end. Those parties that exceed this limit are required to submit their statement of accounts within six months of their year end. A copy of those statements is made publicly available on the Electoral Commission website.

Moreover, the PERA requires registered parties to submit quarterly donation reports to the Commission. These reports must include all donations over £5000 to main political party offices and over £1000 to constituency or local party offices. A person commits an offence if they knowingly or recklessly make a false declaration with regard to the receipt of donations during a particular quarter.

Concerning campaign expending, the controls applied for the 365 days end with the date of the poll. Parties which spent £250,000 or less have to submit their returns within three months of election day. Political parties spending more than £250,000 have to submit audited returns within six months.

The *Representation of the People Act* (1983) governs spending and donations for candidates during election time. Candidates are required to submit their returns to their local returning officer within 35 days of the election. Returning Officers forward copies of the returns to the Electoral Commission.

Relatively strong sanctions are also provided, since the PPERA establishes criminal penalty for failure to submit proper statement of accounts and donations reports.

As for cases of corruption linked to the above-mentioned aspects, there is concern about honour selling by political parties (specifically the Labour Party) in return for loans and donations.

V. General Comments

Corruption in the UK occurs mainly at the level of local government. Scandals have had an effect on legislation and institutions, especially in relation to the Standards in Public Life.

Best practices can be found in the UK in a tradition of high professional standards in the civil service and non-professional politicians.

C. Analysis of the Country Reports

I. Acquisition of Instruments for the Evaluation of Corruption in the Public Sector

1. Data-collections on Corruption

The number and quality of the public and private agencies appearing relevant – the different instruments of the systematic collection of data on corruption – show whether and how corruption can be perceived, recognized, evaluated, and fought against. Data collections as statistics on criminality show the corruption abatement which has already occurred and its results in type and quantity of the recognized cases. The data collections thus give a valuable first picture for the state of the corruption in a considered country. The statistics, however, look at state of corruption in the country in focus but are restricted to the number of reported delinquencies as well as the narrowly defined legal concept of corruption. Only indicated crimes, suspects and/or condemned persons are covered. In order to get a comprehensive picture which is clearly closer to reality, data are necessary which cover more than the identified offences and use a wider concept than the legal one. Therefore, additional private data collections are considered and are included in the investigation. Only the data collections which the experts classified as significant are considered.

Except for the representation of corruption in a certain system, the existence of significant data collections allows for tentative conclusions whether a problem awareness for corruption is present within the political system, within the population, as well as in the structure of its representation, its strength and its quality. This awareness coagulates in the institutions and in the approval to private data collections. The question is also how far does the public participate in the fight against corruption and its monitoring, and which control possibilities on the topic of corruption does it have. What institutionalized means – and non-institutionalized means – are there?

Data collections or agencies in which corruption is represented also have a clarification function, however, and thus fight against corruption. In addition to the pure statistics, such Internet presences, brochures, and so on also contain descriptions of the phenomenon of corruption. They help thus with recognizing corruption, they provide anti-corruption strategies and they produce pressure on certain countries or areas; this happens for example through the famous Corruption Perceptions index (CPI) of Transparency International. So, what potential does the public in a country have to contribute to control corruption, its abatement and prevention?

It can be assumed that the larger the number of the public and private data collections classified as relevant by the country experts is, the greater the chance is of coming closer to a true picture

of corruption. This does not mean that this must be given by a higher number. In order to be able to determine whether the individual measuring stations produce true measures, one would clearly have to go into much more depth than can be the case here. With several agencies, there is always the chance that the one agency judges the other as well as its results critically.

The measuring stations or data collections should be as independent as possible in the ideal case. If they are assigned a certain ministry or similar, it appears beneficial for good corruption coverage if data is also gathered in other places according to other methods and points of view.

In the following, the public and/or state data collections as well as the private ones are briefly described. They are categorized and then used for comparison.

2. Data-collections in the 25 Examined EU Countries

In order to draw inferences on the ability of the countries to fight corruption, both public and private data collections were asked for. These data collections of public and/or state agencies and private non-government offices are represented in the following. The representation of corruption by the public agencies are based as a rule on the narrow legal concept of corruption. It is attempted to complete the picture through the data collections of the non-public agencies which, like Transparency International, often follow a wider concept of corruption and provide a number of indices that often do not refer to criminal statistics or similar, but are often based on subjective appraisals or indices of a rather economic nature.

Figure 1 shows the agencies where data are collected; they are very different in their structure and their connection. Furthermore, the evaluation methods are very different. The comparative judgment of the evaluation and measurement of corruption therefore turns to be very difficult and must be restricted to rough and unclear differentiations. It can at best be regarded as advantageous for the measurement of corruption that by different measuring points and methods within one country, different perspectives are created and, as a rule, a more comprehensive and therefore potentially better picture of corruption can be drawn up which includes several perspectives. Furthermore, it is problematic that the data at the state agencies are difficult to access or not accessible at all. Transparency, the antidote for corruption, must begin, however, with the perception and measurement of corruption.

Figure 1: Data Collections on Corruption (author's representation)

Country	Ministry of the Interior/ Police	Ministry of Justice	Court of Auditors	Independent Public Positions	Private Positions	CPI 2006
Austria	X	X		X	X	8.6
Belgium				X	X	7.3
Cyprus				X ⁵⁰⁷	X	5.6
Czechia	X	X			X	4.8
Denmark					X	9.5
Estonia	X	X			X	6.7
Finland					X	9.6
France					X	7.4
Germany	X				X	8.0
Greece				X	X	4.4
Hungary	X	X	X		X	5.2
Ireland			X ⁵⁰⁸	X	X	7.4
Italy		X		X	X	4.9
Latvia	X				X	4.7
Lithuania				X	X	4.8
Luxembourg		X				8.6
Malta		X	X			6.4
Netherlands	X	X			X	8.7
Poland	X				X	3.7
Portugal	X	X			X	6.6
Slovakia				X	X	4.7
Slovenia	X	X			X	6.4
Spain		X			X	6.8
Sweden				X	X	9.2
United Kingdom			X		X	8.6

With the state agencies, it is recommended to notice – in the comparative analysis of the named sub-categories of state agencies – that the choice of duties, tasks and competences of the ministries in different countries can be very different. It seems reasonable at best to compare whether data are gathered at one or at several state agencies in a particular country, since several agencies allow comparisons, more perspectives.

a) State Data-collections

The data collections classified as relevant by the experts are allocated to different types, according to affiliation to organizations, ministries and so forth. Data are gathered in the Ministry of the Interior and/or in the police in the following states: Germany, Estonia, Latvia, the Netherlands, Austria, Poland, Portugal, Slovenia, Czechia and Hungary. Data collections in and at the Ministry of Justice exist in Estonia, Italy, Luxembourg, Malta, the Netherlands, Austria, Portugal, Slovenia, Spain, Czechia and Hungary. In the United Kingdom, Ireland, Malta and Hungary statistics are led in the Court of Auditors. Without considering all details, data

507 Is formed by representatives of different offices such as ministries, auditors, chairperson of a parliamentary committee (cf. corresponding country report).

508 Additional Parliamentary Opposition Committee.

collections that are established at the Court of Auditors can principally be classified as being more independent than data collections of agencies which are related to ministries. Such were identified as independent agencies by the experts in Greece, Ireland, Italy, Lithuania, Austria, Sweden, Slovakia and Cyprus.

There is an independent administrative unit in Belgium which provides publicly accessible information. In Ireland, there is a parliamentary opposition commission in addition to the agency of the Court of Auditors. In Greece, data are gathered by the Ombudsman and at the Chief of Staff of the Public Administration. In Malta, there is a permanent commission against corruption (Permanent Commission Against Corruption – PCAC).

Obviously, allocation and organization of the data compiling agencies are heterogeneous. The same is valid for the tasks, functions, degree of independence and bases of the corruption measurement. The existence of an agency as independent as possible which collects corruption data – next to other state agencies – seems generally desirable for effective corruption abatement. Although – as already explained– an agency gathering data independently is regarded as beneficial for the corruption abatement, only Ireland, Austria and Sweden show a relatively good CPI-value from the countries with such agencies. However good, adequate data collections do not mean that a country shows little corruption but rather that the chance to be able to measure available corruption is higher.

It appears desirable that many types be represented. In order to even come close to being able to comparatively measure corruption, it is necessary to have at least two to three corresponding agencies that measure corruption with similar methods in all countries. An EU-wide facility with researchers from all of Europe who interpret and use the data is still desired.

In some countries that achieve good rankings in the CPI, not all types of stations are available, as for example in Denmark and Germany. This can mean two things. Either that there is little corruption, and thus an operation of many agencies seems unnecessary at first; or, that the present corruption is not being measured. And then there are countries which achieve poor rankings in the CPI and have many stations. Here, one may hope for improvement soon – and rightly so. The situation is worst in countries such as Poland, Slovakia, Lithuania and Latvia. There are few state measuring stations in spite of bad CPI-values.

b) Private Data-collections

How important the independence of the data-collecting agency is shows in the importance of private organizations which collect data on corruption. The one organisation assessed as being the most significant that collects data on corruption is Transparency International. Nevertheless, even if this organization has preserved a large amount of independence itself, it still has to continuously defend and improve this. Regarding private agencies, dependences can arise

through donations and sponsoring. Thus for example, TI pays attention to deleting enterprises suspected of corruption from their sponsor lists.

The national chapter of Transparency International and sometimes additional private organizations that systematically collect data on corruption are mentioned as significant private data collection by the experts in most countries. Only in Estonia, Malta and Luxembourg are none named. Transparency International does capture data in Denmark, Finland, Lithuania, Czechia, Spain and Cyprus; however, no organization are present or are worth mentioning. By now, all 25 examined countries of the EU are ranked in the CPI. This means that even if no significant national data collection exists, data on corruption are collected by the non-government organization Transparency International in all 25 countries.

It is interesting that although Finland and Denmark did very well in the CPI, they do not have any other data collections from the private sector at their disposal which would be worth mentioning, according to the experts. In turn, states which have a poor CPI ranking often show private agencies which conduct systematic data collections to corruption. Thus for example Hungary rank 18th in the CPI in the European comparison of 25 countries, in spite of data being collected here by the police, the Ministry of Justice, at Transparency International and other private agencies and therefore in more different areas than in all other countries. In contrast to that, data are not collected in such a diverse manner as in Finland and Denmark, which always achieve good rankings in the CPI. The data of the private agencies are accessible to everyone. At public agencies they are mostly accessible also via websites or only after request.

It is known that there is no direct simple connection between a high measured amount of corruption and the rate of actually occurring corruption. Just as little can it be assumed that the more agencies collect corruption data, the less corruption there is and/or is perceived – see CPI.

According to the CPI, states in which more corruption seems to be present often have a heterogeneously organized data acquisition through several agencies. This offers good possibilities to fight corruption effectively. Hungary is ranked No. 18 out of 25 in comparison with the other included EU states. Good chances for an improvement of this rank exist, as the data collection is carried out at different agencies: at the police, the Ministry of Justice and the Court of Auditors. Whether a systematic, heterogeneously organized data collection will be successful also depends on other factors, however. Countries such as Lithuania (21st place in the comparison of the included 25 states of the EU) where the data collection is restricted on commissions, or like Poland (25th place), where it is carried out only by the Ministry of the Interior, have less chances of improvement.

States such as Finland and Denmark which achieve good rankings in the CPI have a state data acquisition which bears only few heterogeneous features. An improvement does not appear urgent here either. Data collection at more than the available agencies seems, however, also

recommendable here, since corruption is a perception offense.⁵⁰⁹ In many states which are now very low in Transparency International's perception index, there were phases in which corruption was present but not perceived. The perception of corruption has, however, become stronger in all countries concerned. Whether corruption also increased cannot be stated for sure. However, the portion of corruption that was recognized and thus could be fought has definitely increased. A lasting growth of this portion is only possible if the collection of data on corruption is strongly developed and heterogeneously organized.

3. Discussion of the Results

When corruption is measured more frequently and more thoroughly, it seems to increase. Furthermore, corruption can seemingly increase alone through further and increasingly more adequate anti-corruption standards which cover even larger areas of phenomenon and their circulation and implementation. This becomes clear when one considers Moroffs three phase model of the internationalization of the anti-corruption regimes (for example the UN Convention or the OECD Convention).⁵¹⁰ But increasing openness, worldwide networking and transparency do not cause corruption, they reveal it. Sometimes they can be wrong and point to corruption where there is none. This is valid all the more since the public is subject to an increasing medialisation and therefore its distortions of perception, representation and interpretation. From a democracy-theoretical point of view, it seems worrying that it is becoming less and less the case that the media is fulfilling the part of a 'fourth power' which is often ascribed them. On the contrary, they are increasingly becoming subject to economic objectives which urge towards scandalisation.⁵¹¹ Through the changed role of the media, corruption appears as 'the public construction of corruption' more and more.⁵¹² Against the background of information networking, globalization, and medialisation, the measurement of corruption appears to be a difficult task. Furthermore, the fact that corruption is understood differently worldwide and

509 Cf. *Ulrich von Alemann*, Systematische und historische Einleitung, in: *id.* (ed.), Dimensionen politischer Korruption, Beiträge zum Stand der internationalen Forschung, PVS – Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, page 14.

510 Cf. *Holger Moroff*, Internationalisierung von Anti-Korruptionsregimen, in: *Ulrich v. Alemann* (ed.), Dimensionen politischer Korruption. Beiträge zum Stand der internationalen Forschung, PVS – Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, page 444-477. A detailed representation of the conventions, etc. can be found in *Sebastian Wolf*, Maßnahmen internationaler Organisationen zur Korruptionsbekämpfung auf nationaler Ebene. Ein Überblick, in: FÖV Discussion Papers 31, Speyer 2006.

511 *Frank Marcinkowski/ Barbara Pfetsch*, Die Öffentlichkeit der Korruption - Zur Rolle der Massenmedien zwischen Wächteramt, Skandalisierung and Instrumentalisierbarkeit, in: *Ulrich v. Alemann* (ed.), Dimensionen politischer Korruption. Beiträge zum Stand der internationalen Forschung, PVS – Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, page 287-310.

512 *Frank Marcinkowski/ Barbara Pfetsch*, Die Öffentlichkeit der Korruption - Zur Rolle der Massenmedien zwischen Wächteramt, Skandalisierung and Instrumentalisierbarkeit, in: *Ulrich v. Alemann* (ed.), Dimensionen politischer Korruption. Beiträge zum Stand der internationalen Forschung, PVS – Politische Vierteljahresschrift, Sonderheft 35, Wiesbaden 2005, page 287-310, page 292.

among the EU states themselves has a complicating effect.⁵¹³ But even though explicit standards and explicit terms are lacking as a basis for the measurement and thus also for comparability, this state is still to be preferred to the time before the '80s, since a lot of what is measurable today was not even perceivable back then.

Increased transparency through improved and manifold measuring is a promising path. Indeed, corruption is not necessarily fought through more data collections and reports; nevertheless, abatement is made *possible* by data collections. A transparent representation of the number of delinquencies is a necessary precondition for successful corruption research, even though the dark figures cannot be covered by it. The strength of data collections of statistics on criminality etc. do not lie in the complete representation of corruption but in the possible representation of the facts collected up to now. As a rule, the strengths of the NGOs that measure corruption do not lie in the accuracy but in an approximation to a valid measurement through application of different perspectives.

The measurement problems described crystallize in the consideration of the most significant instrument for the measurement of corruption: the Corruption Perceptions Index from Transparency International. The most pleasant and most effective thing about this most important index is not its accuracy or reliability, but that a measurement is carried out at all – and in a transparent and understandable manner. Even if the index and its measurement quality are rightly criticized⁵¹⁴, it still does contribute decisively to the perception and abatement of corruption.

Its strengths are based in its weaknesses, as many different sources flow into it. The weakness of a wide and consequently inaccurately appearing definition becomes a strength, since this encompasses many phenomena that cannot be covered by a narrow legal definition. So all essential elements can be understood through the variety of the measuring stations and the broad definition.

4. Interim Conclusion

The heterogeneity of the agencies collecting data only indirectly influences successful corruption abatement. Through the analysis carried out, an evaluation of the chances of the corruption control and consequently its abatement can take place. The control and abatement chances increase with the heterogeneity. There is also the chance to perceive more aspects of corruption,

513 On the differing understandings and terminology cf. e. g. *Holger Moroff/ Verena Blechinger*, Corruption Terms in the World Press, in: Arnold J. Heidenheimer/ Michael Johnston, Political Corruption, Concepts & Contexts, New Brunswick, page 885-908.

514 On the method, cf. *Johann Graf Lambsdorff*, The Methodology of the Corruption Perceptions Index 2006, Passau and Berlin 2006.

which means to decrease the portion of undiscovered corruption through different methods of measurement and differently structured agencies.

Under certain circumstances, data collections on corruption can well measure the success of new regulations. A measurement of the success is, however, difficult with the present *kind of variety* of the data collections. A structured and standardized heterogeneity would be desirable. It is to be recommended that the countries have an equally structured minimum stock of data collections on corruption. These should gather data according to defined rules. The data would have to be publicly accessible without difficulty. It would be ideal to have an independent expert commission which would continuously evaluate the data collections in a standardized way.

In order to be able to fight corruption effectively (if it is present) and to be able to prevent corruption (if it is not present), it is recommended to follow several approaches when data on corruption are supposed to be collected and evaluated:

1. Operation of independent state agencies,
2. Data collections in/at at least two ministries,
3. Cooperation with private data collection,
4. Establishment of European-wide standards on corruption measurement – in addition to the present standards.

Ad 1. In order to be able to measure corruption as completely as possible, the independence of the actors of the examined is required. In order to be able to carry out thorough research, sufficient strength and instruction independence are required.

Ad 2. Since corruption is multi-layered, a measurement by as many observers as possible is required. This means that corruption should be measured and/or evaluated in as many agencies with different objectives at ministries. Suitable ministries are the Ministry of Justice, Ministry of the Interior or Ministry of Economics, among others.

Ad 3. There should be an active communication between state agencies and private agencies on corruption measurement which, however, does not endanger the independence of the private ones. Corruption can be referred to as a communication offense – and it can also be fought through communication. Concealed communication is the basis for corruption; transparent communication is an effective antidote.

Ad 4. Next to desired heterogeneity in the above-mentioned points, measurements according to common transparent standards also have to be carried out in order to facilitate a comparison. The setup of common standards is recommended.

There is a good chance of perceiving and evaluating existing corruption as faithfully as possible if these four points are adhered to.

II. Legislation dealing with Corruption

Most of the examined states – although not all – recognise their own *anti-corruption laws* (Austria, Latvia, Poland, Cyprus, Sweden, Lithuania, Estonia, the United Kingdom, Malta). So there is clearly a problem awareness with respect to corruption. The same is valid for the states which issue amending laws with respect to valid criminal or administrative laws and describe these amending laws as corruption abatement laws (for example Germany and Poland). The remaining states which have not become explicitly active here deal with corrupt behaviour in part through the penal code (for example Portugal, Czech Republic, Finland, Spain); others have ratified the UN or OECD Conventions (for example the Netherlands, Luxembourg, Hungary). The oldest legislation to deal with the fight against corruption is that of Great Britain of 1889 (Public Bodies Corrupt Practices Act) and 1916 (Prevention of Corruption Act). Particularly the states which deal with corruption via the penal code primarily perceive the offense of (active and passive) bribery (for example Czechia, Poland). In Denmark, the fight against corruption falls under the law against money laundering and terrorist financing; and under the Electoral Act in Ireland.

In most states, the *Principle of Legality* applies; only in the Netherlands, Denmark, Ireland, Malta and in Cyprus are oriented towards the *expediency principle* (principle allowing the public prosecutor to judge whether legal proceedings are appropriate in certain cases); in Luxembourg, both the Principle of Legality as well as the *expediency principle* apply.

Corruption has complex forms, since it is defined – with all the diversity of the concepts of corruption– as a deviation⁵¹⁵ from a state or behaviour interpreted as being correct. Naturally, the possibilities of deviation are countless. The first difficulty which the research on corruption has to deal with is therefore the determination of their research objectives (see A.II.). Consequently, it does not seem surprising that in most of the states, a legal definition of the concept of corruption does not exist. So for example only Greece, Latvia, Cyprus, Portugal, Lithuania and Estonia can refer to such a definition.⁵¹⁶

515 So Aristoteles, who in *Politeia* 1278 b 31 – 1279 b 10, quoted in the edition by: Jeffrey Henderson (ed.), Loeb Classical Library (1944 ND 2005), already uses ‘parekbasis’, the Greek word for ‘deviation’ or ‘overstep’, in order to describe the transition process from a good to a bad form of government.

516 Latvia: ‘For the purposes of this Law, corruption means bribery or any other action by a Government official intended to gain a benefit or advantage for him/herself or other persons by means of his/her office or authority or by overextending same’.

The Legal System of Cyprus counts with an official definition of corruption. The Civil Law Convention on Corruption and additional provisions, Law No. 7 (III) of 2004, gives such a definition in its Article 2: ‘corruption’ means the demand, offer, conferring or acceptance, directly or indirectly, of bribery or any other illegal benefit or expectation of them, that disturbs the smooth performance of any duty or conduct awaited by the acceptor of bribery, or the illegal benefit or expectation of them.

Lithuania: As for the meaning of corruption, the Law on the Special investigation Service (Article 2), provides the following definition: Corruption is a direct or indirect seeking for, demand or acceptance by a public

These largely follow the famous definition of *Joseph Senturia* of 1931. For him, corruption is the abuse of public power for private benefit.⁵¹⁷ The strength of this experimental definition is its concise elegance. The three elements *1. abuse*, *2. public power* and *3. private benefit* cover the corruption-relevant offense. *1. Abuse* can be understood as a behaviour against the rules, the exercising of authority of office is not carried out corresponding to the standard procedure. Accordingly, the definition presupposes the existence of a normative frame in a society, an assumption which the study picks up when examining corruption-relevant standards from a selection of EU member states, as will follow. *2. Public power* contains all positions on the levels of the state hierarchy equipped with authorisation and decision legitimization, as for example a delegation authorization. In this way, the legislative, executive and judiciary are covered, thus also the elected holders of political offices. While in Latvia, the focus is meanwhile put on ‘a government official’, the Lithuanian definition stretches the side of the public power and refers also to ‘person of equivalent status’ in addition to the ‘public servant’. The Cypriot definition is not restricted here to the public power and leaves this unmentioned. *3. Private benefit* includes any services of monetary value. This term includes both the direct advantage of the respective office-holder, as well as that of a third party. This aspect is supported in its definition by both the Cypriot state as well as the two Baltic states. It is striking that in the Lithuanian and Latvian definitions, the focus is put on the public sphere and in having done so, the purely economic sphere is faded out; in this way, relationships of corruption undoubtedly also exist within and between economical enterprises. The Cypriot definition ends in defining corruption as a behaviour against the rules. Consequently, an anticipatory stance cannot be explicitly derived from the actions of the affected persons, the legally correct exercising of office as conforming to the law is accordingly avoided.

Since a legal definition exists, it is to be presumed that the awareness of a problem is especially developed here. On the other hand, a legal definition can be also obstructive since the term ‘corruption’ can cover different offenses and is difficult to be described definitively in its form, which is why a definition could fade out possible crimes of corruption. Meanwhile, it is interesting that some states have their own corruption abatement laws although there is no legal definition (as for example in Poland and Germany).

servant or a person of equivalent status of any property or personal benefit (a gift, favour, promise, privilege) for himself or another person for a specific act or omission according to the functions discharged, as well as acting or omission by a public servant or a person of equivalent status in seeking, demanding property or personal benefit for himself or another person, or in accepting that benefit, also a direct or indirect offer or giving by a person of any property or personal benefit (a gift, favour, promise, privilege) to a public servant or a person of equivalent status for a specific act or omission according to the functions of a public servant or a person of equivalent status, as well as intermediation in committing the acts specified in this paragraph.

517 *Joseph Senturia*, Corruption, *Politica*, in: Edwin Seligman (ed.), *Encyclopaedia of the Social Sciences*, New York 1931, page 448 ff.

While only Luxembourg, Malta⁵¹⁸ and Cyprus do not have any Freedom of Information Act (FIA), it does exist in all other examined states. It is interesting that especially Luxembourg does not have any FIA and nevertheless occupies the eleventh place in the CPI (the fifth best in EU comparison) while Poland is bringing up the rear here (EU internally) and nevertheless is building on transparency regarding the FIA. In a functional respect, transparency can be described as a means of behavioural *inspection* in this context for their conformity with certain behavioural standards. It is therefore used for the *control* by providing information needed for the practice of control functions. The FIA allows citizens insight into public processes, so for example order books can be viewed and administrative processes can be controlled *ex post*.

III. Institutionalisation of Control Mechanisms

In the public sector, corruption occurs particularly in those areas in which the citizen is dependent on approvals, authorizations, permissions or registrations, generally speaking: when projects need state authorizations. At these points of contact, intertwinement between economy, administration and politics, arbitrary tendering procedures and non-transparent decision processes can favour corruption. Corruption can be considered as worthwhile when the hoped for or foreseeable advantages are large, but the risk of being discovered and punished is small.

This relationship must be reversed also by means of institutional precautions, which means: where possible, to minimize the occasions to corrupt others in advance and to maximise the probability of being discovered. This can be achieved by maximum transparency of decision procedures; in particular, however, also through well functioning control and investigation agencies. It is therefore decisive that control instances exist and that they are equipped to work with maximum efficiency.

Thus, the establishment and/or the expansion of an efficient integrity system is necessary. Such a thing as this is not limited to the separation of power of the state structure into the central institutions of the political system (executive, legislative and judiciary), but it includes a series of regulating institutions lying between these as well as outside of them. Parliament, administration, control institutions like Ombudsmen, Courts of Auditors and anti-corruption authorities, justice, media, lobby groups, NGOs and civil society must create an environment in which corruption does not thrive.

518 In Malta the free access to public documents is regulated in some cases by the ‘Press Act’ and the ‘Data Protection Act’.

1. Administration Facilities with the Task of Preventing and Fighting Against Corruption

The state organization is a primary starting point for the fight against corruption; it offers the best possibilities to make corruptive influences more difficult. Corruption is facilitated by missing, neglected or inadequate control. Therefore, the creation and upkeeping of a reliable control system has to be the goal. A task which is not easily managed in view of the general saving cuts which exist due to the shortage of public resources. A tendency towards an administration reform with the aim of a simplification of the administration through the reduction of bureaucratic obstacles and the speeding-up of administrative processes – under the aforementioned circumstances – often causes an accumulation of decision-making powers which then are distributed to a single or only a few persons, thus creating a setting rather prone to corruption. Simultaneously, control and supervision authorities are reduced in the sense of a ‘cutting back’ of the administrative apparatus. The dangers of a greater susceptibility towards corruption arising from this are foreseeable. The nevertheless existing need – or rather the necessity – to lower the costs of the state machinery cannot be denied, however. Still, this aspect can not enjoy absolute priority. The strengthening of the control instruments within the administration is rather something that must be seen to in view of this conflict of objectives.

A decisive basic condition must first be fulfilled for an effective institutionalised fight against corruption: control instruments – of whichever kind – depend on a complete documentation, which especially has to cover the principal reasons of decisions made as well as the manner in which they came into being. Only this way is a reasonable monitoring through internal (e.g. superiors, internal revisions) and external (e.g. regulatory authorities) controlling bodies as well as prosecution authorities possible. The above-mentioned right of freedom of information unfolds special significance in this context (see above, II.). Administrative actions do not only have to be understandable for state control instances, but first and foremost have to be controllable also through the citizen and private institutions. As an instrument for the corruption prevention in the administration, it can decisively contribute to making manipulations and corruption more difficult by creating the duty of having to disclose details on administrative processes to possible competitors, people concerned or even merely interested persons.

Only under these conditions, which are to a large extent fulfilled in the examined member states – although to different degrees – the control institutions primarily to be focused on here can be effective in the first place.

All examined 25 member states took measures in the sense of an institutionalized corruption prevention and abatement. In part, specific anti-corruption authorities were established. In part, administration facilities charged with general control tasks take on additional tasks in the area of corruption prevention and abatement.

a) **Special Anti-corruption Authorities**

Some of the examined member states have established specific authorities, departments or special units whose original and sole responsibilities are to be found in the area of the corruption prevention and/or abatement. Clear differences do exist, however, both with regard to the form of organization and in particular also to the competences of these state anti-corruption institutions.

In Belgium, a department has been established on the ministerial level which advises and supports the regions and communities in the development and organization of rules of conduct for the corruption prevention. The Irish ‘Standards in Public Office Commission’ which was established by law as an independent authority in the year 2001 has similar tasks. Cyprus established a Coordinating Body Against Corruption as well, the task of which is to act in an advisory capacity to the Council of Ministers in political questions concerning corruption and to suggest measures for a more efficient implementation of the legal regulations in this area.

The especially established anti-corruption authorities in other member states, as for example in Italy, France, Latvia, Malta and Poland go beyond advisory and supportive functions by being equipped with (initiative) investigatory powers.

In the year 2003, the Italian Parliament founded a new committee, assigned to the Council of Ministers: the ‘High Commissioner for Prevention and Inhibition of Corruption and other Offense Forms in the Public Administration’ (*Alto Commissario per la prevenzione e il contrasto della corruzione e delle altre forme di illecito nella pubblica amministrazione*). It is charged with the prevention and abatement of corruption in the public administration in the case of which it is endowed with comprehensive investigatory powers.

In France in the year 1993, an interdepartmental ‘Central Office for Corruption Prevention’ was established (*Service central de prévention de la corruption, SCPC*), which is under control of the Ministry of Justice. Primarily, the SCPC is responsible for the prevention of corruption. It also records, however, concrete information and examines suspicious cases. In the year 2003, the Ministry of the Interior started up a special unit for corruption abatement, the ‘*Brigade centrale de lutte contre la corruption*’ (BCLC) which is subordinated to the Department of Financial Investigations.

Latvia has set-up a specific agency under the supervision of the minister's cabinet which acts preventively and can conduct investigations. However, this ‘Office for the Prevention and Abatement of Corruption’ can not take any prosecution measures or use means of enforcement.

In the year 1988, Malta founded the ‘Permanent Commission against Corruption’ (PCAC) which, being a body which is specialized, independent and not bound by directives, is charged

exclusively with the investigation of corruption cases. The committee can become active on own initiative and has comprehensive rights of access to files. In addition to the reporting duties with regard to the corruption cases investigated, it is incumbent on the committee to elaborate on recommendations that aim at a corruption-preventive improvement of work methods or processes.

In Poland, the Central Anti-Corruption Office was established in June 2006, which is also endowed with investigative powers; in addition to that, however, it performs tasks in the area of research and the evaluation of the investigation and research results.

The ‘Commission for Corruption Prevention’, existing in Slovenia since 2004, is an independent state body, the task of which is to coordinate, develop and to enforce corruption-preventive measures in all public concerns.

While these institutions are mainly entrusted with preventive tasks and endowed with more or less extensive investigation authorizations, some countries also established institutions with very much more comprehensive authorizations. Lithuania and Austria are to be named here.

In 1997, Lithuania established the ‘Special Investigation Service’ at the Ministry of the Interior, an independent state institution, the only task of which is the prevention and abatement of corruption. It reports to the president and to the Parliament. For the fulfilment of this, it was equipped with far-reaching powers.⁵¹⁹ Lithuania is worthy of note beyond this as it has established more institutions solely charged with the abatement of corruption in addition to this central authority. There are special units at the prosecution, a ‘Chief Official Ethics Commission’, an ‘Interdepartmental Commission for Coordinating the Fight against Corruption’ as well as the ‘Internal Ethics Commissions’. In Lithuania, great significance is consequently attached to the corruption prevention and abatement through special state facilities.

In 2000, Austria founded the ‘Büro für Interne Angelegenheiten’ (BIA) (Office for Internal Affairs) as a specialized department of the Federal Ministry of the Interior. As an independent organisational unit which is not bound by instructions as regards content, the BIA leads nationwide security and criminal police investigations in the case of suspicious situations of malpractice in office and of corruption. The BIA cooperates closely with the responsible prosecutions and courts and is endowed with special competences compared to other security agencies. The responsibilities of the BIA in the area of prosecution and exposure of corruption are complemented by further important fields of activity within corruption prevention and education and/or training of personnel.⁵²⁰

519 For details on tasks and authorisations, see <http://www.stt.lt>, 18th June 2007.

520 For the individual task areas see <http://www.bia-bmi.at>, 18th June 2007.

In numerous member states, special units were arranged at the prosecution agencies and the police which are exclusively responsible for prosecuting cases of corruption offenses, for example in Germany, Estonia, Lithuania, Malta, Portugal, Sweden, Slovakia and Czechia. In 2006, the United Kingdom made available to the Serious Fraud Office, already founded in 1988, which as the fraud department is also responsible for corruption, a specialist team consisting of 15 expert civil servants for corruption abatement as a support.

Member states such as Germany and the Netherlands do not rely on central, external control and supervisory organs, but mainly on an internal kind of corruption prevention and abatement. During the last years, Germany employed more and more so-called anti-corruption commissioners – particularly at the local level – who are available as contact persons for corruption prevention in the agencies e.g. for employees, citizens and office management as interlocutors who advise the office management and inform the employees as well as pay attention to general signs of corruption. The tasks of the integrity representatives and/or the integrity agencies in the Netherlands are similar. However, there are also corresponding facilities in other member states that intensify the internal control mechanisms through specific anti-corruption facilities – in addition to the external control, as for example in Cyprus.

b) General Administration Facilities with the Task of Fighting Against Corruption

All examined 25 member states safeguard the legality of the administrative action through constitutional procedures which are characterized in that the ones acting on behalf of the state are obliged to report to a superordinate authority. Even though the prevention and abatement of corruption does not regularly fall into the responsibility of these general control instances, cases of corruption are indeed often disclosed on the occasion of reviews of administrative processes and of concrete administrative actions, since corruptive behaviour usually accompanies violations of the monitoring standards to be adhered to by the control instances.

The existing controls attendant to decisions through superiors in the authority are frequently complemented with inspections that are carried out by regulatory agencies or internal control instances. Here, not only formal or process-oriented aspects are brought into the focus, but the control also includes questions of legitimacy and expediency of the execution of tasks. In this sense, internal commissioners for the budget, accountants and internal revisions often check public institutions regarding the compliance of legal guidelines and the goals/aims of public institutions set by managements and/or laws. In particular, an ‘internal revision’ which – being an organisationally solid facility within an authority – is permanently charged with the controlling of administrative processes can be found for example in Germany, Finland, Greece, Luxembourg, the Netherlands, Austria and Czechia.

The authority measures for the control of legitimacy and expediency, which indirectly also possess a corruption-preventive and/or corruption-combating character, are complemented by

external controls in all 25 member states examined. The consulted experts continuously designate the Courts of Auditors as being the suitable institutions for that. In all examined states, as well as on the level of the European Union, the Courts of Auditors are granted a status and competences that guarantee a reliable control in this sense. The Courts of Auditors are independent state institutions which are in charge of comprehensively controlling the budget and economic management of the state institutions. For this purpose, they are regularly endowed with extensive controlling authorizations. The scope of the control extends to both the legitimacy of state action as well as to expediency aspects. Here, the economic efficiency and the thriftiness of the usage of funds are in the foreground. However, it is especially the broadly designed control competence – linked to that – which contributes to the prevention of general mismanagement and excessive expenditures. In view of its extensive competences and range of action, the Court of Auditors represents an effective instance of control in the area of corruption prevention and abatement – even though its own decision-making and responsibility, regularly only consists of counselling/advisory activities and reporting, and it lacks intervention rights of its own. In their advisory and reporting function, the Courts of Auditors have, however, a strong and particularly also a high-publicity position, so that the administration and Parliament actually take the recommendations and implement them. Courts of Auditors therefore contribute significantly to minimizing insufficiencies, especially in a way that goes beyond individual cases but rather in the sense of a sustainable and general structural improvement – which itself sometimes even prevents corruption.

In all examined 25 member states, there is in addition the institution of the ombudsman or institutions similar to that. As with the civil representative of the European Union, whose area of responsibility covers the complaints against EU institutions such as the European Commission or the European Parliament, the function mainly attributed to this institution is that of an ‘office for complaints’ on the state-member level.

However, differences can be found on the member-state level with regard to the concrete legal structure. In some member states, the ombudsman is an institution with constitutional status (thus for example in Finland, Sweden and Slovakia); in other member states, corresponding institutions are mainly found on the local or regional level (thus for example in Germany⁵²¹, the United Kingdom and Ireland).

The office of the ombudsman can be carried out by individual persons; often, however, it consists of committees which employ whole staffs of ‘ombudspersons’. For example it is the so-

521 In Germany, the Institution of the Ombudsman was introduced by the establishment of the defence commissioner (Art. 45b GG) – even though with limited function – in the year 1956. Similar facilities can now also be found more and more on the communal level now. There, civil representatives (Bürgerbeauftragte) support the citizens in the realisation of their rights concerning administration. Additionally, the petition committees also carry out the tasks of an ombudsman on the state and federal state level.

called *Volksanwaltschaft* (Ombudsman Board) in Austria which takes on amongst others the tasks of the ombudsman.⁵²² It is both an organ to control the public administration as well as an ombudsman, which is to mediate between citizens on the one hand, and offices and authorities on the other. In Sweden there are also several justice ombudsmen of the Parliament (*Riksdagens Ombudsmaen* or *Justitieombudsmaennen*) as well as a number of further ombudsmen which are appointed by the government and supervised by the Justice Ombudsmen of the Parliament.

Whereas in most member states only comprehensive powers of mediation, advising and also investigation are granted to the ombudsman, some member states endow the ombudsman and/ or the ombudspople with competences that reach further. In Sweden, Slovenia and Poland, for example the ombudsman can institute proceedings even without a concrete complaint, on his own incentive. In Poland, the ombudsman is furthermore entitled to the right to stop a proceeding, to pass it on to the responsible court, to only inform the complainant on possible legal remedies or to institute and lead the proceeding himself.⁵²³ The Swedish justice ombudsmen are active as special prosecutors in such cases that concern the violation of an official duty in the public service, and are also authorized to take disciplinary actions in such cases.⁵²⁴ The authorizations of the Finnish ombudsman have been designed to be similarly extensive.⁵²⁵

Although there are considerable differences between the respective member states' constitutional and legal regulations regarding the organization and the establishing of the forms of ombudsmen, at least a minimum of similarities in the nature of the organ can be determined regarding the functions which the ombudsmen are to fulfil within the system of governmental controls: As an independent instance, the ombudsman discovers abuse of power, mismanagement and/ or mistakes or failures in the public administration in general. In this function the ombudsman can be understood in all member states as an essential institution for the area of corruption prevention and abatement. The advantage of the institution of the ombudsman lies in its close relationship to the actors and the victims of corrupt behaviour. As an independent state facility, it can recognise structures or procedures inclined towards corruption (from an insider perspective) more succinctly than others, due to information provided by the victims of concrete suspicious cases. A strengthening of this function through an expansion of the (also executive)

522 There, the federal constitution assigns the Ombudsmen Board (*Volksanwaltschaft*) the general task of checking anomalies in the administration. Thus, the *Volksanwaltschaft* is to exercise a 'public control in the services of the constitutional state and democracy' and supplement the political control in this way (via the legislative bodies), the legal control (via higher authorities, supervisory authorities, the constitutional court, the administrative court and independent administrative senates) and the financial control (via the Court of Auditors); cf. http://www.volksanw.gv.at/i_volksanw.htm, 18th June 2007.

523 According to the 'Act of 15.07.1987 on the Commissioner for Civil Rights Protection (The Ombudsman Act)', published at <http://www.rpo.gov.pl/index.php?md=1372&s=3>, 18th June 2007.

524 See websites of the *Riksdagens ombudsmän* – JO, especially. the section 'Competences and Sanctions', http://www.jo.se/Page.aspx?MenuId=12&ObjectClass=DynamX_Documents&Language=en, 18th June 2007.

525 See <http://www.oikeusasiamies.fi/Resource.phx/ea/english/complaints/results.htx>, 18th June 2007.

authorizations of action, as for instance according to the Swedish example, could improve the efficiency of the prevention and/or abatement of corruption in the long-term. Not only the institution of the Ombudsman can be considered for that, however, also the specific anti-corruption authorities (already existing in some states) can offer the same advantages as can be shown in the example of the Austrian Office of Internal Affairs (BIA). Here, the inside view on internal matters of the administration is also associated with the function of a contact person for the immediate victims of corruption.⁵²⁶

2. Parliamentary Facilities with the Task of Fighting Against Corruption

Also the parliaments themselves carry out tasks in the prevention and abatement of corruption. This is natural in the field of legislation. In addition, they can play an important role, however, also during the control of parliamentary-internal processes as well as during the fulfilment of their classical function in democracies: the monitoring of the government.

There are often internal committees in the parliaments of the member states; these committees control the observation of ethic guidelines and/or behavioural rules for Members and/or ministers, so for example in Belgium (Deontological Committee⁵²⁷), Greece (Permanent Committee on Institutions and Transparency), the United Kingdom (Parliamentary Commissioner for Standards), Latvia (Mandate, Ethics and Submissions Committee), Lithuania (Commission for Ethics and Procedures⁵²⁸) and Poland (Committee for Ethics/ Integrity). In Germany, the President of the German *Bundestag* who also stands at the top of the *Bundestag* administration, carries out similar tasks.⁵²⁹ In which manner the Members and/or political office-holders in the member states are subject to, for example, certain Codices of Conduct, prohibitions of secondary occupations or also duties of disclosure regarding their income, is subsequently discussed under C.IV.2. and C.IV.3.

The function of a control organ aimed towards the government is ascribed to the Parliament as a whole. In the constitutional reality, however, it is particularly the opposition who acts as a central instrument of government criticism, since it is especially its members who are provided a

526 'All agencies of the department must inform the BIA immediately about relevant factual circumstances and allegations in writing (obligation to report) while every employee of the Ministry of the Interior and of all subordinate agencies can turn to the office directly at any time, even outside the chain of command (right to report). This right is naturally applicable to all citizens as well.' See BIA Statistik 2004, page 2, http://www.bia-bmi.at/downloadarea/de/statistik_2004.pdf, 22nd August 2006.

527 For example, the Deontological Committee established within the Flemish Parliament monitors the compliance of the Flemish representatives to the deontological code regarding the services for the population. In the first place, the code intends to achieve a change in mentality of both the politicians as well as of the population; see <http://jisp.vlaamsparlement.be/docs/biblio/brochures/deutsch.pdf>, 19th June 2007.

528 For details, see. http://www3.lrs.lt/pls/inter/dba_intra.w5_show?p_r=72&p_k=2&p_b=3800, 20th June 2007.

529 The duties of the President of the *Bundestag* are described in the Standing Orders of the *Bundestag*: 'The President represents the *Bundestag* and regulates its affairs. It maintains the dignity and the rights of the *Bundestag*, promotes its work, leads negotiations in a just and impartial fashion and maintains order in the House.'

number of rights and instruments by the constitutions, laws or rules of procedure. These rights and instruments are for the fulfilment of this control function in all member states, which allow them to become informed on the work and plans of the government. Therefore, in all member states, the MPs are endowed with question and information rights which either are organized as minority rights or to which the individual member is entitled.

The parliamentary investigation committees are to be mentioned as a further instrument of government control. Investigation procedures regularly enable the parliaments to independently and discretely examine factual circumstances (also those suspected of corruption) which fall into the government's area of responsibility. Regarding the organisation of this instrument in the member states, a similar nature can be determined in that the investigation committees are parliamentary *ad-hoc* committees with special rights and procedures. Investigation committees can regularly demand the submission of files, question witnesses (under oath), evaluate evidence and publicly report on the results of their investigation (cf. for example the country reports of Belgium, Germany, Estonia, Greece, Netherlands, Austria, Poland, Spain, Czechia and Cyprus). Despite the investigation committee instrument primarily representing an 'effective weapon' for the opposition due to its investigative authorizations, its public effectiveness and its accusational effect connected to that, the right to establish an investigation committee is still not organized as a minority right in all member states (as, however, for example in Germany, Portugal, Slovenia, Czechia and Hungary). For example in France⁵³⁰, Austria and Spain, only the parliamentary majority is entitled to this right.

Some member states recognise additional parliamentary committees which (as opposed to *ad-hoc* institutions such as the parliamentary investigation committees) are of permanent nature and (as opposed to the above-mentioned ethics committees) do not only serve the control of parliamentary-internal processes, but also fulfil a monitoring function of the government. Such facilities can be found for example in Germany (Petition Committee), Estonia (Select Committee on the Application of Anti-Corruption Act), Finland (Audit Committee⁵³¹), Latvia (Defence, Internal Affairs and Corruption Prevention Committee), Lithuania (Anti-corruption Commission), Malta (Standing Committee On Public Accounts⁵³²), Sweden (Standing

530 The opposition only has the right to apply for the setting up of an investigative committee. The setting up itself is decided upon by majority, however.

531 As of 1st June 2007, the auditing committee has taken over the work previously carried out by the five parliamentary auditors (as they were still described by the consulted expert), see <http://web.eduskunta.fi/Resource.php/parliament/committees/audit.htm>, 19th June 2007. It does not have the specific task of preventing and/or abating corruption, yet, from this point of view, it also indirectly focuses on the public management of the budget, as does the Court of Auditors.

532 In Malta, however, this committee does not specifically take on the disclosure of corruption, but it is designed as a parliamentary control of the Court of Auditors and its reporting.

Committee on the Constitution⁵³³) and Slovenia (Commission under the Prevention of Corruption Act).

3. Role of Media, Science and NGOs in the Fight Against Corruption

Media can play a (quite important) role in the prevention and abatement of corruption because there is a ‘public’ in which one can accuse corrupt actors. This public is constituted by the citizens of a country whose interest in this kind of coverage can vary in its degree of strength. The role of the media in the fight against corruption gains significance if the media users are interested in the subject matter, if even the media usage itself is of interest and if the media is independent and credible in their reporting from the media users’ point of view. If these conditions are fulfilled, the public pressure can theoretically lead politicians and bureaucrats to more responsible behaviour. Nevertheless, although such an effect is to be critically questioned in concrete cases, it can be presumed that this pressure can be intensified or even weakened with the aid of the media (for example through minimizing reporting or nonobservance).

The consulted experts from Belgium, Estonia, Finland, Greece, the United Kingdom, Italy, Lithuania, Malta, the Netherlands, Poland, Sweden, Slovakia, Slovenia, Spain, Czechia, Hungary and Cyprus report of an important and active role of the media in the abatement of corruption in this sense.

On the other hand, the consulted expert from Ireland only ascribes a subordinate role to the Irish media due to the restricted circulation of domestic media and refers to the greater attention that British media enjoys in Ireland as well. The consulted expert from Denmark sees the role of the Danish media as being similarly reserved; however, he attributes this to the attention generally only set aside for the phenomenon of corruption. The consulted expert from Austria judges the role of the Austrian media to be similar.

From a theoretical view of corruption, it is not fundamentally about whether or not the media acts with ‘nobleness’ when disclosing factual circumstances of corruption or if they are simply driven by the intent of profiting from higher distribution sales. Emotionally charged topics such as corruption always have a sales- promoting effect in the media sector so that a broader public is reached. The possibly missing ‘nobleness’ becomes relevant, however, if the media themselves are even under the suspicion of being corrupt or only just biased. If corruption or partisanship – be it only in the eyes of the public – have influence on mediacoverage, the role of media in the prevention and abatement of corruption is devaluated.

533 This committee checks government action and the ministers, and submits reports to the Parliament, among other things.

The consulted expert of France assesses the role of the media as being weak and gives three reasons for this: firstly, because the building industry holds 43% of the shares of the first television program; secondly, because according to his appraisal, it can be observed that many journalists are dependent on politics; and thirdly, because daily papers are printed only in small circulation. The two first-mentioned factors indicate a presumed partisanship in the sense of the above-mentioned statements. In a restricted form, this is also valid for the assessment of the consulted expert from Latvia. He does indeed ascribe an active role to some of the daily papers; however, he generally refers to the issue of the ownership structure regarding media-enterprises, which is often unclear or also governed by dependences, and journalists thus find themselves to be in a weak position compared with the media owners. The consulted expert from Portugal states a lacking attention of the media and attributes this to the interweavement between politics and media as well.

The role of science in the prevention and abatement of corruption is differentiated from that of the media. Science mainly enjoys the attention of the ‘technical public experts’ and therefore does not regularly reach a similarly wide audience. But science unfolds its strength in the prevention and abatement of corruption in another area. A democratic community cannot function without standards – written and unwritten. In view of this, the role of science, generally speaking, consists of the setting and/or developing of standards as well as the demanding of the set standards for that part of our social and cultural structures which regulates the human social activities. In other words, their task lies in the evaluation and/or design of rules and sanctions and thereby the influencing of decisions, actions and the conduct of the relevant actors. However, science rarely finds itself confronted with the problem of lacking conformance of what is to be and what is, the legal system and reality, official statement and actual practise. In turn, however, it has the task of uncovering exactly these discrepancies when investigating and evaluating the both written and unwritten rules. In this function, only an indirect (and therefore most likely hardly perceived) position of influence for the prevention and abatement of corruption is ascribed to science. In the critical analysis with the emotionally charged topic of corruption, it is often eclipsed by the scandalous media coverage – even in the discussion of state decision-makers. It is probably due to this circumstance that eleven of the 25 consulted experts⁵³⁴ did not give any statement on the role of science in the prevention and abatement of corruption and five of the consulted experts⁵³⁵ classified the role of science as being small. Still, seven of the consulted experts (from Belgium, Estonia, the Netherlands, Sweden, Spain⁵³⁶, Czechia and Hungary) awarded a significant role to science. Two more consulted experts (from

534 No details were given on this by the consulted experts from Germany, France, Italy, Lithuania, Luxembourg, Malta, Austria, Poland, Portugal, der Slovakia and Slovenia.

535 This statement was made by the experts from Denmark, Finland, Ireland, Latvia and Cyprus. However, the Finnish expert justified his opinion by saying that corruption in Finland is not a problem and therefore it doesn't receive any attention from the scientific community.

536 The Spanish expert evaluated the roll of science as not being stronger than that of the media.

Greece and the United Kingdom) approved of a function of science in the prevention and abatement of corruption – with restrictions.⁵³⁷

The role of the nongovernment organizations (NGOs) in the co-operation of the (private) actors in the prevention and abatement of corruption can be described in brief as an attempt by the NGOs to fulfil the functions of media and science cumulatively. Being non-profit and often democratically structured member organisations, they are geared towards influencing the decisions, actions and the conduct of the relevant actors by presenting the results of their research or results of investigations on individual cases with a high publicity effect. They gain their special significance in view of the fact that they are founded by citizens who share the same interests and who then joined for commonly acknowledged objectives. This way, they make up a part of the citizens thus a relevant power in society. In view of this, it is surprising that only seven of the consulted experts (from Ireland, Latvia, the Netherlands, Poland, Sweden, Slovakia and Czechia) describe the role of NGOs in the prevention and abatement of corruption as being important. The information of the consulted expert from Spain did not go beyond the statement that the role of the NGOs does not surpass that of the media. But anyway, 13 more of the consulted experts⁵³⁸ gave no information on the role of NGOs and four consulted experts (from Finland⁵³⁹, Greece, the United Kingdom and Cyprus) even denied a significant role of the NGOs.

4. Interim Conclusion

The institutionalization of control mechanisms in the member states occurs in a very heterogeneous way. In part, available organisational structures are used for corruption abatement or sometimes such organisational structures are newly created. The controls are partially carried out internally or across authorities. Some member states make use of all these possibilities, others use only some of them. The way in which the different paths of institutionalisation of control mechanisms are taken also varies significantly. Thus for example central contacts or also internal revisions are established within an authority, departments and/or sections. Specific anti-corruption authorities are employed and ombudsmen or also the Courts of Auditors are charged with tasks of preventing and combating corruption. The institutions, however, do not only differ in their organisational form but also in their competences. The question alone whether control instances are authorized for the acceptance of both internal as well as external reports is not answered homogeneously. In which manner an evaluation of the information is carried out and

537 For Greece, a limitation is made regarding the influence of the scientific contributions towards the actual situation. For the United Kingdom, the expert indeed stated an increasing amount of attention from the scientific community, complains however about a thematic narrowing of the discussion.

538 No details were given on this by the consulted experts from Belgium, Denmark, Germany, Estonia, France, Italy, Lithuania, Luxembourg, Malta, Austria, Poland, Portugal, Slovakia and Slovenia.

539 Also here – as already in the evaluation of the role of the scientific community – the Finnish expert justified his opinion by saying that corruption in Finland is not a problem and therefore it doesn't receive any attention from the NGOs.

how the information is to be further processed is regulated variably according to specific countries, too. Mere informative and consulting competences are possible but also individual powers of intervention or the establishing of a duty of information towards the prosecution authorities.

The situation on the parliamentary level presents itself less confusingly, but also less actively, however. Only few member states have organizationally established hardened institutions for the prevention and abatement of corruption within the parliaments. Most member states merely recognise the right of the setting-up of *ad-hoc* investigation committees, the majority of the consulted experts, however, did not award any special role to these in the prevention and abatement of corruption.

The assessment of the consulted experts regarding the corruption preventive and abating effects of science and NGOs is similarly reserved. From the area of private institutions, only the media is awarded a significant role.

Science and NGOs especially, but also the parliaments are institutions which can have a long lasting and broadly designed influence on the public opinion, the raising of awareness and the general attitude towards corruption. Special attention should therefore also be paid to a strengthening of the private institutions and/or a stronger participation of the parliaments in the prevention and abatement of corruption (beyond the legal activities and in fulfilment of a model function).

IV. Actors

1. Public Administration

Public employees take a special position in this respect, in so far as that – in a certain way – they hold a ‘position of monopoly’ concerning the exercise of certain sovereign rights. Certain applicants who want to put through their interests in the administration can attempt to influence official decision processes in their favour through the granting of certain advantages; yet, the other way around, it is also true that public servants can abuse their ‘position of monopoly’ in such a way as to make certain decisions depending on benefits provided by the applicant. This special situation is taken into consideration through formal expression of legal and disciplinary standards. Thus, cases of undue influence (as for example bribery offenses) are subject to standards under criminal law in all member states; fines and imprisonment are the sanctions provided for this. Additionally, depending on the respectively imposed sanction, the loss of civil servant rights and/or the job can be applied as further sanctions. Furthermore, regulations for the acceptance of gifts are also found (for example Greece, Luxembourg, Estonia, and Belgium forbid journeys at the expense of a private third party or enterprises and the acceptance of gifts in the respective standards concerning civil servants).

Often the grantings of advantages of small value are the starting point of corruption. They frequently pave the way to corruption.⁵⁴⁰ Even if at first these seem to be advantages, the acceptance of which lies below the threshold of criminal relevance or even the relevance of service-regulations, such allowances are always used for the maintenance of contacts and the improvement of the cooperation between enterprises and administration which always contains the latent danger of a change into favouritism.

Among other things, the preconditions for the integration into the EU relate and/or used to relate to the extent of corruption and the measures for its abatement in the accession scale of corruption. It is therefore not surprising that especially in the youngest member states, enormous efforts have been undertaken in the area of corruption abatement.

The venality of public employees does not only occur in authoritarian states, but also in western democracies. According to the 2004 report of the German Federal Office of Criminal Investigation, the general public administration is for example clearly by far the main target area for corruption in Germany (about 75%). Two-thirds of all corruption cases concern the allocation of public tasks, particularly construction projects.⁵⁴¹

Even if the extent of corruption and the economically resulting costs cannot be properly estimated in this area, administrative decision-making processes can nevertheless be distorted.

Additionally, the citizens' confidence in a flawless administration process and structure and thus in the constitutional state is endangered. As a taxpayer, the citizen also fears considerable damages on top of that. The dangers of such venality – and therefore the danger of corruption – must be effectively counteracted by all state agencies in order to meet the claim of every citizen to a fair, proper and impartial procedure.

a) Legal Position within the National Legislation

It is difficult to reduce the causes of corruption to one explanation since various factors are to be considered. If, however, civil servants are paid in a manner that they become dependent on secondary employment and/or income, this can certainly be a factor which supports

540 The *situative corruption* is to be excluded from this, as this results from a favourable situation and has not been prepared for long (e.g. bribery attempt of a police officer during a vehicle spot-check).

541 www.transparency.de/Verwaltung, 23rd May 2007.

corruption.⁵⁴² An Egyptian saying from about 2000 B.C.: ‘Make your civil servants rich, so that they will carry out your laws.’⁵⁴³

It must not be part of the political culture to consider low income as a justification for the acceptance of bribes through state employees.

In close connection with this is also the problematic nature of secondary employment, which is referred to under IV.1.c) bb).

aa) Rights and Duties of the Employees in the Public Administration

However, not only does the ‘direct’ monetary aspect play a significant role in the case of the question of income, but also ‘indirect’ advantages of monetary value, such as social securities. Possibilities for such can be for example a ‘job security’ through the appointment to a civil servant for life, coverage of the health insurance, economic security for retirement or the grant of family allowances. Such a certain privileging of the employees of the public service indicates their position in the state which takes the special importance of its employees into consideration and ‘rewards’ them. In return, they are obliged to carry out official tasks impartially.

This model, in which the state provides for its employees and makes them – to a certain extent – independent from third party influences, yet demands a comprehensive faith and duty of loyalty for that as a return service, is characteristic for all member states of the European Union. The concrete structure, however, and therefore also the specific rights and duties of the state employees, vary from member state to member state.

Nevertheless, two types of civil servants can be basically distinguished. One, traditionally called civil servants, are appointed for life and are interminable. The other ones constitute their employment to the state by means of a private law contract and are subject to the general law which is valid for all employees; they are employees of the state.

In most member states, the public administration consists of both civil servants and employees. Only in Luxembourg are the employees exclusively employed for life. Italy and Spain form the diametric exception, as they only employ employees under private law.

In the cases in which in civil servants and employees in the public service are employed simultaneously in one member state, one can speak of an extensive approximation of their positions. If privileges are given (see below), these two groups are entitled to them equally. The

542 Personal factors play a roll as well (personal weakness) as for example incapacity, high standard of living or debts, which cannot be dealt with here, however. In this context, the study can only deal with control possibilities as these represent institutional basic conditions.

543 Quoted from *Wolf Middendorff*, ‘Unterschleif und Korruption im Rahmen des üblichen ...’ *Wirtschaftskriminalität in historischer and kriminologischer Sicht*, in: *Kriminalstatistik 1985*, 160 (160).

only significant difference, if at all, could be seen in that the civil servant is appointed for life and thus – unlike the employees – is interminable. It is to be noticed, however, that the private law employees in the public service are provided a comprehensive protection against dismissal following certain rules,⁵⁴⁴ and they thus enjoy a relative job security. This is only understandable if one considers that the state demands comprehensive faith and loyalty duties also from these employees under private law.

Italy and Spain once again form an exception for the privileging of protection against dismissal for their employees in the public service. The cause for this is probably the lacking comparism between employees with this dismissal protection and those without in the public administration in these countries so that they do not find themselves compelled to constitute a special protection against dismissal for their employees for the sake of avoiding internal friction.

In spite of the explicit duty of loyalty which the employees are subject to in the public administration, they are allowed in many member states⁵⁴⁵ to strike in order to improve their legal labour position. This is valid also in Luxembourg, if even in a remarkable manner, as it is a country that only has lifetime employees in its public administration.

The possibility to strike is always accompanied by the latent danger of legal incapacity and/or limitedness of the state. This is also the reason why for example in Germany, the civil servants – but not the employees however – are forbidden to participate in strikes. Other member states⁵⁴⁶ which grant their employees a right to strike also prevent this danger by excluding certain areas of the public service from the right to strike. For logical reasons, these are: the courts, the police, prison guards and the military.

Even though a certain number of member states design their contractual relationships through contracts under private law, it cannot be concluded from this that a complete levelling of work relationships and/or contractual relationships in the private sector and thus a ‘quasi-abolishment’ of the special status of the public servants would occur. A special loyalty relationship⁵⁴⁷ to the state is established (as through the imposition of neutrality and loyalty duties, especially for judges, attorney generals, military, police and in the diplomatic service) which expresses itself strongest through the fixing of the strike prohibition in these areas. Simultaneously, what also becomes clear through this is that the state cannot be put out of action in these areas.

544 For example Belgium, Greece, Ireland, Latvia, Luxembourg, the Netherlands, Poland and Cyprus.

545 So in Estonia, France, Greece, Latvia, the Netherlands, Sweden, Portugal, Spain, Italy, Czechia, Hungary and Cyprus.

546 Latvia, France, Greece, Estonia, Sweden, Spain, Czechia, Hungary.

547 So also in Italy.

bb) Workforce of the Public Administration in Comparison to Workforce of the Private Sector

In almost all member states⁵⁴⁸, income possibilities in the administration are evaluated as being higher in comparison to the private enterprise, mostly in the lower salary levels; in those areas where better qualifications are important – thus academics in particular – the income is judged as being higher in the private sector. Additional compensations – as they are usual in the private sector – are not normally paid in the public administration.⁵⁴⁹

A compensation for ‘lower’ income is created, however, by other securities in various ways.⁵⁵⁰ Thus in Cyprus for example, the members of the public service receive free healthcare in state hospitals; in addition, they receive a lump sum in addition to their pension which is based on their last salary and the number of their years of employment. Civil servants in Germany and Austria are neither covered by an unemployment nor a retirement plan; they gain direct claims from their respective employer. In France, the employees of the public sector receive privileges as well in that they must pay lower pension contributions over a shorter period of time. Contributions to unemployment insurance are dropped entirely. Members of the Greek Public Administration receive on average a higher pension than corresponding employees in the private sector and are subject to special provisions for credit. In Luxembourg, specific special conditions exist for public employees with regard to health insurance. Other privileges such as family benefits⁵⁵¹, settlement of debts arising from professional training⁵⁵² and coverage of further educational costs⁵⁵³ can also be found in isolated cases.

However, there are also countries which offer their employees in the public administration hardly any more social securities than it is usual in the private sector. These countries are: Finland, Italy, the Netherlands, Austria, Poland, Sweden and Czechia.

In general, a position in the public sector is seen as more secure⁵⁵⁴ and also as more regulated⁵⁵⁵ in terms of holiday time and free time.

The granting of privileges, the relative security of the job and not least of all the fact that also especially the lower salary levels in the area of the public administration lie above the country's average income contribute to the formation of the predominant opinions in almost all

548 Belgium, Denmark, Germany, Estonia, Finland, France, Greece, Ireland, Latvia, Luxembourg, the Netherlands, Austria, Poland, Sweden, Slovenia, Spain, Czechia, Hungary, Cyprus.

549 Expressly for example in Denmark, Ireland, Latvia and Lithuania.

550 Especially in Germany, France, Greece, Lithuania, Luxembourg, Hungary and Cyprus.

551 For example in France and Luxembourg.

552 Estonia.

553 Latvia.

554 For example in Ireland and Hungary.

555 So for example in Estonia, Greece, Sweden and Spain.

countries⁵⁵⁶ that employees of the public service are not dependent on an additional income. In Italy, however, the low income possibility and the lacking special social securities are considered as indicators for the corruption occurring with civil servants.⁵⁵⁷

cc) Structure of the Public Administration

Depending on the internal state structure of the individual member states, the administration structure can be divided into two⁵⁵⁸ to four⁵⁵⁹ levels. The individual administrative levels of the countries are charged with competences and individual responsibilities in very differently marked manners; it can be determined, however, that the lowest administrative level, usually called municipality or commune, acts autonomously in a very predominant number of the member states⁵⁶⁰, meaning that it is given its own decision-making powers in defined areas. This is shown to the largest extent in Italy, as there the entire general administrative competence lies with the municipalities. A part of the administrative competence, however, can be transferred onto the other administrative levels by law, namely the provinces, regions or the state, for the sake of the uniformity of the implementation.

Ireland is an exception concerning self-government. This country defines itself as strictly a centralised state; consequently, the local governments may also rule only within narrow legal and regulative restrictions.

The administrative structures of the member states are fundamentally hierarchically organized.⁵⁶¹ The lower administrative levels are instruction-dependent towards the higher ones and are furthermore subject to their permanent control. Also the decisions of the lowest administrative levels⁵⁶² made within the framework of the self-government are subjected to a control in principle, not least also due to the fact that the municipalities and communes are largely financially dependent on the higher levels of administration, despite all possible self-government.⁵⁶³ The case of Hungary presents itself differently; here, the municipalities enjoy a autonomy guaranteed by the constitution. There, the decisions of the lowest administrative level are entirely exempt from national control and therefore potentially more prone to corrupt behaviour than for example in Italy.

556 Expressly in Denmark, Germany, Estonia, Finland, France, Luxembourg, Austria, Sweden, Czechia, Hungary and Cyprus.

557 *Hans R. Claussen/ Heribert Ostendorf*, *Korruption im öffentlichen Dienst*, 2. Aufl. 2002, page 24.

558 So for example in Estonia, Finland, Latvia, the United Kingdom, Ireland, Luxembourg, Portugal and Slovakia.

559 Examples of three or four levels: Belgium, Germany, France, Sweden, Spain and Hungary.

560 So in Denmark, Germany, Estonia, Finland, France, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Sweden, Slovakia, Slovenia, Czechia and Hungary.

561 So for example in Denmark, Germany, Estonia, Finland, Greece, Latvia, Lithuania, Malta, Austria, Poland, Sweden, Slovakia, Slovenia, Spain and Hungary.

562 Compare for example Denmark, Germany.

563 Expressly in Estonia.

dd) Privatization

Tasks which had classically always been monitored and implemented by the countries' public administrations are increasingly being transferred to private institutions in all of the member states. Especially concerned here are the areas of infrastructure such as energy⁵⁶⁴ and water supply⁵⁶⁵, transport⁵⁶⁶, waste management⁵⁶⁷, telecommunication⁵⁶⁸ and traffic⁵⁶⁹ (infrastructure of streets, toll, car inspection, etc.). But also social tasks are transferred to private enterprises. So for example: child⁵⁷⁰ and senior citizen care⁵⁷¹, insurances⁵⁷², health service⁵⁷³ (especially hospitals), radio⁵⁷⁴, television⁵⁷⁵ and bank and credit services⁵⁷⁶.

In some member states, however, the state reserves a certain degree of control possibilities by further holding shares in the new society forms⁵⁷⁷ under private law, or mainly awards only public orders instead of the entire outsourcing of an activity branch.⁵⁷⁸

b) Allocation of Financial Resources

The supervision of the public budgets through independent organs is a necessary instrument in controlling the administration. In addition such control can also support the Parliament in the fulfilment of its controlling function.

The importance of such control instances is allowed for through the existence of National Courts of Auditors (in the Federal Republic of Germany and in Austria both on the level of the federal government as well as on federal state level), of audit offices or of Departments of Financial Control, settled with some ministries (for example in Luxembourg) in all member states. In Denmark, the independent agency 'Rigsrevisionen' which is similar to a Court of Auditors, consists of six Members of the national Parliament. In Malta, there are additional authorities (Director of Contracts and the General and Special Contracts Committee) which control the public procurement procedure; where appropriate, the procurement procedure can be suspended

564 So in Belgium, Denmark, Finland, Greece, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Spain and Hungary.

565 For instance in: France, Latvia, Spain and Hungary.

566 In Denmark, Greece, the Netherlands, Poland, Portugal, Slovenia, Spain, Czechia, Hungary.

567 For example in Belgium, Denmark, Germany, France, Latvia, Poland, Portugal, Slovenia, Spain, Czechia and Hungary.

568 For example in Belgium, Germany, Greece, Lithuania, Luxembourg, the Netherlands, Austria, Portugal, Slovakia, Slovenia and Czechia.

569 For example in Finland, Ireland and Austria.

570 Cf. Denmark and Portugal.

571 So for example in Denmark

572 For example in Italy.

573 In Germany, Portugal and Czechia, among others.

574 For example in Portugal.

575 For example in Portugal.

576 For example in Greece, the United Kingdom, the Netherlands, Austria and Slovakia.

577 For example in Denmark and Finland.

578 For example in Cyprus.

through these authorities in the case of suspicion of improper favourable/unfavourable treatment. Furthermore, specific ‘Local Government Auditors’ on the level of the district councils have been established in Malta which especially control the local procurement procedure. In Estonia, a role in the prevention of corruption is ascribed to the control agencies established internally in all ministries. In Latvia, every public institution must have an internal control agency which reports to the Parliament.

Essential tasks of these control authorities lie in the inspection of the legitimacy and expediency (also economic efficiency) of the use of state funds. In the majority of the states, the results of the controls carried out are submitted to the inspected authorities and also to the parliaments for information or commenting; usually, the reports are then accessible to the public. A democratic control follows the control task of the Courts of Auditors – in the majority of the member states – through the compulsory disclosure of the reports. In Belgium for example there is no institution which exclusively deals with corruption abatement in the area of the public management of financial resources. There however, transparency is increasingly counted on, in the form of the publication of reports in the Internet by different agencies.⁵⁷⁹ Corruption cases are also uncovered by the ‘Financial Processing Unit’ – in a way as a ‘by-product’ of the investigations with regard to the crimes that stand in connection with money laundry. This independent administration authority mainly has the task of fighting money laundering. It can initiate investigations due to tips from specific finance institutions or individuals. An especially marked consciousness with regard to the necessity of corruption abatement is not present at the ‘Financial Processing Unit’. It rather becomes active in the sense of a specific prosecution authority against money laundering.

In contrast, the Belgian National Court of Auditors is endowed with specific control authorizations concerning the public management of financial resources (similar to the regulation in Spain, where every expense of the public administration is subject to authorization by the ‘Interventor’). Its approval is necessary in approximately 20% of the expenses from the public budget. Should the Court of Auditors refuse its approval to the Ministry of Finance, the government can disregard this decision after a detailed examination and according information given to Parliament. With regard to the remaining 80% of the public expenses, no control authorizations are attributed to the Court of Auditors. The Belgian system is therefore rather careless concerning the control of the public management of financial resources and the fight against corruption.

Nevertheless, scandals have become known in the nineties concerning the public management of financial resources. This public attention can traced back to the publication of the reports of the

579 For example at: http://www.ctif-cfi.be/menu.php?lang=en&page=ann_rep, 26th July 2007.

‘Financial Processing Unit’ as well as those of the National Court of Auditors, among other things.

The already mentioned Departments of Financial Control in Luxembourg also counts affects the public. The finance controllers control and approve every public expense. If a minister wants to disregard a decision of a finance controller, he must justify this publicly.

Even if the fight against corruption is often not explicitly listed in the task catalogue of jobs of the national Courts of Auditors, it is still (inevitably) included in the control process through the disclosure of (possible) irregularities. Thus the annual report of the Italian Court of Auditors to the Parliament gains important meaning also in the sense of a corruption statistic.

Nevertheless, there are authorities in some member states whose explicit task is also put in concrete terms towards the abatement of corruption. In Greece, the General Inspector of Public Administration is responsible for the disclosure of misconduct and corruption. Furthermore the ‘Inspectors–Controller's Body for Public Administration’ was established as an internal control agency for the abatement of corruption in Greece which can also become active in the prosecution of the violations disclosed. In Poland, an ‘anti-corruption unit’ has been established in the Ministry of the Interior since 2003, whose task consists in fighting and/or preventing corruption in the area of this department. The national Court of Auditors in the Netherlands (*Algemene Rekenkamer*) may also not have been charged with explicit corruption abatement, but it follows a ‘good-governance’ strategy within the framework of its control which puts aspects such as transparency, liability, efficiency and performance into the focus of corruption abatement. Slovenia has established a ‘Commission for the Prevention of Corruption’ of their own whose main tasks lie in the prevention of conflicts of interest and the integrity control in both the public and the private sector.⁵⁸⁰ In Cyprus, the ‘Auditor General’ controls the public management of financial resources and is endowed with comprehensive authorisations with regard to the auditing, the accessing to information and the accessing to files. Its authorisations idle, however, in so far as that the Parliament and/or a parliamentary investigation committee has the ‘last word’ in corruption cases and decides on a further prosecution. In the same way, the Austrian Court of Auditors cannot order any measures in order to remedy any irregularities in the public management of financial resources. The responsibility for that lies with the Parliament of the Federal Government or the respective country's Parliament alone. Through an increased media attention on the reports of the Court of Auditors, an outstanding position is attributed to them in Austria, however. The Finnish Court of Auditors publishes its reports⁵⁸¹ on the control of the public management of financial resources under the provision of the secrecy of trade secrets. However, these publications did not lead to the exposure of scandals in this area which

580 <http://www.ehfcn.org/index.asp?id=1163673>, 26th July 2007.

581 http://www.vtv.fi/index.phtml?menu_id=5&lang=3, 26th July 2007.

certainly can be interpreted in different directions. On the one hand, the nonexistence of scandals could speak for the effectiveness of the audit in the sense of corruption prevention – especially under inclusion of the evaluation of Finland in the Corruption Perceptions Index⁵⁸² as one of the three states perceived to be the least corrupt; on the other hand, however, it could also point to a disinterest of the (media- and/or) public in controls and reports with regard to the management of financial resources.

In Lithuania, a discrepancy between the desired and actual state is felt in the area of the public procurement procedures. While the involved civil servants from the public administration think the procurement procedures to be transparent and hardly susceptible to corruption, the applicants from the private sector lament that the processes leave room for corruption and illegal agreements, despite Lithuania having charged various authorities with the task of auditing and internal control.

c) Public Services Law and Human Resources in the Public Administration

aa) Influence of Political Parties on the Staffing

In the following, the issue is to be approached to what extent decision processes in the administration can be influenced through party-political personnel decisions and can be distorted by that. Two stages can be distinguished here.

On the one hand, the stage of the actual personnel selection, which is the selection of the ‘suitable’ candidate that is determined through the respective party-political influence.⁵⁸³ In this case, this personnel selection does not occur exclusively according to ‘neutral’ points of view, such as the usual requirements oriented towards the job applicant profile and selection procedure; it does therefore not take other qualified competitors into consideration who are running for office due to the public job announcement. A selection based on qualitative aspects will only occur if the selection procedures are carried out by means of appropriate contents-related decision criteria which meet the conditions of a fair procedural organization. In this way, the principle of ‘selecting the best’ is to be guaranteed for the public service not only in the interest of the individual applicant, but also in the interest of institutional ability to function and perform.⁵⁸⁴ Personnel recruitment can therefore occur only according to suitability, qualification and professional performance; other criteria must not be used.

On the other hand, one can look at the stage after the finalised personnel decision made through party influence, which is then about the actual job in the administration. Here, the danger

582 <http://www.transparency.de/Tabellarisches-Ranking.954.0.html>, 26th July 2007.

583 Here, the influence of a change of government is taken into consideration.

584 *Gertrude Lübke-Wolff*, in: Horst Dreier (ed.), *Grundgesetz-Kommentar*, Bd. 2 (Art. 20-82), 2. Aufl., Tübingen 2006, Art. 33 Rn. 32.

attached is that during decisions of administration processes, as for example the granting of building permissions or other permissions, decisions are made which were not decided exclusively based on the legal situation. These distorted decisions (competition-wise) are then made out of loyalty or possibly from the worry about losing the position attained. It is to be presumed as well that it is also this aspect which is taken into account within the framework of the personnel decision ('first stage').

For the majority of the states⁵⁸⁵ it could be ascertained that the staffing in the administration is influenced little through parties but that the personnel selection is carried out through a process of public announcement and a subsequent selection procedure. Art. 97 section 3 of the Italian Constitution can be named as an example here which guarantees the principle of access to public offices through open competition.

Independently of that, however, there is the 'perceived possibility of influence': thus in Poland for example, the opinion is prevalent that elections are always followed by a wave of staffing in the administration and also in state enterprises. The media play an important role here through the announcement of such staffing with party-political motivation. Despite the guarantee which is standardised in the constitution, staffing through family relationships and personal relationships of loyalty still takes place in Italy. According to the opinion of the Italian expert, the guarantee standardised in the constitution is avoided through a targeted practise of appointing of the ruling parties. Since even if from a formal point of view the staffing in the civil service is not influenced by parties, the occurrence of this is still assumed; this information could be determined from the answers of the Slovenian and Belgian experts. It is further noteworthy that the parties in Greece have or rather had such an influence on the staffing in that an independent committee was created (so-called High Council of Choice of Personnel for the abatement of these structures. This committee has the possibility to select the candidates for the public service in job interviews. It is, however, not endowed with any comprehensive competence and possibilities to elude it do exist. There is a similar situation in Cyprus, where due to the high influence of the parties on the staffing, efforts have been made towards an objectivised procedure in the form of written exams for the applicants. The job interview which in the end decides on the filling of the post, however, still leaves room for personal and party-political favouring. It is also worth mentioning that the Danish country expert generally assumes that positions in the public sector are not filled due to personal loyalty relationships or favouritism. The cultural sector represents an exception, however, as well as the public-legal media, although in a small scale. This appears especially problematic regarding the role and the importance of the independent press in a democracy. Also Portugal makes an effort for a limitation of the influence

585 For example Sweden, the Netherlands, Luxembourg, Germany, Estonia, Lithuania, Hungary; in Latvia, however, the prevailing opinion is that parties do have an influence on the staffing, in contrast to a change in government, which as a rule does not.

of political parties on the staffing in the public service, at least on the national level, through the introduction of a selection method based on competition. As far as this section dealt with positions in the public administration which affect the so-called political offices such as ministers, undersecretaries or other staff that directly reports to the ministerial level, the influence of a change in government (and thus also in party-political view) on these levels is answered positively in some member states.⁵⁸⁶ On the highest ministerial level, this can also be explained by it being a question of such positions which, due to their politically shaped character, require employees who are close to the ruling party. Also under the aspect of the elite recruitment function and governmental function of parties, it is absolutely usual in these areas due to a government or coalition programme to recruit such personnel for levels of immediate decision-making and suggestibility that belongs to the same party-political direction and thus pursues the same aims for the political activity to be coped with during the term of office in these. Due to this reason and the issue of 'deciding in one's own interest', possibilities for a change are rare in this area.

bb) Secondary Activity

Under IV.1.a) the connection between the social securities and corruption was shown in brief; to carry out a secondary activity can mean to be dependent on a further income and therefore justify the necessity to take on secondary employment.

Furthermore, the secondary occupation is of still another meaning. The carrying out of such a secondary activity creates an additional dependence to the other employer. Needs or duties of loyalty of the employed person can occur additionally. Here again the danger of decision distortions exists which also have a negative effect from a competition-legal point of view. Apart from the danger of corruption, secondary occupations can also increase other criminality susceptibilities; here, entanglements with 'side governments' similar to the Mafia can be listed which in the worst case can even create a dependence of the authorities.

For this reason it is an important part of corruption prevention to break open such risk structures. An important step is therefore to restrict the secondary activities by limiting them to such activity branches which exclude a conflict of interest right from the start. Here it is indispensable to adhere to a strict separation between the main activity in the public service and the secondary activity. On the other hand, the danger of an 'accompanying criminality' must be counteracted. A further approach is to also pay attention to the fact that any personal connections which result from the secondary activity do not influence the main activity. In such cases it is most effective to prohibit such secondary activities. As far as secondary activities are principally allowed, they should be under the order of strict obligation of approval which is faced with a strict procedural

586 For example in Denmark, Poland, the Netherlands, Italy, Spain, Belgium, Slovenia and also Austria.

control. This additionally implies that for the practice of unapproved secondary activities which are subject to approval, consequences under service law (or work law) disciplinary law and/or also criminal law nature must follow.

A number of the member states which principally allow a secondary activity counter the dangers secondary activities can initiate in that they make such an activity dependent on the approval of the employer, which is only then granted if a collision of interests is not given.⁵⁸⁷ In Denmark, secondary activities are generally allowed without previous permission. Only in Cyprus, Finland and Ireland (only for employees of the higher service) is the practice of a secondary occupation not allowed (even with permission), the regulations in Italy and Portugal provide for a fundamental prohibition with permission reservation. France allows the practice of secondary activities only for such in the sciences, arts or teaching; in Germany, secondary activities are also limited with regard to the temporal frame in order to counteract a neglect of the main activity through the additional load and thus to guarantee the proper function of the public administration.

A further aspect which, however, is not in direct connection with the secondary activity of administrative employees/civil servants, concerns the question of problem-free quitting the public service in order to perform an activity in the free economy. In France, a legal regulation for the defence of corruption and promotion of transparency seems to be especially worth mentioning. According to this, all civil servants, officials of the regional authorities, officials working in hospitals, who want to withdraw from civil service in order to be active in the private economy must obtain permission from their offices, which then makes its decision after a consultation with an expert commission.

From the circumstances of being allowed to perform a further activity and thus to achieve an additional income, it can however not be concluded that the members of the public service are dependent on a further income. Since, as far as this question was addressed, the members of the public service in the examined member states are not in need of any further sources of income in order to make their living.⁵⁸⁸ This also results from the fact that the employees in the public service enjoy additional benefits and/or care through corresponding social securities (for example health care insurances or also through old age pensions). However, this does not mean that individual persons would not be prone to allowances of monetary nature in order to improve their standard of living.

587 For example Sweden, Finland, the Netherlands (in some authorities), Belgium, Luxembourg, Latvia, Estonia, Lithuania, Hungary, Czechia, Slovenia, Germany.

588 For example Estonia, Hungary, Germany, Czechia.

cc) Internal Control Possibilities, Undue Influence, Corruption-relevant Regulations

Corruption can only be prevented and fought if every employee of the public service feels responsible for their office. The common objective of a corruption-free administration should be pursued by every employee. It appears difficult, however, from the point of view that the willingness to report somebody is hampered among colleagues due to considerations of a necessary cooperation and colleague loyalty. Nonetheless, problem awareness must be created in this area which for example the internal ethics guidelines in the administration in Poland are aimed at. In addition to external controls (cf. IV.1.b)), internal control processes are an essential condition. Since corruption can also be supported by administration bodies having all encompassing competences, the non-performance of service controls and additionally, if evidence for incorrectness is difficult to be provided or completely absent. That such controls are indispensable as well for the prevention and abatement of corruption shows for example the comment of the Polish Court of Auditors from the year 2003, which criticised the weakness of internal administration control and counted this as among the reasons for corruption.

In this context, deficits in personnel management, disregard of service supervision, shortcomings in training and further education are to be listed. But also during personnel recruitment⁵⁸⁹, preventive measures can already be taken. Since during the filling of especially corruption-susceptible service posts, the personnel in question should be questioned with regard to criteria as for example previous investigations under criminal or disciplinary law, indebtedness or other similar problems. In the same way, a previous employment in the private economy can contain dangers of corruption for an office activity taken up immediately thereafter in the respective area, due to still existing economical or personal interweavement. This is for example taken into account by the Italian Incompatibility Regulation in Law No. 145/2002, according to which newly employed leading civil servants may not carry out certain functions for two years with regard to their former employer.

In almost all the authorities of the different member states⁵⁹⁰ there are internal mechanisms of service supervision which are connected to the hierarchical structure by rule. Furthermore, there are partially⁵⁹¹ also institutions which were established especially for the control of the internal processes of the administration. These are regularly independent by rule and not integrated into the administrative structure. These are for example the ‘Committee on Standards in Public Life’ or in Ireland the ‘Controller and Auditor General’. In Spain there is an organ within the administration which controls the expenditures of the respective authority; as a further example also Greece can be listed. There, a so-called ‘Inspector Controllers Body for Public

589 This does not refer to the issue already described under IV.1.c) aa).

590 For example in Germany, Estonia, Finland, Latvia, Lithuania, Austria, Sweden, Slovenia and Czechia.

591 In Germany, France, the United Kingdom, Ireland, Lithuania, the Netherlands, Hungary and Cyprus.

Administration’ is responsible for the internal control of the public administration and all their subdivisions. This facility guarantees the ‘harmonious’ and effective work of the public administration, in particular with regard to mismanagement, non-transparent processes, ineffective administrative actions and corruption. In Italy, independent administration authorities, so-called *Autorità amministrative indipendenti*, were established in order to guarantee transparent processes in economic transactions. Belgium introduced an ‘Integrity Monitoring Department’ which provides support to all administration departments through advising and supporting with regard to corruption prevention, for example during the formulation of internal ethic guidelines. It represents a centralised grouping of the competences for corruption prevention, although the legislation is still lacking a general strategy for corruption abatement up to now. What is outstanding here is the threat of imprisonment of five to ten years in the case of the corruptibility of a office-holder.

Generally, it can be determined that the predominant majority of the member countries⁵⁹² has covered different offences in their general penal codes which are allocated with the term of corruption (as for example the acceptance of benefits and bribery) – in the classical sense. In addition, several member states also created specific bodies of law for the coverage of corruption-relevant actions. So for example the United Kingdom (Prevention of Corruption Act 1906) and Ireland (Prevention of Corruption Act 2001). A violation is punished according to the individual case by fines or also with imprisonment.

In addition, some countries⁵⁹³ issued special codices of conduct for employees in the public service as internal behavioural rules, which serve the avoidance of conflicts of interest and contain regulations on for example acceptance of gifts. The more detailed structure as well as the group of people addressed by such behaviour rules does, however, differ strongly from country to country. Thus for example Slovakia restricts their ‘Ethics Code’ only to specific occupational groups of the public service, such as the police, judges and bank employees. In Poland, so-called ‘anti-corruption-strategies’ were developed according to which for example the economical activity of certain persons holding a public office can be restricted. In addition, Poland has striven for even further efforts in the fight against corruption in the year 2002 and passed an ‘ethics code for civil servants and/or public employees’ and additionally ordered ‘ethics councillors’ into the public administration. In Malta, an ethics code was adopted for all employees in the public service as well; among other things, employees must announce existing or possible conflicts of interest to the responsible head of department one week after assumption of office. This duty exists also in Italy, determined by a behaviour codex issued per/through statutory order. This behaviour codex provides, among other things, for the prohibition of the

592 So for example Denmark, Germany, Estonia, Finland, France, Greece, Italy, Luxembourg, the Netherlands, Austria, Poland, Sweden, Spain, Hungary and Cyprus.

593 Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Sweden, Slovakia, Czechia and Cyprus.

acceptance of gifts. The Federal Republic of Germany recognises a detailed regulation of the acceptance of gifts through public employees in the Federal Civil Service Code. The provision provides for a safeguarding of the impartial and independent practice of service through three special precautions: the acceptance of any economical or non-economical advantages is forbidden firstly outside of the service, secondly on completion of the employment and thirdly through relatives of the office-holder. Also in Latvia, the acceptance of gifts is regulated in detail with regard to the person giving, the occasion and the value of the gift in the 'Law for the Prevention of Conflicts of Interest in Actions of Public Office-Holders'. An office-holder who accepted a gift may neither issue any administrative act nor perform supervisory, controlling, investigative or punishing functions with regard to the person giving the gift for two years before and after the acceptance of the gift. The value of the gift during one year must not be higher than one monthly minimum salary. In Ireland, a duty of disclosure exists for members of the public service with regard to their distribution of personal property; this duty of disclosure affects also relatives. This duty provided for in the in the Law for Public Employees also regulates the authority's possibility of carrying out enquiries in the case of violations. Furthermore there are especially established authorities (so-called 'internal audit procedure' and 'outside appointment board') which are charged with the prevention and abatement of corruption. Belgium introduced different disciplinary measures for the non-compliance with the ethics guidelines in the public administration through the so-called 'Camu Statute'. In Estonia, a comprehensive and detailed regulation was introduced with the 'Anti-Corruption Act' which is supposed to uncover undue influence. So public office-holders must give a declaration of economical interests as well as of possible absence of impartiality and danger of corruption necessitated due to personal relationships.

d) Interim Conclusion

Questions in connection with scandals and the respective evaluations of the country experts showed (even though not indicated by the majority) that especially the allocation procedure is regarded as being susceptible to corruption. On the one hand, the principle of public procurement must be followed more closely, the allocation of public tasks must be regularly controlled with regard to factors of undue influence, the acceptance of the tender has to be divided up between several persons, but on the other hand, however, also the rotation principle has to be introduced and/or be more strictly followed.⁵⁹⁴

In general it can be emphasised, however, that enormous efforts were undertaken in this area; weak spots were discovered and attempts have been made to provide suitable protective measures, the problem of corruption is not played down anymore – which is already shown by the reactions to all scandals in connection with corruption – even though the reasons and/or

594 Cf. *Hans R. Claussen/ Heribert Ostendorf*, *Korruption im öffentlichen Dienst*, 2. Aufl. 2002, page 24 ff.

motivations of the offenders are not often easy to classify, one can at least see important steps in the area of control and sanction on the way of the corruption abatement and prevention over the last years. This becomes very clear in the area of internal control in the public administration, which often refers to the economical aspect but also through the establishment of ethics commissions and internal guidelines. However, the current empirical knowledge does not suffice to make precise statements on the success of such institutions. Also here, a response is missing on the part of the experts. But nevertheless it can be said with certainty that the existence of such control and defence measures represents an indispensable step.

2. Members of the National Parliament

The individual national parliaments in the EU member states consist of the Members. These can be understood as general, appointed delegates, for the perception of the collective interests. They do not have an imperative mandate in the representative democracies of the EU states and are accordingly not formally tied to orders. Unlike the local dignitary parliaments of the 19th and early 20th century, the parliaments are shaped by high professionalization and academization.

In all examined states, the competence in the area of the legislation lies on the side of the Parliament. The fact that members of the national parliaments are dealt with within the framework of this study can be substantiated in that these influence legislation and government activity in parliamentary democracies. Thus the sphere of parliamentarian influence can be assessed as a starting point for corrupt behaviour. Members at the forefront of decision-making often cooperate for example with democratically non-legitimate lobbyists. The objective of this cooperation is usually to gain an informational head start over the political competition. Furthermore, a maximization and accreditation of information with regard to the specialization of political fields is inevitable, in the same way as for the processing of international contracts and government or party programs. A wanted side effect is certainly the discharge of the legislative and executive sector which accompany an exogenous information supply. This cooperation with lobbyists usually occurs via networks and is not the object of public debates. The possibility of corrupt behaviour lies here especially.

However, the influence of the simple Members – mostly those of the opposition parties – in comparison with the governments in the legislation process is normally smaller by far – and especially in the enactment of ordinances. The latter can have a legislative effect on ordinances to a considerable extent – they also normally need the authorization of the Parliament here. Meanwhile in France, the competences of the Parliament are considerably restricted. Here, all fields not explicitly reserved for the parliamentary legislator can be processed by means of governmental regulation. An aspect which seems hardly compatible with the democratic representation. In Greece and Italy in turn, the number of government regulations went up

strongly in the last years, a practice which is originally only provided for emergency and exceptional cases.

Due to the enormous task spectrum of the parliaments and the variety and complexity of the legislation as well as controlling tasks – structures based on division of labor have developed in most European parliaments. The emphasis of the work in most parliaments is on the respective committees. With regard to the contents, these correspond with the departments of the governments and assemble together for a legislative period. Only in France and Greece is their number restricted to six; the respective Member strength is therefore especially high, which can influence the efficiency.

France, the United Kingdom, Ireland, Malta, Greece and Spain can be counted amongst the countries of a ‘rationalized parliamentarianism’⁵⁹⁵ Here, the government majority determines the parliamentary procedure of the legislation and the determination of the state budget. Through this, elbow room for the opposition factions and individual members is at the same time strongly restricted. On the other hand, such formal restrictions – the restricted elbow room for the members of the opposition to act – is comparably weak in the Scandinavian countries and the Netherlands.

a) Legal Position within the National Legislation

In all of the examined states, Members are mainly elected via party lists; the nominating of candidates occurs through an inner-party election and, accordingly, it is always organized democratically. Meanwhile, independent candidates who regularly have very much smaller chances of being elected need the support of the population of the corresponding constituency; in this case, the level of the respective quorum has various degrees of height. However, it is not the independent candidates, it is the candidates of the individual national parties which dominate the selection process around the candidacy for the national Parliament. It is not really surprising, however, that in all EU states, the nomination occurs democratically. In article 6 section 1 of the Contract on the European Union, it is stated that: ‘The Union is based on the basic principles of freedom, democracy, respect of human rights and basic freedoms as well as the rule of law; these basic principles are common to all EU member states.’

aa) Remuneration of Parliamentarians

The remuneration of parliamentarians varies in amounts, the Members’ salaries are anywhere from € 1,183 monthly in Lithuania to € 8,000 in Ireland. In Belgium, the parliamentarians additionally receive vacation pay and an end-of-the-year bonus. On the one hand, Italian

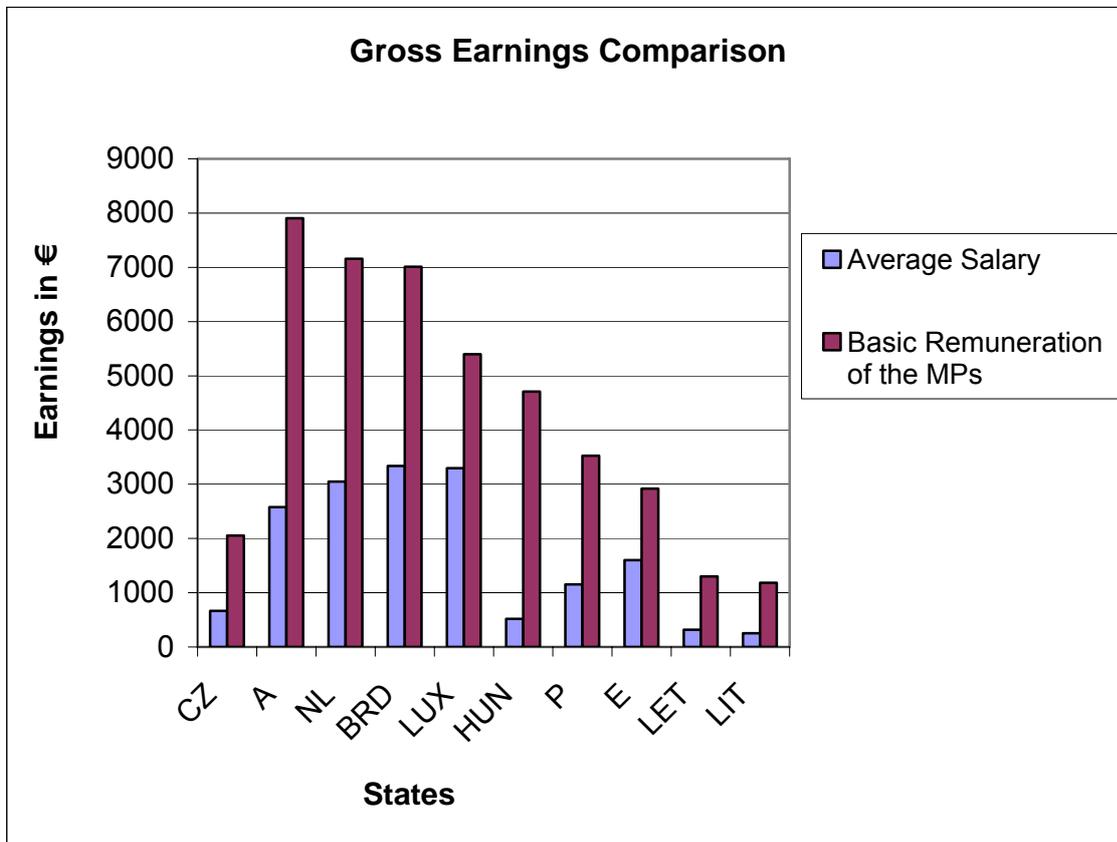
595 *Wolfgang Ismayr, Die politischen Systeme Westeuropas, Opladen 2003, page 33.*

mandate holders receive a basic salary (*Indennità*) and in addition draw daily allowances for their time present in Rome. These are paid per session participation (*Diaria*).

If one compares these amounts with the average monthly salary in the respective states, however, it becomes noticeable that particularly in Austria, the Netherlands, the Federal Republic of Germany or in the more recent EU member state of Hungary, the salaries of the mandate holders are far over the national average income (see Figure 2).

Due to the enormous variation with regard to the salaries, the presumption could be refuted that susceptibility to corruption sinks with a higher income. So for example Hungary takes the 41st place in the CPI (the sixth-worst within the EU member states), although the parliamentarians here are well off, being financially above average.

Figure 2: Comparison of the member salaries with the national gross salary; selection (author's representation)



bb) Additional Benefits

The Members of all examined states receive additional benefits next to their basic income; these in turn vary in type and extent. Portuguese and Austrian mandate holders receive a 13th and 14th month salary, for example. While these benefits are otherwise uncustomary in the EU states, this is not valid when comparing general financial benefits on top of the basic income of the Members. So for example, parliamentarians in Czechia, Luxembourg, Hungary and Sweden

additionally draw money for office equipment. Also, business trips are financially subsidized. Swedish, Spanish, Czech, Lithuanian, Slovenian and German Members of Parliament enjoy benefits for trips and/or receive free public transportation. Besides the transportation costs, Greek mandate holders are also freed from all telephone and postage costs; the same also applies to Irish Members; in addition to that, for example, they receive money for research.

Furthermore, parliamentarians can also enjoy an interim allowance after leaving office. This affects for example those in Germany, Austria and Luxembourg. So that the Members are not financially burdened by their obligatory professional attendance in the respective capitals, Swedish, Spanish and Lithuanian parliamentarians receive a subsidy for the renting of an apartment in the capital. Furthermore, special social insurances are common for the mandate holders. So for example German Members enjoy of old age compensation; in addition they receive a provisional settlement and allowances in cases of illness, health care and birth. In Luxembourg, they are insured for the duration of their mandate by both the health and pension funds of the public service and additionally receive family benefits also valid for the public service. Austrian Members are already entitled to be pensioned after a mere 10-year term of office. Belgian Members generally enjoy this after the age of 52. Here, they receive a full right to pension, however, only after 20 years of service as a Member, the amount of which corresponds to 75% of their last salary. Only in Slovenia are the Members not especially socially insured in comparison with employees in the private sector.

It can be definitively stated that the Members enjoy additional benefits. These are organized differently in the individual states.

cc) Immunity

The immunity of Members is supposed to protect them from infringement on the part of the executive and the judiciary. This privilege implies protection with regard to the practice of the free mandate and the effectiveness of the Parliament. This protection from prosecution can also favour corruption, however, by not making the Members legally liable for offenses. All Members of the EU member states formally enjoy immunity.⁵⁹⁶ However, it is to be noted that the immunity can be lifted in the individual states, in principle, and so protection from being held legally accountable for their actions does not exist for Members per se. In this respect, it seems questionable whether the instrument of immunity can favour corrupt behaviour in general.

dd) Incompatibility

There are incompatibility provisions concerning other offices in all examined EU states. First of all, it becomes obvious that there is a problem awareness concerning the danger of extraneous

⁵⁹⁶ However, no concrete details could be determined for Poland and Latvia.

considerations on the decision-making in each of the states. This manifested itself in the corresponding incompatibilities; however, the form and the extent vary considerably between the examined states.

There are incompatibility provisions for Portugal concerning other public offices which must not be held by Members. In turn, Hungarian Members are not allowed to concretely hold certain positions (among other things the office of the President, membership in the constitutional court, ombudsman, President of the Court of Auditors, administrative assistant, a professional and active membership in the military or the police and membership in supervisory boards).

In Estonia as well, no additional state office nor local office is allowed for them. In Latvia, they may not be part of private commercial enterprises. The most extensive provisions in a Baltic comparison are those of Lithuania. Here, Members are not permitted to hold other public offices (with the exception of the office of the Prime Minister) nor to be active in the private sector. Greek Members are indeed permitted to be active in the private sector, but may not, however, be employed by an enterprise subsidized or licensed by the state. Also in Luxembourg, the incompatibility principle is valid –the holding of office and mandate is incompatible. In Poland, Members must not be in the presiding council of the *Sejms* and senate, must not belong to the Constitutional Court or the Supreme Chamber of Audit and not hold the office of the Ombudsman. In Ireland, double mandates are forbidden. The incompatibility principle is also valid for the Netherlands between certain offices. In Spain, the mandate is incompatible with positions in the public sector or the private sector. In Austria, the mandate is incompatible with other public functions, as well.

In conclusion, comprehensively equipped prohibitions with regard to secondary activities could be determined concerning the standards of incompatibility, in particular for Hungary and Poland. These are, however, states which occupy the last places in the CPI EU-wide. In this respect, it could be presumed that incompatibility provisions do not necessarily affect the reduction of corruption.

The study generally focuses the attention on the possibility of secondary activities. The reason for that is that these additional employment relationships are also prone to corruptive structures of influence for mandate holders. However, it is certainly not true in the EU states that the Member's mandates are entirely incompatible with other activities. Thus it is usual in all states that Members hold additional positions next to their parliamentary mandate. Only in Ireland are secondary activities uncustomary, though they are formally allowed. Since the EU states strongly vary in the CPI with regard to the perception of corruption, it is questionable whether the possibility of holding additional positions has in fact considerable effects on the susceptibility to corruption.

ee) Cooling-off Periods

A further variation of protection from influence is the allocation of positions to influential actors. If it occurs before a decision which turns out to the benefit of the groups interested, a suspicion that it is an aspect of a bribe acceptance seems likely – a statutory offence, easily classified as illegal. It is generally difficult in this case, however, to produce concrete evidence of illegal action. So position allocations can indeed occur together with long-term interests, the purposeful ‘baiting’ of relevant decision-makers to the association's own benefit is for example hardly controllable. Should actors *ex post* receive a highly remunerated post, at least the question whether the step had already been discussed behind closed doors with regard to decisions later made would come up– which would at least be simply illegitimate. An aspect which would have to discredit this form of influence as well. As an approach to the solution – especially after prominent recent cases – as for example currently in Germany, there is a public discussion on cooling-off periods for office-holders retiring from office. However, up to now, there are no cooling-off periods for Members in any of the examined member states except for Latvia and Ireland. Accordingly, a general problem awareness does not seem present in the examined states.

b) Supplementary Income of Members of the National Parliaments

In connection with corruption, two varieties are recognizable: one direct and one indirect. The first variety can be seen as the possibility of simultaneously gaining additional income next to a Member mandate through additional earnings. The assigning of lucrative positions, highly remunerated secondary activities to influential politicians can in this case be ‘affected with a taste critical of democracy.’⁵⁹⁷ It is especially critical if the Members have to make decisions which favour the interests of the secondary employer. Here, a suspicion of accepting a bribe is likely, the Member becomes the servant of several masters. In this respect, it is therefore of central importance to comparatively collect regulations in connection with the possibility of having several incomes. The influencing of Members via party donations is considerably more consequential – more indirect. More attention is paid to party donations, however, in the following, under C.IV.4.

First of all it is to be stated that in all examined states, Members are allowed to gain additional earnings. In part these are, however, restricted with regard to the amount or the allowed activity. The former affects Belgian parliamentarians. The additionally generated funds here must not exceed the half of their salary as MP; if this should be the case, their earnings are reduced. Regarding allowed activities in Lithuania, Members there may be active as authors in the arts and sciences; in Spain they may be active in intellectual activities only. Since, however,

597 Ulrich von Alemann/ Florian Eckert, Lobbyismus als Schattenpolitik, in: Aus Politik und Zeitgeschichte, 15-16/2006, page 8.

secondary activity is generally allowed in all states – regardless their position in the CPI – it seems at the same time questionable whether the admissibility of additional earnings is a sole indicator in being able to state susceptibility to corruption.

aa) Disclosure of Supplementary Income

The results show that not all examined states require their Members to publish their additional incomes; this is true for example for Sweden⁵⁹⁸ and Belgium. However, in those states which have introduced a transparency standard, there are in turn different assessment limits as of which additional earnings are to be published. These vary in amount. While in Estonia, amounts as of € 3,000 are to be specified, the transparency duty is as of € 3,570 in Czechia. On the other hand, there is no fixed threshold value in Austria. Here, additional earnings are to be published as soon as they exceed 14% of the monthly basic salary. In other states, however, all earnings must be published (e.g. in Hungary, Poland, Portugal, Lithuania, Latvia, Luxembourg and the United Kingdom). In Ireland, all capital investments and tax payments are to be indicated; the complete assets of parliamentarians can be seen on the Internet – certainly a comprehensive duty of transparency. While the Members must publish their additional earnings annually in the states as mentioned, this time limit is not valid for Cyprus. Here, the corresponding data are questioned only every three years. In Greece, not only Members are obligated to perform the duty of disclosure, it also includes judges, journalists, owners of media enterprises and government members.

German Members of Parliament must present to the President of the *Bundestag* all additional earnings as of € 1,000 per month and/or € 10,000 per year. In this case, they are not subject to any general duty of disclosure concerning their complete assets, however. The contents of the duties of disclosure are defined in detail. According to this, economic shares in corporations are covered, not land ownership or similar, however. The information is not completely published, but only summed up corresponding to a certain income level and published in the official manual and on the Internet. Different sources of the Members' income are not listed separately. The publication obligations are especially extensive in Greece; here, earnings from secondary activities must be published – as all other assets, also those of marriage partners – up to three years after leaving office. In this way, increases of assets are also disclosed *ex post*, though politicians removed from office are ultimately no longer responsible to the voters, which can detract from the scope of this regulation (in addition, the collection occurs only every three years).

Since the majority of the states stipulates publication as a whole, a problem awareness seems present in the EU member states concerning this. Nevertheless, these data are sometimes not

598 Here, the duty of disclosure is only of voluntary nature, though recommended.

generally accessible to the public in spite of duty of disclosure – as for example in Germany – so that also this measuring instrument must be criticized. Independent of this, it is also to be observed that no connection can be found between the perceived corruption measured in the CPI and the measure in which transparency is used in order to fight corruption regarding the examined states. So states which stipulate a complete disclosure of additional earnings (for example Hungary or Luxembourg) have different standings on the CPI. In Finland – the state with the least amount of perceived corruption worldwide – additional incomes are not subject to a duty of disclosure. The ascertainment of to what extent duties of transparency affect the abatement of corruption in this context or at least the perception of it, is complicated by the fact that the CPI does not facilitate any investigation of time series.

It has already been referred to that in all examined states, additional earnings are allowed for Members; also it could be shown that these are indeed accompanied by a susceptibility to corruption. In order to generally reduce this, the examined states have implemented standards, the violation of which produces at least a strong suspicion of corruption. To be mentioned here is the prohibition (only legal in sections, otherwise socially standardized) of the buying of political hearing and thus potential political influence with money. Such behaviour is against the commandment of democracy – based on the equality of all citizens and valid for all examined states. It produces the evil suspicion of influencing the result of state decision processes in an unauthorized manner. The affected decisions are compromised by this suspicion and reduced in their political effectiveness, regardless whether they in fact were influenced by the use of private means or not.

During the implementation of the standard representing the core of an anti-corruption instrument, three essential phases can be distinguished:

The determination of the facts. In juridical diction, the establishing or hearing of evidence could be referred to.

The evaluation of the facts with respect to the standard. Here, the process of bringing together and mutual fitting of determined facts and abstractly formulated conditions of the standard is meant.

The definition of the consequences of a violation. Typically, the violation of a standard opens the possibility of expressing sanctions. Legally speaking, it is a question of appointing certain definite consequences.

According to the perception of these three phases, either through special state organs and/or organs employed by the state or through the public, the instruments of corruption abatement can be assigned to either the group of instruments of internal implementation or to that of external implementation.

Whether for example the achieved supplementary incomes thusly influence (in an offensive manner) the processes of formulation of objectives of the favoured Member, is reserved for the public judgment through transparency standards; the public brings their own standards to the case. The evaluation of the previously officially determined facts with regard to the prohibition on the purchase of political hearing is therefore incumbent upon the community of citizens. Also a question of public judgment is the definition of the consequences of the behaviour in question, for instance whether the respective party will suffer a decline of political support. Consequently, the prohibition of the buying of political hearing is therefore a standard whose control and execution are incumbent on the public for the most part, therefore it is an instrument with external implementation. Comparatively, it was examined whether the EU member states use such in order to oppose corruption in connection with achieved supplementary income. It is to be stated in this case, however, that the term ‘transparency’ is multi-layered. In a functional respect, transparency can itself be described as a means of inspecting behaviour patterns for their conformity to certain behaviour standards. It therefore serves the controlling, in that it provides the information needed for the practice of control functions.

bb) Disclosure of Income from Persons of Close Relation

In connection with the mentioned motives for a principle of transparency, it can be understood as a broadened problem awareness that not only the Members themselves are obligated to follow the duty of disclosure of their earnings, but also persons of close relation. The background is that parliamentarians could pass on additional incomes to their spouses in order not to have to publish these themselves. Thus the duty of disclosure would be avoided and the desired effect in connection with the abatement of corruption negated. In spite of the possibility of being evasive by using persons with close relation and booking the additional earnings there, it is only in exceptional cases that these persons must publish their income. This applies to the states of Ireland, Hungary, Lithuania, Greece (up to three years after the spouse leaves office), Poland and Czechia (refers here only to property, however).

In Slovenia, the spouses must disclose their assets only in suspicious cases of corrupt action. Here, the Commission for the Fight Against Corruption has the right to inspect.

The awareness that additional income can be rerouted to persons of close relation is hardly present; it is at least not present in an extended fashion in the EU. At the same time, the states with a duty of disclosure for persons with close relation hold lower positions in the CPI (in EU comparison). This complicates the effectiveness of this instrument or makes it difficult to test.

It has already become clear in connection with additional earnings and the duty of disclosure of earnings for persons with close relations to the mandate holder that the background for those standards and the transparency implied in them consists in that they seemingly are an effective means of inspecting behaviour patterns for their conformity to certain behaviour standards.

Transparency is therefore used for control when it provides the information needed for the practice of control functions. This can be clarified by means of the disclosure of income from additional earnings: whoever knows who gets how much from additional activities, possesses an informational basis in order to be able to evaluate the influence of a third party onto the people's representative's decision-making which possibly accompanies the additional income as being legitimate or illegitimate. The consequences in the case of a negative result can for instance consist of a loss of political success.

Concerning a comprehensive duty of disclosure with regard to the complete assets of Members, it can be said that a need for this extensive transparency hardly seems to exist in the EU. It is only obligatorily provided for in Ireland, Poland and Czechia. In Spain, the Members must indicate their assets one time; asset growth during their activity is therefore not included in the duty of transparency.

cc) General Accessibility of Data

If an essential ulterior motive for the implementation of transparency standards consists of delivering information into the hands of the public in order to be able to form a critical judgment oneself, a comprehensive disclosure of the corresponding data then plays a roll of central importance. This is accompanied by a central problem of transparency standards: the selection of the data to be made available. Because – one would assume – a transparency standard reveals its full effect only then when the corresponding data are ultimately also publicly accessible. This affects the EU states of Italy, Portugal, Hungary, Ireland, Lithuania, Estonia, Austria, Latvia, Luxembourg, Poland, Greece, Cyprus, Slovenia and Czechia. Accordingly, a problem awareness exists here with regard to the possible danger of non-transparency and additional incomes. However, since the mentioned states vary extremely in the CPI, the instrument of transparency must still be questioned, especially as Finland, France and Denmark do not explicitly stipulate a disclosure here (see Figure 3). The question of their suitable presentation is closely associated with the selection of the relevant data. This concerns both the place of the publication and the type of preparation. Places of publication such as official announcement organs or established daily papers (for example this is true for statements of accounts by parties in Greece) dominate in the regulations; in practice, the Internet is also widely used (for example in Ireland and Poland). The essential criteria for publication of the data should be good accessibility to the place of publication and a representation which makes the access to relevant information as easy as possible. It is interesting that the corresponding Greek data are also sent on to the Anti-corruption NGO of Transparency International.

Figure 3: Comparison of MP's supplementary incomes

	Politicians have a possibility of various incomes from different sources.	Full extent of politicians' incomes must be generally published.
Austria	Yes ⁵⁹⁹	Yes ⁶⁰⁰
Belgium	Yes	No
Cyprus	Yes	Yes ⁶⁰¹
Czechia	Yes	Yes
Denmark	Yes	No
Estonia	Yes	Yes
Finland	Yes	No ⁶⁰²
France	Yes	No ⁶⁰³
Germany	Yes	No
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Malta	/	/
Netherlands	Yes	Yes ⁶⁰⁴
Poland	Yes	Yes
Portugal	Yes	Yes
Slovakia	/	/
Slovenia	Yes	Yes
Spain	Yes	Yes
Sweden	Yes	No

c) Undue Influence

aa) Bribery of Members of Parliament

Bribery and acceptance of benefits can endanger the reputation of and the confidence of the general public in the functionalism of state decisions. It is important in this respect, as confidence is an essential pillar of state activity. A disloyal acceptance of material services, the prohibited relationship between bribers and the bribed, endangers the confidence of the public in state activity. It results in a distortion of allocation effects. In the case of a bribery and/or benefit acceptance of Members, a suspicion seems likely that their decisions were made only due to subjective economical advantages.

599 The Incompatibility Commission of the National Council decides on a case-by-case basis, to what extent politicians are allowed to practice a secondary activity.

600 As long as this income is annually more than 14% of the monthly basic salary of a Member of the National Council.

601 However, here they only have to file a report to a parliamentary committee every three years.

602 Finnish MPs have to make statements on the possession of shares & property, as well as on liabilities as of amounts exceeding € 100,000.

603 Only at the beginning and at the ending of the mandate are assets and economic shares to be disclosed to the Commission for the Financial Transparency of Political Life.

604 As of a yearly amount of € 12,027.51 (14% of the MP's income).

In order to protect the confidence of the public in state activity and not to make parliamentary decisions dependent on third party material services, the bribery of Members in some EU states (Portugal, Latvia, Luxembourg and the Netherlands) is an explicitly punishable offence. In some states, Members are regarded as office-holders – as suggested by the OECD Convention – (for example in Cyprus or Czechia), so that they can be legally prosecuted as political office-holders as well even if there are not any additional regulations for Members. In general it is to be stated, however, that most states have not provided for any specific standards concerning the bribery of Members. In Germany, the criminal offence is for example very narrowly defined, so here only the buying and selling of votes is a punishable offence. In Austria, the bribery of Members is not a criminal offence.

bb) Sanctions

Imprisonment or loss of the right to vote are the prevailing sanction measures provided for (the latter for example in Greece). In some states, the loss of mandate is also possible (for example in Estonia, Latvia, Luxembourg, Czechia and in Sweden); not everywhere, however, since there are not any special standards in some states with regard to undue influence with Members, and they are punished accordingly as ‘ordinary’ citizens (for example in Poland). Even if for Greek Members there are no standards of their own here, they can nevertheless lose their political rights if they are convicted of bribery.

In this context, an especially sensational example was the parliamentary exclusion of the former Irish Prime Minister Foley. He was banished from Parliament for 14 days due to tax evasion.

cc) Acceptance of Gifts

Not only bribes can produce an advantage for the briber, but also services of monetary value. In order to prevent this, the acceptance of gifts and other benefits can also be prohibited, for example. This is, however, allowed in most EU states; special regulations exist only in exceptions. So the acceptance of gifts is generally prohibited only in Latvia and Poland. In Malta, Members are not allowed to accept any gifts, provided that these encroach upon the proper practice of the duties of the Members. In Ireland, all received goods, no matter what financial amount, must be published. Slovenian parliamentarians may accept gifts only if they are given due to protocol – usually for example a guest gift – and are of small value. Those which individually do not exceed the amount of € 62.76, or those of a donator which do not exceed an annual amount of € 125.52 are regarded as such. Nevertheless, all gifts are listed additionally.

In contrast, Hungarian Members are far less affected by restrictive guidelines; they may even accept trips on company costs. Here there are not any further regulations which would restrict these for mandate holders. When compared, the problem awareness in this aspect does not seem

very much developed in all EU states due to the low regulation density, and ‘baiting’ as well as ‘undue influence’ or ‘acceptance of benefits’ through the acceptance of services of monetary value seems to be in the bounds of possibility. However, since for example Poland generally forbids the acceptance of presents, yet is bringing up the rear in the CPI, the question on the efficiency of this regulation is also posed here.

Up to now in all examined states, Members were not excluded from the party or the faction.

d) Interim Conclusion

The corruption-relevant standards, in connection with the Members of the national parliaments, are to be definitively inserted into a summary representation in a considerably simplified form. With regard to the *recruitment of the Members*, a comparatively homogeneous picture can be recognized. Not surprisingly and also as laid down by the shared contracts of the EU (for example through the *acquis communautaire* with regard to the new member states of the 2004 expansion), the candidates for the elections of the national parliaments are chosen via democratic elections. In turn, the screening of the candidates occurs at the party level through an inner-party election and in the case of independent candidates, signatures of the eligible voters in the corresponding constituencies are necessary. The quotas here vary nationally.

In conclusion, while homogeneity could consequently be found to a large extent here, this was not valid for the area of *salaries*. The earnings of the Members turn out to be at different levels. Due to this variation, it cannot be concluded that higher payment of the mandate holders minimizes the susceptibility to corruption – measured by means of the CPI and the perception of corruption resulting from that (see A.II.4.). An aspect that certainly still needs investigation, which, however, could not (and should not) have been carried out within the framework of this study.

Additional services of the parliamentarians also vary similar to the compensation. Indeed all members enjoy receiving additional services compensated next to their basic income; nevertheless, amount, type and extent vary considerably in some aspects. Subsidies for the office equipment as well as for business trips, and free public transportation are usual.

All Members formally enjoy *immunity* in the examined EU member states. Since this, however, can be lifted by the Parliament under certain conditions in each case, the question arises as to what extent this instrument aids and abets corruption.

Similar to this is the existence of *incompatibility provisions* – the incompatibility of the Member mandate with other offices. Also here there are incompatibility provisions in all compared states which, however, are differently organized in the countries. While some states (for example Portugal) exclude public offices for Members per se, others provide a list with concrete offices

that must not be held. It is striking that states with comprehensive rules suffer at the same time from a publicly large perception of corruption (Poland and Hungary).

In general, however, the possibility of holding additional activities next to the Member mandate is especially of great interest in connection with the fight against corruption. At the same time, influence structures susceptible to corruption for mandate holders are possible in principle. From a democratic point of view, as from the viewpoint of the fight against corruption, no influence can be allowed to be bought with money. This can only be guaranteed, however, if transparency is created on all secondary activities to a necessary clarity (this must be accompanied by a strict control as well as with drastic sanctioning measures). Generally, the democratic principle must not be hollowed out, one voice must not achieve more influence than another. In this respect, the area of the incompatibility of Member mandate and other activities – in particular in the public service – is not the only aspect which must be examined in connection with the securing of unauthorized influence by third parties. Consequently, the study also directed its attention towards *cooling-off periods*. An aspect susceptible to corruption, as a mandate holder can also be monetarily paid *ex post* for certain decisions during his Member activity through highly remunerated positions. It is interesting that in light of the background of corruption susceptibility, cooling-off periods exist only for Members in Latvia and Ireland.

In addition, *secondary activities* in general must also be examined in the this context, as these could serve corrupt behaviour as well, as already pointed out, and thus Members easily become the servant of several masters. Despite this, however, the parliamentarians in all examined EU states are allowed additional incomes through secondary activities. The sphere of activities is regulated only in exceptions. So Members may be active for example in Lithuania only in the arts and sciences and may only follow intellectual activities in Spain. An extensive homogeneity is observable in the comparison of the states concerning the possibility of some additional earnings. Since, however, as stressed previously, transparency seems at first to be a reasonable instrument to ensure that money does not buy influence; the focus must then be put onto the *publication of the corresponding data* of the secondary activities in a further step. Here in turn, the individual states vary from each other. Threshold values are common for one group of states; as of these values, Members must announce their additional earnings (Estonia, Czechia, Austria, Germany). Normally, the Parliament is to be informed of this data once per year; only in Cyprus are the corresponding data questioned every three years. Another group demands a complete disclosure of all additionally gained money (e.g. Italy, Portugal, Poland); other states do not stipulate any explicit disclosure of the additional earnings at all (e.g. Sweden, Belgium, Finland).

An essential aspect of transparency consists of giving information into the hands of the public in order for them to be able to form a critical judgment themselves. This is meanwhile only possible if a comprehensive disclosure of the corresponding data is guaranteed. This is not, however, the case in the majority of the examined states. So for example German Members must announce

their additional earnings as of a threshold value; however, these are not published completely, they are only summed up. Only Italy, Portugal, Hungary, Ireland, Lithuania, Estonia, Austria, Latvia, Luxembourg, Poland, Greece and Cyprus require a disclosure of the earnings, which is then accessible to the general public. Since, however, in this selection of countries – according to the CPI – states are enlisted which on the one hand include states perceived as being more corrupt (e.g. Greece and Poland) and on the other hand states perceived as being less corrupt (e.g. Finland, Denmark), the question as to the range of this kind of the transparency can be posed.

Also in a further area of regulation, the legislative practice in the examined states is characterized by non-uniformity. Only in Portugal, Latvia, Luxembourg and in the Netherlands are there standards which explicitly control the bribery of Members. The corresponding regulation in Germany, which makes the buying and selling of votes a punishable offence, is mainly regarded as being too narrowly defined regarding the offence. Parliamentarians are regarded as office-holders – for example in Cyprus and in Czechia – so that they can be legally prosecuted as political office-holders. The remaining states do not regard the Members here as office-holders. The background here is the fact that not all states – as suggested by the OECD Convention on the fight against corruption – converted the Convention into national law. Consequently, it can be generally stated that most EU states did not provide for any specific standards concerning the bribery of Members. So bribery of a Member is not a criminal offence in Austria. Normally this is covered, however, through the national penal codes. So the acceptance of benefits and bribery are punishable offences in most states.

In order to prevent Members from attaining illegal advantages (besides money) also through services of non-monetary value, the *acceptance of gifts* and other benefits is additionally prohibited in Poland and Latvia. Most other states did not issue any special rules here, however. There are restrictions for Maltese, Irish and Slovenian Members. Here, awareness of the problem regarding the possibility of exerting undue influence varies in intensity in the individual states.

3. Political Public Office-holders on the National Level

a) Legal Position within the National Legislation

In all examined countries, the laws that deal with the corruption-sensitive legal position of political office-holders differ little or not at all from those of the office-holders in the administration and/or for the Members. In these countries, political office-holders are – to a large extent – given equal legal treatment as Members and/or simple office-holders.

As is the case with the other actor groups considered, also the political office-holders' financial and social securities are looked at in order to be able to determine whether a potential gateway for corruption exists due to insufficient support. The incomes of the political office-holders on

national level lie altogether clearly above the average incomes of the total population; they are, however, usually lower than those for similarly outstanding and demanding activities in the private sector. This is not significantly different with political office-holders than it is the case with the other examined groups of actors as well. To be concluded from this is that the incomes of political office-holders as well as those of the Members and the office-holders in the administration in the EU member states normally prevent an office-holder from becoming corrupt in order to achieve an appropriate life style. The possibility of falling victim to corruption in order to prevent individual poverty, as it is often the case in less developed countries, can be ruled out in the European Union. If office-holders practice corruption, it is due to other motives.

In some countries, as for example in Portugal, Lithuania and Italy, political office-holders do not receive any additional social securities in comparison with the other employees. In other countries, they are especially socially protected, mostly through services of health insurance, pensions or interim allowance, as for example in Germany, Austria, Luxembourg and Slovenia. The difference of amount in the securities of similar activities in the private sector is similar to the other examined groups here as well. Even though in some countries civil servants are not protected in a special manner, their standard of living nevertheless suffices in order to remain independent. Also there are no structural incentives for corruption which could be justified by a too small extent of securities. The financial and social situation of the political office-holder is therefore secured and does not need to be improved. Even if similar work performances are often better honoured in the free economy.

b) Supplementary Incomes of Political Office-holders

Supplementary incomes potentially endanger the integrity of political office-holders. In the examined 25 countries, supplementary incomes are forbidden in only very few of them; in most of them, they are allowed under conditions. These conditions restrict the activities with regard to the contents and/or stipulate a reporting duty. Type and variety of the regulations as well as different exceptions and so forth make an overview seem reasonable, which is restricted to the focuses of the regulations and also represents their relations to each other (Figure 4).

Secondary activities can very strongly increase the danger of corruption. For this reason, secondary activities of political office-holders are principally not allowed in France, Luxembourg, and Portugal. In Portugal, the expert stated that the prohibition is not kept up in practice. In Austria secondary activities may only be carried out if these were approved. In Germany⁶⁰⁵, professional activities are generally prohibited. Secondary activities that do not

605 In Art. 66 GG, the incompatibilities are determined under constitutional law: ‘Neither the Federal Chancellor nor a Federal Minister may hold any other salaried office, or engage in any trade or profession, or belong to the

reach the extent of professional activities in particular with regard to time – as for example lecture activities – are on the other hand allowed and not subject to approval. Also only certain secondary activities are allowed in Czechia and in Spain. These restrictions either describe concrete activities or refer to conflicts of interests and/or interferences with the main activity. In all other countries, secondary activities are only subject to registration – except for Sweden, which counts on voluntariness here. There are not any specific regulations in Malta. On the other hand, in Slovenia they are allowed but uncustomary. In Denmark, no incompatibilities are named at all. Political office-holders can follow any kind of other secondary activity. The treatment and regulation of secondary activities is therefore non-uniform.

Figure 4: Focuses of the regulations on secondary activities/secondary incomes (author's representation)

Country	fundamentally prohibited	certain prohibited	subject to approval	subject to registration	voluntary registration
Austria			X		
Belgium				X	
Cyprus				X	
Czechia		X			
Denmark					X
Estonia				X	
Finland				X	
France	X				
Germany		X			
Greece				X	
Hungary				X	
Ireland		X		X	
Italy				X	
Latvia				X	
Lithuania				X	
Luxembourg	X				
Malta		X			
Netherlands				X	
Poland				X	
Portugal	X				
Slovakia		X			
Slovenia				X	
Spain		X			
Sweden					X
United Kingdom		X		X	

Conflicts of interest can not only occur through secondary activities carried out simultaneously but obviously also through activities occurring after a political office is finished. The examined countries attempt to counter the problem in different manners through cooling off periods. Transparency International demands a cooling off period of five years for office-holders in the

management or, without the consent of the Bundestag, to the supervisory board of an enterprise conducted for profit.⁷ Short-term literary or sporadic lecturing activities are not subject to the prohibition, however.

Federal Republic of Germany.⁶⁰⁶ For this time period they are not to be employed in areas which they dealt with in their previous function.

There are cooling off periods in Belgium (up to four years), Estonia (three years, however unclear regulation for government members), Spain (two years), Italy (one year); in Czechia there are no general cooling off periods; however, government members must not be active in a sector for one year which is affected by one of their decisions; in Austria there are only occasional cooling off periods. There are no cooling off periods provided in Denmark, Germany, Hungary and Cyprus. As with the supplementary incomes, a wide spectrum of regulations exists here as well.

The attempt of preventing distortions of the duties of an office-holder through secondary activities and through revenues from those therefore can go into three directions: The activities are fundamentally prohibited; or they are prohibited with exceptions; or the activities are subject to approval, accompanied by a reporting duty towards a certain agency or even the compulsory disclosure.

In most of the countries mentioned, the allowance is connected to a reporting duty on these incomes or the asset situation. In Denmark and Sweden there is, however, no such obligation. In Sweden the report is voluntary. Here, ministers must announce their assets, but not to the public, however. In the most of the cases, the reports for the supplementary incomes are accessible to the general public, in some cases only to certain institutions or authorities. In the same way as the above-mentioned restricting regulations, the reporting duties aim at the avoidance of secondary activities influencing the duties of the office-holder.

Secondary activities of political office-holder are a much discussed problem. Conflicts of interest from secondary activities can certainly be completely avoided if these activities are entirely forbidden. What speaks against a general prohibition is that professionally successful people would completely be torn out of their previous professional life by taking an office and/or could have a hard time getting back into it again. The permission with restrictions and/or conditions appears to be a compromise. Secondary activities should be avoided when they are able to influence the office. This can only be determined when all secondary activities are disclosed. In most cases, it might be sufficient that this is done subject to a certain committee. As it is in many other places, there is also a great variety in the regulations on supplementary incomes.

606 Cf. the detailed representation and reasons from Transparency International Germany e.V. in the position paper by Transparency International Germany on cooling off periods for politicians and civil servants, Berlin 2006, <http://www.transparency.de/Positionspapier-zu-Karenzzeit.1018.0.html>, 10th June 2007.

c) **Undue Influence**

There are usually no standards for political office-holders or sanction possibilities for undue influence applying only to them. Mostly, the regulations valid for civil servants apply. Consequently, there are no specific sanction possibilities. Specific scandals on the topic were not named by the experts.

d) **Interim Conclusion**

Especially political office-holders seem predestined as a target of corrupt practices and influence attempts since they contain correlative potentials of office-holders and Members. Nevertheless there are no special or intensified regulations especially for them in any of the examined states. Instead, in some member states, regulations for office-holders take effect and in others those for Members. Here a unification of the regulations appears very urgent.

Income and social securities are sufficient for political office-holder as well as for the other examined actor groups in order to prevent corruption for reasons of financial need. Action is required for the regulation on the incompatibility of the public office with secondary activities and on supplementary incomes. Here, as in many other points, a variety exists that hinders overall European action against corruption. It is debatable whether secondary activities should be completely prohibited. If they are associated with the main activity, this is a good target point for corruption. If they have nothing to do with the main activity at all, they nevertheless restrict the work performance and the fulfilment of tasks of the political office-holder. Before regulations become far too strict, however, it is to be taken into consideration that a mere secondary activity itself cannot be an offense. Only the duty violation in the main activity is what ultimately causes the damage. The transparency of secondary activities is supposed to help to uncover these duty violations. The public should participate here.

4. **Political Parties**

Within the framework of this study, the focus is on the political parties, as they have a close relationship to Members of Parliament and thus also to the parliaments. As will be shown in the following, they always have influence on the staffing of the parliaments in democratic legal systems, a recruiting function for the political personnel and – depending on the type of their involvement within the social order more or less indirect – influence on legislation and government activity. Within the framework of these occasionally diffuse and veiled areas of influence, they can be considered as a starting point for corruption. The task of the parties is to take in, to bundle up, to channel and to articulate interests and opinions of not only their voters but also of lobbyists. It must not be overlooked here that the political parties are regularly driven by the basically irreprehensible motive of the best possible positioning within the political power structure. They can also be understood, however, as a gateway for possibilities of undue

influence on the states decision-making process. In the same way, a guardian position is ascribed to them within the framework of a functioning party competition. A look at the voters, the competitors aiming for the voter's favour, and the financial possibilities of the competitors during the organization of this competition clearly shows that every political party also has to have an elementary interest in the combatants not obtaining any unfair advantage.

These target conflicts and problems find pointed expression particularly in the question of the financing of the political parties. The fulfilment of the functions ascribed to them – both in the case of the influence on the states decision-making process as well as in the competition for the achievement of corresponding influential positions or staying in power – is decisively shaped by finances.

The legal general conditions under which political parties act and are financed and/or finance themselves partially influence their possible courses of action. The comparison of these general conditions should give information about the manner in which certain legal regulations – or perhaps nonregulations (consciously used) – where appropriate take effect: either as pioneers for corrupt behaviour or as isolation from it.

The legal position and the organizational character of the parties form the background for this evaluation to which the results can be related. These two aspects shape the conduct and the courses of action of the parties both inwardly and outwardly.

a) Legal Position and Organizational Character

A quite homogeneous understanding of parties' functions can be taken from the constitutional orders of the EU member states. Independent of whether or not the parties themselves are concrete objects of (constitutional) legal regulations at all, and even if the concrete contents and intensity of the regulations can be clearly distinguished where appropriate, a functional core position can still be determined: the parties play a central role in the process of political decision-making process, a role which finds its essential expression in the differently organized collaboration in parliamentary elections.

When constitutions of the EU member states expressly mention political parties, not only do the contents and importance of the regulations differ, but also the perspective which the respective constituent legislator took focusing on the work of the political parties. In terms of constitutional law, they have found expression in two forms: on the one hand, in an institutional anchoring of the political parties, and on the other in the form of an individually, legally valid guarantee of the exercising of the basic rights of citizens aimed at party-political activity.

Thus the institution of the political party is a concrete object of regulations in the constitutions of Germany (art. 21), France (art. 4), Poland (art. 11), Sweden (ch. 3 § 1, 7-9), Spain (art. 6),

Czechia (art. 5) and Hungary (Preamble and art. 3). However, the individual right of the citizens in these member states to be politically active together with others is protected via such guarantees as the freedom of information, freedom of speech, freedom of association and freedom of assembly – yet without expressly mentioning the (party-)political activity. This is different in the constitutions of Estonia (art. 48), Italy (art. 49) and Lithuania (art. 35). Here, the free right of the citizens to found parties and to be active in them themselves is expressly protected in the basic rights. Constitutional provisions for the institution of the political party itself cannot be found there. Both directions of protection are explicitly regulated in other constitutions, e.g. in the constitutions of Greece (art. 29), Latvia (art. 102), Portugal (art. 3, 10 and 51) and Slovakia (art. 29). In some other constitutions, the political parties are only mentioned peripherally, for instance concerning the regulations for the candidate nominations for parliamentary elections (Finland art. 25, 54), the seat distribution in Parliament (Malta art. 52) or the formation of factions (Cyprus art. 73). An exception here is the Constitution of Austria, which mentions the so-called ‘wahlwerbende Partei’ (election campaign party) in connection with elections, which then differs from the political party in the actual sense, in so far as that election campaign parties are only founded for the purpose of participation in elections and disappear again thereafter. However, the political parties participate regularly in elections via election campaign parties using their party denomination.

But also in the constitutional orders, in which specifically party-legal regulations are missing in the Constitution (in Belgium, Denmark, the United Kingdom, Ireland, Luxembourg and in the Netherlands), both the right of the citizens to political activity as well as the activity of the political parties themselves are protected. On the one hand, under constitutional law, corresponding guarantees – in particular the freedom of association, freedom of assembly and freedom of speech – also safeguard the (party-)political basic right practices of both the individual as well as the association itself. On the other hand, a recognition of the role of political parties in the political decision-making process can be generally stated, which is mostly more closely developed through sub-constitutional regulations.

Party-⁶⁰⁷ or party financing laws⁶⁰⁸ which directly describe tasks and functions of the parties more closely (or indirectly, via the regulation of the activities eligible for funding) partially exist. Sometimes they are – in addition or exclusively – the object of standardizations under electoral law or parliamentary law, which then reflect the basic general understanding of the function. From a mainly formal perspective, they control the staff composition of the parliaments through

607 E.g. in Germany, Estonia, Finland, the United Kingdom, Austria, Poland, Slovakia, Slovenia, Spain and the Czechia. Lithuania and Portugal have regulated the right of the political parties in both a political parties act as well as separately in a party funding act. Hungary has regulated the party freedom to be an essential part of the general freedom of association. This regulation is to be found in Law No. II on the freedom of association from 1989.

608 Thus in Belgium, Denmark, France, Italy, Lithuania, Portugal and Sweden.

the selection of the political personnel and the participation in elections – even though usually not without competition at all. On the other hand, they fulfil an intermediary task with regard to the contents, and this is done twofold: On the one hand, they collect interests and opinions, bundle them up and articulate them and then bring them – via their elected representatives – into the states decision-making process, in the course of which they are converted into action (governmental decision-making) through the carving-out of the positions capable of obtaining the majority. It is equally their duty to also mediate the politics to the people of the nation.

In view of this, the generally prevailing consensus on the political parties as having a certain continuity and stability of their organisational structure can be explained. It can be described as corporate as it is membership-oriented; yet in its existence, however, it is independent of its number of members as well as a concrete membership. A consensus beyond this on a certain type of organization is in no way connected.

The obligation to take a certain form of organization cannot be understood from any legal order of the EU member states. The fact that the political parties in all member states are nevertheless organized in the legal form of an association of private law⁶⁰⁹ can also be explained in view of the basic functional understanding, which forms the basis of all constitutional orders: They are indispensable elements of organization and function within a nation's political decision-making process and act as such in the social field. Accordingly, the political parties are subject to general association law and/or to the legal association provisions of civil law – also in the member states in which the legal position of the political parties is shaped through constitutional regulations under public law or party acts.

In some member states, an equalization of political parties with ‘associations of private law’ is indeed put into perspective by jurisdiction and science referring to the importance of the political parties for the states and nations decision-making process. Thus both the Constitutional Court of Spain⁶¹⁰ as well as that of Czechia⁶¹¹ have described the work of the political parties as the fulfilment of a ‘public duty’ through which they are distinguished from other civil law associations. Nevertheless they are not equated with constitutional organs or other state organs. The specified importance also does not lead to a change in the legal character to be anchored in the non-governmental social sector here. On the contrary, this special position is turned into the

609 The legal positioning of the political parties in Lithuania poses to be a peculiarity, where they are awarded the legal form of a ‘public legal body’. This positioning, however, can be found in the Civil Code (art. 2.34) from 18th July 2000, effective date 1st July 2001, so that also after this the basic subjecting to the civil law of political parties is not to be questioned.

610 STC 18/1984.

611 Constitutional Act, 4/113 f., quoted according to *Vojtech Simicek*, Die Institution der politischen Partei in der Tschechischen Republik, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

point of contact for privileges of political parties in contrast to other associations or also used as a justification for restrictions.

According to all legal systems of the EU member states, the political parties are thus not integrated into state structures in such a way that their actions would be those of or similar to the practice of sovereign power. With respect to the practice of state authority, the political parties can use only structures of indirect influence, that is, to set the course of action via ‘their’ Members of Parliament, factions and where appropriate government members. An immediate access to the state apparatus and to state decisions is withheld from them – *de lege lata*. In comparison with other institutions which are formally outside of the state structures, the parties’ indirect influence proves to be singled out, however, due to the special close relationship to decision-makers (Members of Parliament, government). In light of this, it does not only appear justified but also obvious to focus – within the framework of this study – on the forefront of state action which is decisively shaped by the political parties, and in particular to examine the relevant area of financing which is relevant for the political parties’ courses of action.

b) State Party Financing Practice in the EU Member States

Social forces form up in political parties in order to attain political power or to keep it. In order to reach this targeted objective, it is necessary to conquer the ‘political market’ in society – that is, to secure market shares for oneself in the form of votes. In other words: The political parties compete with each other in free competition for the favour of the voters. One needs ample financial means for this. Only these can make it possible for political parties to finance their election campaigns, to increase their fame and popularity by means of other informational strategies and to sustain organisational structures and their administration present within the parties. Thus, the strength of the finances takes on a heightened position in the competition of the parties. The aspiration of the parties to achieve the best possible positioning in this competition is therefore always accompanied by the attempt to gain financial advantages in contrast to the competition. With reference to the possible sources of financing for the political parties, there are therefore fundamentally two areas of competition to be described as being prone to corruption: firstly, self-financing, especially through donations, as the necessity to acquire money from private sources opens up the possibility of the donator to influence the political contents and their implementation by the political parties (see below, C.IV.4.c)), and secondly, the distribution of the state funds.

If the state intervenes in the competition of the parties through financial allowances, this must happen under the basic principle of equal treatment valid in all member states. This also necessitates that existing inequalities should not be intensified, yet they should not be levelled either – in other words, so that the competitive position is not distorted beyond an unavoidable measure. The varying amount of support which a party receives from the citizens and which is

reflected in the factual competitive position can best be allowed for by creating proceedings for division and distribution which take the actual strengths of the parties into consideration; here, the choice of placement criteria and their prioritization can and does vary. The temptation to corrupt, unfair interventions in the proceedings for division and distribution by the parties may increase the higher the sums to be distributed and the more diverse the possibilities of manipulation are. Here again, the precautions which such seek to prevent this are to be focused on, in particular the duties of disclosure (see below, C.IV.4.d)) and the possible consequences of a behaviour aberrant from the legal guidelines (see below, C.IV.4.e)).

In almost all member states, the decision was made in favour of a state institutionalization and financing of political parties. The significance of the political parties, which is expressed in the anchorage under constitutional law and/or the sub-constitutional regulation of the party system finds its equivalent in direct state (co-)financing.

aa) Refraining from Direct State Party Financing

Compared to this, state financing of political parties is refrained from in only two countries: in Latvia and in Malta. While in Malta, this legal abstinence is being consistently applied to all areas of political party work, meaning any specific regulations under party law were dispensed with, a refusal was solely given to state subsidizing of the parties in Latvia. Whereas the nonregulation and nonfinancing of the political parties in Malta can still be considered an expression of state freedom in a strict sense, there is no explanation for the legal situation of the parties in Latvia. Especially in view of the regulation under constitutional law and also of the very comprehensive sub-constitutional regulation⁶¹² of the political parties' right in Latvia, the decision not to support the political parties financially in the fulfilment of the tasks ascribed to them through the Constitution and the laws is especially striking.

In any case, when – as it is the case in Latvia – the special significance of the political parties is recognised under constitutional law and sub-constitutionally and thoroughly developed, this is accompanied by the obligation to facilitate the parties' fulfilment of tasks given to them on the part of the state. This can on the one hand occur through direct state (co)financing or, if the political parties are already being comprehensively referred to society, through refraining from financing regulations, which is to say, through the enabling of comprehensive private financing without state control.⁶¹³ If neither state funds are provided nor other private financing is facilitated without state control, this can be understood as a state reaction to a specific dangerous situation which is to be counteracted by legislative measures.

612 On the detailed regulations for donation prohibitions, duties of disclosure and sanctions see below, C.IV.4.c), d) and e).

613 See *Dian Schefold*, Parteienfinanzierung im europäischen Vergleich – Rechtsvergleichende Auswertung, in: Tsatsos (editor), Parteienfinanzierung im europäischen Vergleich, Baden-Baden 1992, page 481 (487).

In parliamentary democracies, such extensive restrictions of party freedom are presumably a possibility only for the protection of outstandingly importantly classified subjects of protection. The content of Latvia's financing regulations can therefore not only give information about what is considered dishonest or even just undesirable financial behaviour, and which external influences must be held off or which external influences must be made at least public. Much more than this, due to the special financing situation of the Latvian political parties, they are also an expression of an especially high legislative demand for honest party competition. To what extent the regulations (which prevent certain types of financing and constitute duty of disclosure) take on this function of an 'integrity guarantee'⁶¹⁴ in Latvia, is the subject of the subsequent statements under C.IV.4.c) to e).

bb) Forms of Direct State Party Financing

In the remaining member states, direct state financing of the political parties is designated without it being a homogeneous financing practice, however. On the contrary, state party financing is handled just as diversely as it is imaginatively. In spite of the predominating wealth of ideas, two fundamentally different starting points for state (co-)financing of political parties can be determined: firstly, the earmarked allowances and secondly, the direct state allowances without earmarking in the sense of general financing. Because of the specific concept usage and distribution in the member states, the reimbursement of campaign costs also deserves special mention, though it can also be assigned to the two above-mentioned financing forms according to concrete development: In part, it has the character of event-driven general financing, but in other member states it is also coupled with a strict limitation of intended purpose of usage; however, it is then regularly complemented with further forms of financing. These basic types of state party financing are also frequently found in the member states as hybrid forms and complemented in multiple ways with indirect state allowances such as tax benefits, grant of free media access, or provision of other state resources. In addition, allowances which are given to the parliamentary groups or the educational institutions close to them are indirectly attributable to the parties.

(a) Earmarked State Party Financing

Exclusively earmarked financing in which the application of funds is not put at the free discretion of the parties, occurs in the Netherlands, Austria and the United Kingdom. In the Netherlands, the 'allowed' purposes are defined in detail⁶¹⁵, whereas, however, the financing of election campaigns is excluded from state support. Electoral success is the assessment basis for

614 See *Dian Schefold*, Parteienfinanzierung im europäischen Vergleich – Rechtsvergleichende Auswertung, in: Tsatsos (editor), Parteienfinanzierung im europäischen Vergleich, Baden-Baden 1992, page 481 (487).

615 Eligible for subsidization are: political-scientific activities, political trainings and further education, information facilities for Members, contact to sister parties abroad and activities which are connected to political youth work.

the distribution of the earmarked funds which amount to a total of € 15 million annually. The political parties in Austria also receive earmarked allowances on basis of request, for ‘purposes of public relations’⁶¹⁶, as a subsidy for election advertising costs and as financing contributions for the party press or political academies. In addition to the allowances from the federal budget, the political parties have claim to funds from the federal state budgets, in the case of which the allowances at the federal state level clearly exceed those of the federal government, and the state funds form altogether the largest part of the income. The United Kingdom also pursues the approach of a earmarked fund allocation in principle; however, the earmarking and the financial extent are both clearly more restrained. There, a total amount of £ 2 million (approx. € 2.9 million) per year is distributed among the parties with at least two parliamentary representatives for financing the duties of accountability assigned to them by the state. Indeed some indirect allowances are additionally granted, as the free use of state facilities. Nevertheless, the portion of state financing in the United Kingdom is clearly below the European average, however.

(b) Reimbursement of Campaign Expenses and State General Financing

A partially earmarked fund allocation is also recognised in Greece, Ireland, Lithuania, Portugal, Slovenia, Spain and Cyprus, which designate a form of election campaign cost reimbursement – which differs in detail – in the sense of a ‘real’ cost reimbursement and/or limitation. In all seven countries, additional and usually large amounts are provided in the sense of a general financing, whereas in Spain and Ireland additionally provide financial allowances to the factions of the political parties which also benefit the political parties, however. In this context, Greece has a special status due to the extremely well-differentiated proceedings for division and distribution. Both the disbursement of the election campaign funds which are paid during election years and the annual general financing have a staggered distribution according to quotas which favour such parties that are parliamentarily represented.⁶¹⁷ Electoral success is also the leading criterion for fund distribution in Lithuania, Portugal, Spain and Cyprus. In contrast to this, Slovenia⁶¹⁸ and Ireland decided on a more refined distribution method. On the one hand, all parties receive a certain base amount, the additional funds are distributed according to electoral success. However, in spite of the homogeneous fundamental decision, the financing forms are clearly different in both countries. Besides the proportional distribution of state funds to a total amount

616 Any political party represented at least in faction strength in the National Council receives funding and that to the amount of € 218,019 as a yearly basic sum plus a smaller share which is distributed according to success in elections. Parties not represented in Parliament only have a one-time claim to funding for in the election year.

617 Altogether, parties represented in Parliament (on national or European level) receive 60% of the campaign funds, which are distributed among the eligible parties according to success in elections. The other 40% go to parties which ran in at least 70% of the constituencies at elections and who achieved at least 1.5% of the votes. Comparatively, general financing solely favours those parties which are represented in Parliament on a national level. They receive altogether 80% of the annually provided state funding. Another 10% is distributed among the parties represented in the European Parliament and the last 10% go to the other parties mentioned before.

618 In Slovenia, the basic allowance quota amounts to a share of 10% of the total volume of the state funding provided.

of € 4 million, Ireland has not only designated a base amount of € 130,000 per party, which levels the actual differences of the parties, but has also, however, chosen an inversely proportional way regarding the distribution of faction funds, which depends on the electoral success: the fewer mandates each party achieves, the greater the portion of funds to be distributed in variable form is. In this way, Ireland is the only member state which changes the actual competitive position in favour of the parties who are less successful with the voters through an inversely proportionally distribution of a part of the financial allowances. Even though some other states change the competitive position by giving out basic allowances which partially level off the differences, Ireland still clearly adopts different methods by accumulation of both variants.

(c) *Reimbursement of Campaign Expenses in the Sense of a State General Financing*

Parties in Italy, Slovakia⁶¹⁹ and Luxembourg receive a kind of party financing exclusively organized as election campaign cost reimbursement. In Italy, the funds⁶²⁰ are distributed among the parties which received at least 1% of the votes, according to electoral success, but there is an upper limit⁶²¹ for the maximum funds a party is entitled to. Since the parties do not have to prove the actual use of the financing for the election campaign, it is in fact a kind of general financing. The regulations are similar in Slovakia, whereas only the parties which achieved at least 3% of the votes can enjoy state funding there. The state financing contributions are paid annually in Slovakia, so that there is practised a kind of general financing, too. Compared to this, state party financing in Luxembourg (first introduced relatively late⁶²²) does provide for election campaign cost reimbursement as well. This is, however, due to its rather restrained extent⁶²³, according to the legal intention only, to be regarded as a partial reimbursement of costs. State financing is disbursed respectively after elections, the actual use of the funds, however, is at the discretion of the party.

(d) *State General Financing*

In the remaining member states – thus in Belgium, Denmark, Germany, Estonia, Finland, France, Poland, Sweden, the Czechia and Hungary – general financing of political party activities is practised in different forms. Throughout, this kind of party financing, characterized by the

619 For more information on party financing in Slovakia see: *Eduard Bárány/Ladislav Orosz*, The Institution of the Political Party in the Slovak Republic, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

620 The total sum of the funds to be distributed is calculated as follows: for national elections, € 2 per person entitled to vote, for European elections € 1.7 per person entitled to vote.

621 A party may not altogether receive more than an amount equal to the sum of € 1 per person entitled to vote.

622 For the first time in the law on the repayment of election expenses of 7th January 1999.

623 It concerns staggered fixed amounts which are paid out depending on the number of mandates gained. From one to four mandates, a party receives a basic sum to the amount of € 50,000, € 100,000 with five to seven, € 150,000 with eight to eleven and € 200,000 with more than twelve. Another € 10,000 is added for each elected delegate of a party.

distribution of the state funds regularly provided in considerable amounts⁶²⁴, is carried out depending on the electoral success of the parties. In some countries, e.g. Belgium, Sweden, Czechia and Hungary, the allowances dependent on electoral success are complemented with lump-sum amounts which are distributed evenly among the entitled parties – after overcoming different hurdles specific to each country. On the other hand, in other member states the funds are distributed – also after overcoming different hurdles specific to each country – exclusively according to the voting percentages, e.g. in Denmark, Estonia, Finland, France and Poland. Finland only assumes a relevance of electoral success leading to the entitlement of benefits, if a party successfully enters into Parliament, so that only the number of mandates achieved at the elections is made the starting point for the fund distribution. Estonia and France distribute the provided funds both according to the achieved votes and the number of the achieved mandates. In view of the above statements, only Germany represents an exception with regard to fund distribution, in that not only the electoral success shown by voting percentage is taken as the standard for the distribution of state funds. The population's support of the parties should be assessed in a wider sense and pose a relevant factor in the fund distribution. For this reason, the financing share is also calculated according to the sum of the Member and representative contributions as well as according to the volume of donations recruited. Additionally, the so-called 'relative upper limit' – according to which the total of the state funds going towards a party may not exceed the party's self-generated income – is an expression of this requirement of a strong social rootedness of the political parties.

cc) Comparative Evaluation of State Party Financing Practice

In conclusion, it can therefore be stated that the political parties of only two member states do not receive any state funds, while 23 member states (co-)finance them more or less extensively. The attempt to carve out a wide-ranging, generally European core supply of financing regulations quickly reaches its limits when facing the very well-differentiated party financing practices of the 23 member states. The types of regulation are too diverse and the concrete conditions which justify the participation in the state funds too individual.

The orientation on the electoral success being the sole assessment basis for the distribution of the state subsidies is especially widespread. A comparison here is further complicated, however, by the abundance of varied hurdles provided for in the member states – for example in the form of a minimum voting percentage to be achieved and/or the requirement of listing candidates in a set number of electoral constituencies – as well as the missing preeminent position of this feature –

624 Thus for example, the volume of general financing in Belgium amounts to € 56 million, in Germany € 133 million, in Estonia € 3.83 million, in Finland € 12 million, in France € 73 million total, in Sweden € 68,436 million.

e.g. complemented with homogeneous base amounts, additional lump-sum earmarked funds or the criterion of the amount of self-generated income.

It is to be presumed, however, that the voting percentage criterion especially enjoys particular popularity for three reasons. On the one hand, because it objectifies the attempt of assessing the parties' actual competitive position and gives a distinguishing feature measurable in numbers to the state decision-makers. On the other hand, it facilitates fund distribution as neutrally as possible in relation with the actual competitive position, in that the advantage which some parties have made over their competition can be maintained.⁶²⁵ In addition, this criterion evades unfair influence through the beneficiaries during the fund distribution process. Apart from unauthorized manipulations of the election result itself, which are hardly promising in the face of the legal precautions of the electoral procedures in the member states, the political parties have no possibilities of changing the distribution to their own advantage and/or to the disadvantage of the political competition. In light of this, fund distribution based on the achieved votes can be seen as being especially resistant to corruption. This is also valid for the base amount allowances which several states allocate complementary to other forms of financing.

However, not all member states use this corruption-preventative advantage inherent in the type of fund allocation. Some undermine it again through hybrid forms of party financing and by using supplementary distribution criteria which are more open to manipulation. Thus for example, room for interpretation is created through exclusively or partially earmarked fund distribution in the question of what is to be understood under the purposes eligible for funding. These are fundamentally suitable to induce the parties to falsely declare normally non-fundable costs or measures or to hiddenly allocate them to other positions⁶²⁶ eligible for allowances. Also in cases in which such behaviour can not lead to an improper fund accumulation because of money not being given in the sense of a true reimbursement of costs but rather as lump-sum allowances, they at least open possibilities of a misappropriated use of the funds.⁶²⁷ In the same way, the reference to the level of the self-generated income in Germany offers room for manipulation.

625 Only Ireland uses this criterion for an inversely proportional distribution of a part of the state funds (namely the faction funds) and thus tries to partially balance out the inequalities between the parties created within the competition. In view of the proportionally low share which this form of financing has on the total volume of funds provided, this state intervention, which distorts competition within the free interplay of the political powers, can be regarded as being acceptable, however.

626 This probably applies above all to the area of reimbursement of campaign expenses which is handled in the sense of a 'real' cost reimbursement.

627 This does not apply solely to the United Kingdom, as on the one hand, the earmarked funds only have a very small extent and the concrete dedication to one purpose – namely the financing of the duty of disclosure – leaves basically no leeway.

Whether and to what extent these corruption-specific dangers are reflected in the follow-up regulations – in particular the duties of disclosure and the sanction system – is the subject matter of the statements under C.IV.4.d) and e).

c) Donation Prohibition

Donations are an essential source of income for political parties. The collection of donations is a desirable form of party financing for two reasons: On the one hand, private financing relieves the state of its responsibility to endow political parties with the financial funds necessary for the fulfilment of their tasks; on the other, next to financing through membership fees, they instigate a feedback to the citizens of those parties who act and are rooted in society.

However, there also exists the possibility of the abuse of this source of income: Financing through donations opens the political parties to external influences and interests. Here, transitions between allowed and even desired adaptation of social requests through the parties within the framework of the fulfilment of their tasks and an undue monetarization of the political decision-making process are fluent and difficult to grasp. Already the suspicion of the venality of political decisions or the dependence between parties and their representatives on the one hand, and possibly financially strong donators on the other, is able to severely harm the reputation of parliamentary democracies. In light of the role of the parties in the process of state decision-making already shown above (C.IV.4.a)), the independence of the state will-forming process and/or the trust in this independence is a precious subject of protection. Whether and in which form the member states have taken measures which can effectively prevent such kinds of dangers concerning the integrity of the political decision-making process indirectly influenced by the parties, is the subject matter of the following statements.

aa) Unlimited Donation Financing

The financing of political parties through donations is not subjected to any state prohibitions in Finland, Luxembourg, Malta, Austria, Sweden or Cyprus. Only for Malta's legal position can this be evaluated as an expression of a consistently understood state freedom of political parties. While Malta completely refers the political parties to the private sphere also in financing questions – and therefore refrains from a regulation of the party system as a whole – the political parties are subject of legal regulations and in particular also receivers of state allowances in the other member states mentioned. That nevertheless a legal regulation of the donation financing is renounced can only be presumably explained in that the national legislators see donation prohibition regulations as being an influence on the parties' freedom which is not to be justified by the negative or at least problematic flip-side of donation financing. An unobstructed competition of the parties also in the rivalry over sponsors as financially strong as possible was preferred and the above described dangers concerning monetarization of the political decision-making process was either considered acceptable or evaluated as being combatable with other

measures, thus in particular through an activation of the public in including the donation financing into the duties of disclosure. To what extent this possibility was put to use is the subject of the statements in C.IV.4.d).

bb) Donation Prohibition Practice

The donation prohibitions, implemented in most states in different intensities, can be understood as an attempt to counter the conflict situations which accompany the financing of political parties through donations with legal measures. On the one hand, the possible feared dependences from individual donators or groups of donators into which political parties could possibly place themselves are to be named here. On the other hand, the party competition itself is also exposed to the danger of a shifting of chances – which is problematic from the democratic point of view – in favour of those parties which appeal to financially strong parts of the population, as they can then hope for higher allowances than parties which take care of the interests of financially rather weak parts of the population. Both points of view – the possible influence of individual donators and the financial betterment of economy-oriented parties – accentuate the financial aspect of the work of political parties at the expense of the ideal discussion related to contents, meaning the political conflict.

(a) Donations from Legal Bodies or other Associations

Regulations which declare donations from legal bodies and/or associations to be undue are found relatively frequently. Corresponding donation prohibitions exist in Belgium, Estonia, France, Greece, Latvia, Poland and Portugal.

Several explanations can be found for this type of donation prohibition. On the one hand, the exclusion of legal bodies and other associations allows for the fact that only natural persons possess the right to vote. The influence on political parties which are attributed a central role as election preparation organizations in all member states is therefore supposed to be reserved for natural persons. A further aspect is that legal bodies and associations regularly have a very much greater financial strength at their disposal than the individual citizen. The danger therefore exists that this can be exploited in particular on the part of the economy, and thus an undue consideration of economical interests is aided. Furthermore, legal bodies and associations can serve as quasi ‘donation-launderers’, since they are not subject to any public statement of accounts. Financially strong individual donators could use them as transit stations in order to enforce certain individual interests without recognition. Ultimately, donations considered undue for other reasons (for example foreign donations) could once again find their way into the parties’ cash boxes in this way.

Some member states forbid with a special intensity donations from organizations which themselves are directly or indirectly supported by the government (for example through tax

advantages), e.g. Germany and Hungary. On the one hand, a handover of the advantages provided by the state is presumably to be stopped by this and the effect of an unwanted double promotion is to be prevented. At the same time, these prohibitions also prevent an abuse of these organizations as ‘donation-launderers’ since they are also not regularly obliged to public statement of accounts.

Latvia and Czechia explicitly forbid donations to political parties by (other) political organizations. Presumably, the underlying thought being that financial support services through organizations of political rivalry make the open and free competition of the political forces non-transparent for the citizens and the financial interweavement distorts the competitive position.

(b) Donations from State Institutions or State-run Institutions

In some member states, political parties are forbidden to accept donations from the public authority. Such a donation prohibition is found in Germany, France, Greece, Italy, Portugal, Slovakia⁶²⁸, Czechia and Hungary, who all comprehensively provide state funds for political parties in the sense of general financing. In light of this, such a donation prohibition aims at preventing a promotion that exceeds the state financing of the parties and thus a concealed and arbitrary form of state party financing. This type of donation allows an unwanted mix between the state and parties to form and leads to an unequal distribution of state funds.

Complementing this and for the same reasons, Germany and Italy introduced a donation prohibition for private enterprises governed by the public authority.⁶²⁹ It is the same question of the avoidance of an additional and concealed state party financing here; at the same time, however, it is also concerned with the avoidance of unequal treatment of the parties, ultimately by the state side.

Only Germany excludes donations from parliamentary factions while all other member states see transverse financing between parliamentary representatives and ‘their’ parties as being unproblematic. This is explained by the strict separation – according to the German legal position – of the factions acting in the immediate state sector and the political parties. Since the factions obtain their own income almost exclusively from tax money, an additional concealed state party financing should also be counteracted through the donation prohibition.

628 See *Eduard Bárány/Ladislav Orosz*, The Institution of the Political Party in the Slovak Republic, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

629 This variation of the donation prohibition is superfluous in those member states where enterprise donations are already forbidden – in Belgium, Estonia, France, Greece, Latvia, Lithuania, Poland, Portugal and Hungary.

(c) Large Donations

In 15 member states, donations to political parties are possible in unlimited amounts. Still, 10 member states provide for a restriction to the donation amount, however. This limitation differs significantly and shows a range of € 2,000 per calendar year and donator (Belgium) to € 60,000 per calendar year and donator (Spain). An explanation for these considerable differences is the prohibition of the donations of legal bodies also established in some member states – in Belgium, France⁶³⁰, Greece, Latvia, Lithuania and Poland. In these countries, the limitation also serves the purpose of complicating the masking of donations from legal bodies as donations of natural persons. Therefore, the permissible donation amount is set rather low there⁶³¹, also in order to not to create stimulus for such bypassing of the donation prohibition by legal bodies. Compared to this, a tendency can be observed for the states which do not have any donation restrictions for legal bodies, to set the maximum limit for all permissible allocations rather high, particularly in Italy⁶³², the Netherlands⁶³³ and Spain. Only Ireland has set a rather low maximum regulation for legal bodies and natural persons equally.⁶³⁴ Overall, the maximum regulations are to be considered an expression of the legislative evaluation that the influence of individual persons – juridical and/or natural – on the parties by means of financial allowances is to be restricted. The defined maximums label the threshold from which a donation can presumably contain the danger of having expectations to political decisions connected to it which are in the interest of the donator.

(d) Anonymous Donations

The prohibition of the acceptance of anonymous donations established in a total of 12 member states – Denmark, Germany, Estonia, the United Kingdom, Ireland⁶³⁵, Latvia, Lithuania⁶³⁶, Poland, Portugal, Slovakia⁶³⁷, Spain and Hungary – is above all supposed to prevent the disguising of actual financial flows and thus to prevent the (financial) dependences from being hidden. Right from the start, anonymous donations are already suspected as being connected with corrupt intentions. Furthermore, parties are not supposed to be involved in unclear financial

630 See Michel Fromont/ Yves-Marie Doublet, Die Institution der politischen Partei in Frankreich, in: Tsatsos and others (editor), Parteienrecht im europäischen Vergleich, Baden-Baden, 2. ed. 2008 (forthcoming).

631 Belgium: € 2000/year; France € 7,500/year for parties, € 4,600/year for candidates; Greece: € 15,000/year for parties, € 3000/ year for candidates; Lithuania: € 10,800/year; Latvia: approx. € 14,400/year.

632 There is no maximum limit for donations to parties in Italy, but donations to candidates are restricted to an amount of € 13,000.47 per election.

633 In the Netherlands, the donation amount is restricted to € 25,000 per year and donator.

634 Ireland limits the donation amounts to € 6,349 per year and donator.

635 See Gernot Biehler/ Eimear Long, Die Institution der politischen Partei in Irland, in: Tsatsos and others (editor), Parteienrecht im europäischen Vergleich, Baden-Baden, 2. ed. 2008 (forthcoming).

636 See Egidijus Sileikis, Die Institution der politischen Partei in der Republik Litauen, in: Tsatsos and others (editor), Parteienrecht im europäischen Vergleich, Baden-Baden, 2. ed. 2008 (forthcoming).

637 See Eduard Bárány/ Ladislav Orosz, The Institution of the Political Party in the Slovak Republic, in: Tsatsos and others (editor), Parteienrecht im europäischen Vergleich, Baden-Baden, 2. ed. 2008 (forthcoming).

dependences to the outside. In order to guarantee transparency in this sense and to exclude the possibility that disguised and possibly undue influence is taken by anonymous donations, Germany, Estonia and Latvia complemented the prohibition of anonymous donations by the prohibition of the acceptance of donations which have been obviously passed on from an anonymous third party. In Germany, Ireland⁶³⁸, Lithuania⁶³⁹ and Spain, the danger of covering up dependences was judged as not being evident in the case of small amounts, so that the prohibition of the acceptance of anonymous donations only takes effect as of a certain amount of allocation.⁶⁴⁰ In the sense of a deterrent effect, the amounts are set so low that the segmentation of a donation, which could guarantee substantial influence due to its amount, into numerous small allowed anonymous donations would probably be too time-consuming for any donor being able to use this bypassing method in a sensible manner.

(e) *Foreign Donations*

The prohibition of accepting donations from foreign countries and/or from foreigners found in 13 member states (and therefore a majority provision) allows for the concept of nation sovereignty. The possibility of political influence should be reserved for the respective citizens and/or population living in the area of the state. A corresponding regulation is found in Germany, France, Greece, the United Kingdom, Ireland, Latvia, Lithuania⁶⁴¹, Poland, Slovakia⁶⁴², Slovenia, Spain and Czechia. In Hungary, this prohibition refers to the acceptance of donations from foreign states while foreign citizens and enterprises are not covered.⁶⁴³ Spain excludes only foreign states and foreign legal bodies. Germany takes a special position in this context due to the extremely well-differentiated prohibition of foreign donation. First of all, only foreign donations which are more than € 1,000 are covered by the prohibition. The amount should exclude any real political influence. Foreigners living in Germany can donate without limitation. Furthermore, foreign donations of more than € 1,000 are permissible, provided that it concerns donations from Germans living abroad, donations from resident EU citizens and/or EU based enterprises, or donations to parties of national minorities from countries of the same national affiliation.

638 See *Gernot Biehler/ Eimear Long*, Die Institution der politischen Partei in Irland, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

639 See *Egidijus Sileikis*, Die Institution der politischen Partei in der Republik Lithauen, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

640 The prohibition is valid in Germany as of an amount of € 500, in Ireland as of € 127, in Lithuania as of 100 litas (approx. € 28) and in Spain as of an amount which exceeds 5% of the state funding.

641 See *Egidijus Sileikis*, Die Institution der politischen Partei in der Republik Lithauen, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

642 See *Eduard Bárány/ Ladislav Orosz*, The Institution of the Political Party in the Slovak Republic, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

643 As of an amount of HUF 100,000 (approx. € 400); however, the names of the foreign donors are to be published.

(f) Cash Donations

Only four member states, Germany, France, Portugal and Spain, recognise the prohibition of the acceptance of cash donations. This donation prohibition allows for the fact that the origin and the path of cash donations are difficult to trace due to the chosen method of payment, even with the proper booking, and actual dependences can be more easily disguised in this way. In light of this, they are already right from the start subject to the suspicion— as is the case with anonymous donations, too – that they will be thought to exert improper influence on parties' political decisions. The prohibition of cash donations therefore already counteracts the 'evil glow' of corrupt conduct. While Spain and Portugal allow only bank transfers (of any amount), Germany and France have loosened this prohibition through the introduction of permitted small amounts⁶⁴⁴, which appear suitable in excluding any large scale abuse of this type of donation according to the respective legal appraisal.

(g) Isolated Cases

In addition to the donation prohibitions already dealt with, which are applied in several member states respectively, there are special features specific to the respective countries. For example, Germany, Latvia and Greece have additional legal regulations concerning donation offences.

Of the 25 examined member states, Germany was the only one to legally regulate two additional donation prohibitions: the acceptance of so-called influence donations and the acceptance of donations which are recruited by a third party against a remuneration to be paid by the party which exceeds 25% of the value of the recruited donation. The first prohibition is supposed to explicitly counteract the venality of political decisions and thus is clearly and unequivocally a measure to fight corruption. Two things remain problematic in such cases, however: the delimitation of the support of the party's political work which benefits the donator – anyway, from the undue influence as well as the production of evidence. The second prohibition, introduced only in Germany, covers the case of donations recruited by mediators and restricts the remuneration of such mediators to 25%. According to legislative intention, the usage of 'pusher companies' should be stopped, as this form of donation recruitment is detrimental to the party system's reputation.

Latvia and Greece are the only member states which exclude the acceptance of donations from a more closely specified group of persons. The very specific donation prohibition of former employees, free-lance employees and informants of the KGB in Latvia can presumably be explained in light of the problematic aspects of Russian/Latvian history. The further prohibition of the acceptance of donations by natural persons who were convicted of an international crime

644 In Germany, cash donations over € 1,000 are forbidden, and in France anything over € 150.

against property, a deliberate crime against national economy or a deliberate crime during the employment with a government institution made by Latvia is presumably used – similar to the German prohibition on the usage of paid donation recruiters – for the protection of the party system's reputation.

Greece prohibits donations from owners of any kind of media enterprises and by this complements the donation prohibition of legal bodies existing for media enterprises themselves. This donation prohibition can be understood as an attempt to counteract unwanted intertwining of interests between media and politics.

cc) Comparative Evaluation of Regulations for Donation Financing

In an overall view, the following tables (Figure 5 and 6) provide an overview of the previously discussed donation prohibitions valid in the individual member states.

Figure 5: Donation prohibitions, sorted alphabetically according to member state (by author)

	Legal Bodies	Other Organisations	State	State-run Enterprises	Amount Limit	Anonymous	Foreign	Cash	Other
Austria									
Belgium	X				X				
Cyprus									
Czechia		X	X				X		
Denmark						X			
Estonia	X					X			
Finland									
France	X		X		X		X	X	
Germany		X	X	X		X	X	X	XXX*
Greece	X		X		X		X		X**
Hungary		X	X			X	X		
Ireland					X	X	X		
Italy			X	X	X				
Latvia	X				X	X	X		XX***
Lithuania					X	X	X		
Luxembourg									
Malta									
Netherlands					X				
Poland	X				X	X	X		
Portugal	X		X			X		X	
Slovakia			X			X	X		
Slovenia							X		
Spain					X	X	X	X	
Sweden									
United Kingdom						X	X		

* Germany is the only member state which prohibits donations by factions, so-called influence donations and the usage of paid donation recruiters as of a certain remuneration amount.

** Greece is the only member state which prohibits donations by proprietors of media enterprises.

*** Latvia is the only member state which prohibits donations by former KGB employees and by legally sentenced offenders, who were guilty of more closely specified offences.

Figure 6: Donation prohibitions, sorted according to number of donation prohibitions (by author)

	Legal Bodies	Other Organisations	State	State-run Enterprises	Amount Limit	Anony-mous	Foreign	Cash	Other
Germany		X	X	X		X	X	X	XXX
France	X		X		X		X	X	
Greece	X		X		X		X		X
Latvia	X				X	X	X		XX
Hungary		X	X			X	X		
Poland	X				X	X	X		
Portugal	X		X			X		X	
Spain					X	X	X	X	
Czechia		X	X				X		
Ireland					X	X	X		
Italy			X	X	X				
Lithuania					X	X	X		
Slovakia			X			X	X		
Belgium	X				X				
Estonia	X					X			
United Kingdom						X	X		
Denmark						X			
Netherlands					X				
Slovenia							X		
Austria									
Cyprus									
Finland									
Luxembourg									
Malta									
Sweden									

The overviews clarify that no practice of homogeneous donation prohibition can be spoken of in the member states. Generalizing statements are hardly possible. At best, tendencies of a donation prohibition practice can be defined.

So for example, of the seven member states which forbid enterprise donations, five have also introduced a regulation for maximum donations of natural persons. On the other hand, only two member states forbid enterprise donations without restricting the sums of the allowed donations of natural persons, however, according to the amount. A further three member states allow enterprise donations in principle, but provide for a limit on the donation amount both for enterprises as well as for natural persons. Thus, a tendency towards suppressing the influence of financially strong donators and preventing the emerging of financial dependences can be found in a total of eleven member states. However, the member states pursue this interest with different priorities. While in some cases a need for legislative action was seen only with focus on the enterprises, other member states felt the need to impose restrictions on financially strong natural persons as well. The measures taken differ from each other not only according to their manner but also in their intensity, in that the donation prohibitions are partly combined and moreover the boundaries of permissible influence through financial allowances are drawn at significantly

differing amounts. The fact that the majority of the member states (14 in total) completely renounce corresponding regulations should not remain disregarded.

A similarly indifferent picture can be seen when considering the attempts of some member states to repel specific influences considered as unwanted independently from the bare financial strength, as through the prohibition of the acceptance of anonymous, cash or also foreign donations. Also here, corresponding donation prohibitions are found partially in combination, partially loosened by maximum regulations. Only the foreign donation prohibition which, in itself barely possesses a corruption preventative character⁶⁴⁵, is provided for in the majority of the member states – even if only in 13 of them.

Also a narrow consideration that directs the focus towards only those member states which designate donation prohibitions at all (19 of 25 states) and which include only the numerically most frequent donation prohibitions (enterprise donations, the limitations on donation amounts, donations of state institutions, anonymous donations, foreign donations) results in a similarly indifferent picture, as following tabular overview elucidates.

Figure 7: Representation of the numerically most frequent donation prohibitions (by author)

	Legal Bodies	Amount Limit	Anonymous	Foreign	State
Belgium	X	X			
Czechia				X	X
Denmark			X		
Estonia	X		X		
France	X	X		X	X
Germany			X	X	X
Greece	X	X		X	X
Hungary			X	X	X
Ireland		X	X	X	
Italy		X			X
Latvia	X	X	X	X	
Lithuania		X	X	X	
Netherlands		X			
Poland	X	X	X	X	
Portugal	X		X		X
Slovakia			X	X	X
Slovenia				X	
Spain		X	X	X	
United Kingdom			X	X	

⁶⁴⁵ On the purposes, see above, C.IV.4.c), bb), (e).

Certainly this results in a purely numerical preference of the member states which make donation prohibitions at all, to use them for the defence of specific dangers that do not stop at the possibility of exerting a dominating influence through bare financial strength only.⁶⁴⁶

Compared with this, the donation prohibitions – which above all attach particularly to the financial strength of the donors, especially the enterprise donation prohibition and the limitation on amounts – are less popular, even though the limitation on amounts is provided for by a majority of 10 out of 19 member states.

So only two of the member states focused on have confined themselves to restricting influence possibilities in consideration of the donors' financial strength. Compared with this, there are still seven member states which especially do not turn financial strength into the starting point for donation prohibitions. However, a total of ten of the 19 member states issued donation prohibition regulations in both directions. Thus the donation prohibition practice in the EU member states therefore remains to be characterized less by uniformity but rather by a wealth of variation.

In this already strongly differentiated practice of prohibition, three member states stand out because of specially distinctive features: Latvia and the United Kingdom on the one hand, and Germany on the other.

The donation prohibitions in the United Kingdom⁶⁴⁷ and Latvia⁶⁴⁸ can be evaluated as surprising in light of the fact that the political parties are granted either no state money (as in Latvia) or receive funds exclusively for the financing of the duties of accountability (as in the United Kingdom). Firstly, the political parties are referred to the covering of their financial requirements by comprehensive self-financing; however, this is then complicated for them by state limitations. Here, the donation prohibitions present themselves to be a massive intervention in the party freedom. This points out the special significance – from the point of view of the respective legislation – possessed by the dangers which accompany the illegal donations and are recognised as needing to be combated against. That in the United Kingdom (exclusively) and also Latvia the anonymous donations have especially aroused legal attention confirms the tendency worked out above towards the regulation of exactly this type of donation prohibitions.

646 Thus the prohibition of the acceptance of anonymous donations which can raise suspicions already – due to the anonymity of the donor – is supposed to counteract any unknown influence hidden from the voter and create comprehensive transparency for the cash flows. The other prohibition of acceptance of foreign donations provided for by the majority is supposed to reserve the relevant influence of the population. The prohibition of additional donation financing by the state itself is to prevent a covered and arbitrary form of state party funding.

647 Anonymous donations, foreign donations.

648 Anonymous donations, foreign donations, enterprise and large donations, donations by former KGB employees and convicted criminals.

Germany is the member state with the most extensive state partial financing in Europe – at least in absolute numbers;⁶⁴⁹ it also maintains the most extensive European practice of donation prohibition. This prohibition abundance is presumably owed mainly to the altogether considerable density of regulations concerning the matter of party rights.

Striking in this context, however, is the disregarding of both a prohibition of enterprise donations as well as a limitation on the donation amount. Germany is therefore – despite the rather elaborate regulations on donation prohibitions – one of the only seven of 19 member states that practises donation prohibitions which do not set any boundaries to the influence of financially especially strong donors. This legislative abstinence gains special explosiveness when focusing on the fact that (among other things) the amount of the donation income also represents a criterion for the dimensioning of the share of the state financing a party is entitled to, thus profiting in twofold respect from the support of financially especially strong donors. That both a limitation of the donation amount as well as a prevention of enterprise donations are refrained from can be justified through the otherwise elaborate donation prohibition and accounting system (for the latter see the following C.IV.4.d)) which is already set to drive back undue influence. This system puts it to the responsibility of the parties to distinguish the improper from the proper influence of financially strong interests and to resist the possible improper pressure of the donors.⁶⁵⁰ The subsequently explained duties of disclosure for donations complements the necessary information to the public, to identify the interests with a possible driving-force effect for the parties in order to draw one's own conclusions and consequences.

To what extent do the member states – in part or exclusively – face the dangers of a monetarization of the decision-making process through the donation financing of political parties by activation of the public? This is the subject matter of the following statements C.IV.4.d).

d) Accountability and Duties of Disclosure

The effectiveness of state measures for the regulation of the finances of political parties depends decisively on the possibilities to control the financial conduct.

649 The per capita share in the total financing amount of political parties calculated taking into consideration the number of citizens in Germany is approx. € 1.6/inhabitant (€ 133 million/ approx. 82.4 million inhabitants), being one of the lowest in the member states. In France the per capita share comes out to even less with approx. € 1.2 /inhabitant (€ 73 million/ approx. 60.8 million inhabitants). In Finland (€ 12 million/ approx. 5.2 million inhabitants) and Estonia (€ 3.83 million/ approx. 1.3 million inhabitants), it shows a clear increase with approx. € 2.3 and € 2.9 /inhabitant. With a per capita share of approx. € 5.4 /inhabitant (€ 56 million/ approx. 10.4 million inhabitants), Belgium is already in one of the top positions; it is, however, passed by Sweden with € 7.6 /inhabitant (€ 68.4 million/ approx. 9 million inhabitants).

650 Thus in standing legislation, the German Federal Constitutional Court, see the decisions in the official collection Volume 20, page 56 ff. (page 105); Volume 52, page 63 ff. (page 87); Volume 85, page 264 ff. (page 326).

On the one hand, from a corruption prevention point of view, the precautions of the member states come into focus which are supposed to guarantee a proper use of the provided public money, in accordance to the state conditions – particularly the duties of disclosure; and on the other hand, the possibly additionally established duties of disclosure, which are supposed to counteract the dangers of a monetarization of the decision-making process arising with donation financing – in particular, compulsory disclosure with regard to recruited donations.

aa) Refraining from Control

Malta and Luxembourg refrain from subjecting the political parties to public statements of accounts. This is consistent, since both states in question are states which put the social function of the political parties into the foreground and do not recognise state financing at all (Malta) or only in small measure (Luxembourg). It is presumably for this reason that both member states did not subject the donation financing of political parties to any legal restrictions and also consistently renounce corresponding compulsory disclosure. For Luxembourg, the renunciation of a control mechanism in spite of state financing (although in small amounts) can also be justified in that the distribution system of the state funds proves not to be susceptible to manipulation due to the pure orientation on the achieved votes (see above, C.IV.4.b), cc)).

bb) Abundance of Variation in Accountability and Duties of Disclosure

The political parties are obliged to a more or less extensive and predominantly public statement of accounts in all other examined member states (a total of 23). The statement of accounts must regularly contain information on the income, i.e. public subsidies, Member contributions, donations, capital income as well as contributions from other sources, and the expenditures.⁶⁵¹ Sometimes, the statement of accounts duty also applies to the assets of the political parties. In many cases, additional information to certain revenue positions, for example the names and addresses of private donators are also provided for – these mainly, however, only if the donation exceeds a certain amount per calendar year. Often, the political parties are obliged to have the correctness of the accounting certified by an external auditor before the submission of the statement of accounts. Altogether, the rules for the statement of accounts and duties of disclosure are characterized, however, by a great variety both with regard to the intensity of the regulations as well as with regard to the concrete type of accounting.

Germany demands account for income, expenditures and assets. Germany – where the legal regulations go into such detail that the accountability appear in many respects very similar to the balancing rules applying to economic enterprises – is an extreme example of especially intensive and extensive accounting. A counterexample – apart from the member states which do not have

651 Only Poland designates an accountability solely for the income.

any duties of disclosure – is the Netherlands, which demand accounts only for a restricted part of the party expenditures and income.

Some states complement the general duty of accountability with a duty to create specific account statements. For example, Estonia and Latvia⁶⁵² demand an additional election campaign cost report, although no election campaign reimbursement of costs is given. This requirement can also be found, however, in most of the member states which give out earmarked election campaign cost reimbursement in addition to the state general financing, for example in Greece, Ireland, Lithuania and Slovenia. Austria also broadens the duty of disclosure in a similar manner: provided that the parties there receive earmarked funds for public relations, precise recordings are to be published on the use of the funds for the designated purpose in addition to the statement of accounts. The other supported purposes, such separate duties of disclosure are, however, not designated. The United Kingdom recognises three reporting duties (concerning general accounting, donation financing and election campaign costs) for which different periods of time have been chosen for the accounting, depending on the extent of the financial frame.

Faced with the varied range of regulations, but also due to the different attention to details of the answers from the consulted experts, a comparative consideration of the valid regulations orientated towards the special features of statement of accounts duties and duties of disclosure promises to be more productive.

cc) Particularities of Accountability and Duties of Disclosure

In some member states, the legal regulations designate more or less restricted or also broadened accountability and disclosure duties of different intensity. The most striking and – with focus on the corruption prevention – relevant special features are discussed below.

(a) *Extended Duties of Disclosure concerning Donation Financing*

In some member states, though not the majority, increased duty of disclosure exists with reference to the donation financing of the political parties. While otherwise the total amount of donation income is usually to be shown in the statement of accounts, Belgium, Denmark⁶⁵³, Germany, Estonia, the United Kingdom, Ireland, Italy, Latvia, the Netherlands and Hungary demand a nominal mention of the donator in an statement of accounts⁶⁵⁴ to be published in

652 S. *Martins Prieditis*, Die Institution der politischen Partei in Lettland, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

653 Names and addresses of private donators, if the donation exceeds the sum of DKR 20.000 (approx. € 2.684) for one calendar year, quoted from *Ib Martin Jarvad*, Die Institution der politischen Partei in Dänemark, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

654 The parties' obligation to record information on the identity of the donator in their own books, without actually publishing this information sometimes does exist in other member states, as for example in Greece: There the parties themselves have to register specific particulars with regard to all allocations which were carried out

varying forms. This additional duty of disclosure serves the purpose of showing the external influence of interests – possibly financially strong – which could possibly even set the course of action for the political parties. This additional information is regularly of interest to the public, which is thus enabled to distinguish between the proper influences (from their point of view) and the improper influences, in order to be able to draw its own conclusions and consequences. The duty of identifying the external influences therefore complements the donation prohibitions already dealt with, which pursue a similar intention; however, they evaluate certain influences already as presumably improper and thus excluding them right from the beginning.

It is striking that of the member states which already did not introduce any donation prohibitions, only one member state – namely Austria – introduced the obligation to the set-up of an individual donation check. This duty of disclosure exists, however, only concerning the Court of Auditors. It neither serves the state authorities, however, in finding out whether donation prohibitions have been complied with, nor does it clarify the external influences to the public. Furthermore, the amount of the donation income is not made the connecting point for state services – as in Germany. The sole purpose of this individual donation check – which represents a considerable amount of administrative effort for the parties – is to serve the state as a verification record of the actual amount of the donation without any consequences being linked to this ascertainment.

In comparison to this, the other mentioned states have also provided for a publication of the donator names; however, this duty only actually takes effect as of a certain upper limit amount which the donation – separately or as the sum of several individual donations – must reach. Only Estonia and Latvia do not make the compulsory disclosure of the donator identity dependent on the attaining of a certain donation sum. Latvia even goes further by designating an ad hoc publication within a period of 10 days after receipt of the donation. As for the others, the upper limit amounts provided for vary significantly and show a range of € 125 per calendar year and donator (Belgium) to € 10,000 per calendar year and donator (Germany⁶⁵⁵).⁶⁵⁶

(b) Partial or Entire Refraining from Duties of Disclosure

The duty of accountability for political parties serves different purposes: On the one hand, it enables the public authority – which for its part is obliged to an economical and earmarked public budget economy – to control the use of public money. This aspect gains importance

directly or by bank transfer which exceed the amount of € 600 per year. This is also valid for all payments from the party funds, with no regard to amount and type of payment.

655 Additionally, there is the obligation for the ad hoc-publishing of donations which are € 50,000 or more.

656 Denmark: from DKR 20,000 (approx. € 2,684); the United Kingdom: from GBP 5,000 (approx. € 7,336) on the national level, from GBP 1,000 (€ 1,467) for local party offices; Ireland: from approx. € 5,079 for party donations, from approx. € 635 for donations to a candidate; Italy: from € 6,500; Netherlands: from € 3,000; Hungary: from € 1,785, from € 357 for donations from other countries.

particularly in those member states which practise an earmarked state party financing. The accountability further allows the state offices to control the compliance to the donation prohibitions. Additionally from a practical democracy point of view, however, there is also a need to reveal origin and usage of the general public funds being used for the financing of public decision-making process. The requirement for a statement of revenue and expenditure is particularly a political instrument which seems reasonable and proper to – among other things – enable those in whose alleged interest the political parties act to decide whether for what and in which amounts funds dispersed seem sensible and proper.

In the attempt to be fair both to the needs of state control as well as to those of the individual, most member states provide not only for a presentation of the statement of accounts at state offices, but also for a publication of the reports. In some cases the publication of the statement of accounts lies in the responsibility of the parties, but in others the state offices publish them themselves. Different media are employed for this. Thus for example the statement of accounts are published in national law and/or official gazettes (for example in Germany, France, Italy, Portugal, Slovakia⁶⁵⁷, Hungary), and sometimes in part, on the Internet as well (for example in Estonia, the United Kingdom, Ireland, Lithuania, Portugal, Hungary) and even in daily papers (Greece).

However, some member states simply neglect the public need to be provided with clarity on the financial behaviour of the political parties. Some completely refrain from giving the public access to political parties' statements of accounts, others only publicise the information to a restricted extent.

Sweden and Cyprus belong to the former category of those which provide state funds for political parties to a considerable extent. Although in both member states, the type of the fund distribution does not offer any room for manipulative interventions on the part of the political parties⁶⁵⁸, both member states demand an auditor to check the statement of accounts on income and expenditures (Sweden) and/or to be presented to a state office (Cyprus). Faced with the largely corruption-resistant type of state fund distribution which a purely governmental control mechanism for the defence of unfair behaviour, however, exactly does not require, the limitation to this function of the statement of accounts can be described as half-hearted at best. It cannot be justified either by putting the focus on the donation financing of the political parties, since both member states have refrained from establishing donation prohibition whose observation would have to be monitored. In light of this, the sense of a statement of accounts still remaining, namely to satisfy the informational need of the public, is not allowed for due to the missing

657 See *Eduard Bárány/Ladislav Orosz*, *The Institution of the Political Party in the Slovak Republic*, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

658 Distribution of funds according to success in elections and basic allowance regulation, see C.IV.4.b), cc).

obligation in Sweden and Cyprus to publish the statement of accounts. That such a need fundamentally exists is also shown by the practice, which emerged in Sweden, to publish the statement of accounts despite the absence of a legal obligation. Although most parties satisfy this need voluntarily in Sweden – in fact the public can therefore function accordingly as a control instance – a legal strengthening of and structural integration into the control system would be desirable. The related legal attempts described by the Swedish expert are therefore to be welcomed.

France and Slovenia involve the public only to a restricted extent. Both member states publish the accountable information – in summary form – in short reports only. However, an increased need for state control does exist here – different than in the cases of Sweden and Cyprus – due to the numerous donation prohibitions (France) and/or the partially earmarked fund distribution (Slovenia). The state control itself is therefore important under this point of view; it is surely not opposed to an additional publication, however.

The Netherlands represent a special case. They do not only designate restrictions with regard to the compulsory disclosure, but also concerning the accountable information itself: In the Netherlands, state funds are provided for the parties exclusively for purposes which are defined in detail. The designated duties of disclosure are also orientated to that⁶⁵⁹: They require the preparation of a budget and a statement of accounts with regard to the expenditures which were financed with the aid of state subsidies from political parties. The accountability therefore, however, encompasses only a part of the party activities – those for which state subsidies are given. A comprehensive duty for the disclosure of party finances does not result from that. But also with regard to accountability, no general, comprehensive compulsory disclosure exists. Only the amount of the state subsidies and certain information on the donation financing are to be published.

Certainly, also the duties of disclosure for donations especially serve the above-described democratic need of the general public for a disclosure of the financial influences and have in this respect also a corruption-preventative character. However, the public control instance is generally renounced for the area of control in the distribution behaviour of political parties. With regard to the control of an appropriate use of state funds, this is possibly owed to the fact that such control, be it on the part of the state or also the public, might be very difficult to manage for actual reasons. In addition, from the point of view of preventing corruption, there is also an interest absolutely worth being protected in disclosing the existing financial interweavements which are reflected in the distribution behaviour.

659 This, however, does not have to be so, as can be seen from the examples of Austria and the United Kingdom, who solely pay out earmarked state funds as well, yet designate a general duty of disclosure. Austria, however, does require an additional report at least for the promoted purpose which makes up the largest part. The United Kingdom only provides the funds solely for the purpose of the reporting.

dd) Comparative Evaluation of Accountability and Duties of Disclosure

Generally speaking, it can be stated that the susceptibility of the state fund allocation to manipulation is an indication of especially comprehensive duties of accountability. Germany in particular can serve as an example of this. Here, very detailed accountability and disclosure duties are designated which also particularly refer to income through donations, which makes the state financing system susceptible to manipulation – as shown above⁶⁶⁰. Also the countries which exclusively or in part allocate earmarked state funds mainly protect the appropriate application of funds through detailed accountabilities and, in part, additional reporting duties. Once again, however, the Netherlands can be pointed out as an exception. Also the member states which distribute state funds via a manner rather resistant to corruption (as Estonia) partially provide for accounting and disclosure duties to considerable extents. In total, it can be stated that, for the most part, a special measure of attention is given to creation of transparency in the field of party finances in the member states.

In former studies, a tendency was created according to which in countries with high financing from the state budget, political parties are subject to a detailed accountability, whereas with a reduction of this share, as a rule, also the intensity of this obligation decreases.⁶⁶¹ This cannot be confirmed under the current conditions (which have changed in the meantime), at least not in this generalized form. There are numerous counterexamples, first of which Latvia should be mentioned: There, the political parties are not financed by the state; nevertheless, a detailed accountability is established. Also the United Kingdom designates a detailed and extensive accountability despite the only relatively small share of state financing, while the state funds are solely granted for the financing of these duties. The Netherlands represent an exception in other direction. They provide state funds to a relatively large extent; however, duties of accountability are only designated to a restricted extent. Similarly, though not as extensive, Sweden does not require any publication of the statement of accounts.

e) **Sanctions**

For the enforcement of the regulations existing with respect to the party financing, and very often creating a corruption-preventative effect, effective sanctions play an important role. A party should not count on certain violations of the party law, – which in certain cases is to say corrupt behaviour – not to cause extensive damage for the party or possibly even to remain entirely consequence-free in the case of disclosure, at least from a legal perspective. Most member states – except for Luxembourg, Malta, Sweden, Spain, Hungary and Cyprus – therefore link consequences to offences against the regulations of the party right.

660 C.IV.4.b), cc).

661 According to *Dimitris Th. Tsatsos/Gerold Deinzer*, Europäische Politische Parteien, Baden-Baden, 1998, page 23; *Gerold Deinzer*, Europäische Parteien, Baden-Baden, 1999, page 21.

aa) Refraining from Sanctions

For Luxembourg and Malta, this is the logical consequence of their also otherwise existing legislative abstinence with respect to the political parties. The fact that Sweden and Cyprus refrain from reinforcing a violation of the designated duty of accountability with sanctions as well is striking indeed, though not inconsistent. Both states do not designate either donation prohibitions or compulsory disclosure for donators or statements of accounts. The statements of accounts themselves possess a rather declaratory character. In view of the distribution of the state funds, which are paid out to the parties for free use and exclusively orientated towards electoral success, the accounting does not seem to fulfil any substantial purpose in both member states.⁶⁶² The duties of accountability fulfil more of a politically legitimatory function, without being able to actually intervene in detail. Given this background, the effects of a not properly fulfilled duty of accountability are to be classified as rather unimportant and the dispensation of sanctions therefore seems consistent. Spain does not designate any sanctions for the parties themselves, but holds only the active person liable. Hungary leaves violations of the financing rules without consequence, too. Should the state office responsible for examining the statement of accounts ascertain unlawful behaviour, the party is called on to restore the lawful state again. Should the party not comply with this request or if there is a case of severe violation of the law, court proceedings are instituted. The parties may revise their reports themselves – without restriction and even after several years. The legal violation does not result in any sanction.⁶⁶³ Particularly in the case of Hungary, which recognises both donation prohibitions as well as a very comprehensive accountability related to income, expenditures and donator information, the renunciation of sanctions in the case of legal violation is to be regarded as a weak point. This way, the legal party financing system remains incomplete and can lead to only limited effects. Essentially, this is also valid for Spain despite having elaborated their party law generally a little less detailed, but at least sanctions are designated regarding the active person.

bb) Different Sanction Models

Compared with this, 19 of the 25 examined member states do sanction legal violations by the political parties. In detail, the sanctions can be with regards to both the non-fulfilment of the duties of accountability and/or irregularities with the reporting (faulty or incomplete statements of accounts) as well as violations against donation prohibitions or specific duties of accountability for donations – where provided. The sanction itself consists of the clawback of state financing and/or a loss of claim to this; sometimes, however, legal violations are punished

⁶⁶² See above C.IV.4.d), cc), (b).

⁶⁶³ According to *Gábor Halmai*, Die Institution der politischen Partei in Ungarn, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

by penalties and/or fines. Some member states face a disregard of the regulations under party law with more far-reaching measures such as loss of mandate or even with measures of criminal law.

Which violations are to be avenged with which funds is regulated differently in the various member states. Thus the Netherlands for example designate the partial or complete loss of claim as a sanction only for cases of inappropriate use of state funding – which, given the only restricted duty of accountability, seems to be consistent. However, they also avenge the rather unusual special case of conviction of a party because of discrimination in the same way.

In part, special regulations have been provided for the case of statements of accounts being submitted either too late or not at all without correctness of the accounting being of any importance. This case only is sanctioned with the loss of claim by Austria.

In Belgium⁶⁶⁴, Germany⁶⁶⁵, Italy, Portugal, Slovenia and the Czechia, this is only one next to other sanction-reinforced conducts which is nevertheless punished there with the loss of claim as well – with two exceptions. Italy, the Czechia and Portugal only suspend the payment of the state funds up until the moment in which a (complete) statement of accounts is submitted; Portugal, however, imposes additional fines.

In the member states mentioned previously, the other sanction-reinforced legal violations are punished with penalties – a consequence less grave. Portugal has an extremely well-differentiated system of sanction in store, not only for political parties, but also for liable individual initiators. For the most varying violations, penalties are designated within a frame marked by a minimum and a maximum amount. Depending on the type and severity of the violation, this amount can range between five times and 400 times the amount of the national minimum income. Fines from twice up to six times the amount of the sum unlawfully obtained are designated especially for violations of donation prohibitions, again depending on type and initiator.

Germany assumes that a penalty to the amount of double the sum faultily shown in the statement of accounts or unlawfully obtained is sufficient to most likely lead the political parties to law-abiding behaviour. Belgium and the Czechia share this assumption and punish the only other sanction-reinforced action, being the acceptance of prohibited donations, in the same manner. The regulations here do, however, differ again in the details. The Czechia – similarly to

664 Belgium restricts the loss of claim temporally to a minimum of one and a maximum of four months. The same sanction takes effect when the parliamentary committee which audits the statement of account queries it.

665 In Germany, the loss of claim occurs should a motion on payment of state funding be filed late or not at all. This motion itself, however, requires a complete statement of account.

Germany⁶⁶⁶ – does give the political parties the possibility to return an unlawfully obtained donation until 1st April of the following year or to pay it over to the state. Apart from the party, also the donator – against whom fines can be imposed – is held liable in Belgium – as in Portugal. Italy and Slovakia⁶⁶⁷ also impose different sanctions depending on the type of violation.

Other member states do not distinguish with regards to the type of the violation and the subsequent sanction, but punish any violation either with the loss of claim (Finland⁶⁶⁸, France, Ireland, Lithuania⁶⁶⁹, Poland) or with fines (Denmark, Estonia). the United Kingdom also treats both kinds of violations homogeneously, responds to them, however, with measures of the criminal law.

Compared with this, Latvia sanctions only the violation of donation prohibitions and/or the duty of disclosure with regard to the donators; this is, however, likewise carried out with measures of the criminal law, in particular with prison sentences or fines and even with a sentence for community work.

However, other member states such as Germany, France, Ireland, Lithuania and Portugal also do provide for complementing legal consequences for the acting persons themselves. Two good reasons for this are: On the one hand, the seriousness of a legal order or prohibition is often seen in dependence on the punishment. A legal order is often regarded as being of minor rank if a violation against the legal regulation is not connected to punishment. From this point of view, the threat of punishment strengthens the symbolic effectiveness of the party financing law – which is in many parts aimed at preventing corruption. On the other hand the prosecution's obligation to prosecute and investigate violations which come with punishability is of immediate practical importance. This way, a considerable increase in control is achieved.

Italy even designates the loss of mandate as a further sanction possibility for violations of candidate financing. The regulations are similarly extensive in Greece, which clarifies violations of the duty of accountability and donation prohibitions in a court procedure that can lead to fines, loss of claim or even loss of mandate. The loss of mandate, as a further possibility to make the active person take on the responsibility himself, works in two directions when viewed from a corruption-preventative point of view: On the one hand, politics – at least for the restricted time for which the passive right to vote is deprived – is released by an actor whose willingness to

666 Germany does grant freedom from sanctioning only if the mistakes regarding the accounting or the donations in the statement of account are voluntarily admitted to by the party itself before they are disclosed externally; also, the amounts have to be paid to the state within a time limit.

667 See *Eduard Bárány/ Ladislav Orosz*, *The Institution of the Political Party in the Slovak Republic*, in: Tsatsos and others (editor), *Parteienrecht im europäischen Vergleich*, Baden-Baden, 2. ed. 2008 (forthcoming).

668 Right from the start, no such regulations are possible, as Finland does neither designate donation prohibitions nor duties of disclosure with regard to the donators.

669 In Lithuania, this sanction is restricted to ‘severe’ violations, however.

stick to the relevant laws was not sufficiently proved. On the other hand, the sanction has a special deterring effect that not only but above all provides an expectation of a certain law-abiding rectitude and resistance to corruption for the behaviour of ‘professional politicians’.

cc) Comparative Evaluation of Sanctioning Regulations

All in all, the question of whether and where appropriate in which manner member states sanction the misdemeanours is not very homogeneously answered. On the one hand, all duties established for the political parties are not implemented everywhere by means of sanctions. Also, the consequences of offences are not always sustainable enough to achieve the expected deterrent effect.

The French expert questions the relevance of the designated sanction, namely the loss of claim, in light of the fact that from the start, the sanction can only affect 30% of the parties active in France, since only this percentage of parties receive funds from the state budget. In a similar manner, this problem is presumably also valid for other member states which only designate the loss of claim as a possible sanction. So in Austria, only the parties represented in the National Council in faction strength have regular claim to state-supported money, and parties not represented in the Parliament have a claim to state funds only in election years. Added to that, only the non-submission of a statement of accounts is sanctioned in this manner.⁶⁷⁰ Also in Finland, only political parties represented in the Parliament are financed by the state and therefore their misconduct sanctioned. In Lithuania and Poland, the loss of claim affects all parties which received at least 3% of the votes in the case of elections and consequently receive state funds. In Lithuania, the sanction is, however, restricted to ‘severe’ violations. In Italy, on the other hand, all parties which achieved at least 1% of the valid votes do participate in direct state financing. The loss of claim to state money has a clearly larger ‘far-reaching effect’ here as a measure of the prevention of corruption.

The consulted experts have also sometimes complained of an enforcement deficit (see for example the Portugal Country Report). The extremely differentiated sanction system does not seem to be used regularly in Portugal. The consulted experts from Lithuania and Poland could also report on party financing scandals discussed in the public and the media, but stated in each case, however, that corresponding reproaches were never proven nor then sanctioned.

Compared with this, the consulted expert from Latvia reports at least 45 cases in which sanctions were imposed on political parties due to different violations. Also in Germany, repeated use has been made of the sanctioning possibilities and that also under the validity of the sanction system, changed due to the exposure of especially severe violations of the duty of accountability in the

⁶⁷⁰ The consulted Austrian expert assesses the legal regulations in a way that ‘scandals’ would almost be impossible to prosecute, which is why the authorities do not explicitly deal with the disclosure of violations.

years 1999-2002.⁶⁷¹ Still, five more consulted experts (from the United Kingdom⁶⁷², Ireland⁶⁷³, the Netherlands⁶⁷⁴, Slovenia⁶⁷⁵ and Czechia⁶⁷⁶) described individual or a few cases of violations which were sanctioned in the past. The (frequent or also occasional) application of the sanctioning regulations can be interpreted, however, in two respects. On the one hand, it can be an indication of a well-functioning control system concerning the prevention of corruption. On the other hand, however, it can also mean that the occurrence of corruption is on the rise. This could mean just the opposite, however, for the member states in which no cases are known or told: Either the control system is functioning poorly or the absence of scandals would seem to indicate a special resistance to corruption of the actors involved.

It is difficult to empirically distinguish whether in fact there is increasing corruption or if there are just simply more scandals being uncovered in a certain period. After all, secrecy of the process is characteristic for the phenomenon of corruption. Especially because corruption flourishes in concealment, more or less large dark areas remain. In addition, not only do the elaborated different legal norms make the comparison more difficult; the informative value of the raised data of improper behaviour is also influenced by the social norms and values which are difficult to evaluate, as well as the commonly seen varying commitment to the disclosure of the corresponding improper conducts and the willingness of the consulted experts to inform of these. Corruption is, however, a typical control offence which can particularly be counteracted by refining suspicion-creation strategies. In order to be able to identify the corruption control offence, one therefore needs the control – as the term already implies. In order to stop the identified corruption with some degree of certainty, however, and also in the future, one needs effective legal consequences.

Effective corruption abatement is therefore ultimately dependent on a highly comprehensive control and an effective sanctioning system. In this sense, there is a lot in favour of the control systems functioning rather well in both of the two countries which make more frequent use of the sanctions (Latvia and Germany), as both member states have reached a high control density in questions of party financing and have a well-differentiated sanctioning system at their disposal.

Generally, deficits are to be found – European-wide – in both areas, however: Already the legal regulations for the prevention of corruption in the area of party financing are inhomogeneous and

671 Hidden accounts were formed within the CDU and the subdivisions of the SPD in Cologne and Wuppertal received disguised payoffs.

672 Cases of quid pro quo donations did exist, especially in the Labour Party.

673 A former vice-speaker of the Upper House was convicted because of a not published donation in 2006. His punishment consisted of community work.

674 In 2005, the state funding for a religious party was cancelled due to discrimination. This party did not accept women.

675 There were some cases of minor violations against transparency provisions during the elections.

676 There was a case of a disguised quid pro quo donation in 1997.

partially incomplete; this discovery applies also to the possibilities for the enforcement of the existing regulations at least. Punishments and/or sanctions influence the calculation of decisions by those disloyal to the legal system in many ways. However, the partial or complete refraining from sanctions and/or of the application of corresponding regulations puts considerably into perspective the corruption-preventive effect of the duties which were defined by law with regard to transparency and integrity of political parties' financial behaviour.

f) Interim Conclusion

In a strongly simplified representation which neglects possibly existing special corruption-preventative provisions and/or catch-all clauses just as well as gaps and deficits of the regulations in detail, a mainly homogeneous picture of member state party law is produced. With the exception of a few cases, the crucial questions concerning a legal arranging of the party system are answered apparently almost harmoniously:

Figure 8: Overall view on the regulations for party financing (by author)

	Direct State Financing	Donation Prohibition	Account for Income/Expenditures	Sanctions
Austria	Yes	No	Yes	Yes
Belgium	Yes	Yes	Yes	Yes
Cyprus	Yes	No	Yes	No
Czechia	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes
Estonia	Yes	Yes	Yes	Yes
Finland	Yes	No	Yes	Yes
France	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	No
Ireland	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes
Latvia	No	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes
Luxembourg	Yes	No	No	No
Malta	No	No	No	No
Netherlands	Yes	Yes	Partially	Yes
Poland	Yes	Yes	Partially	Yes
Portugal	Yes	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	No
Sweden	Yes	No	Yes	No
United Kingdom	Yes	Yes	Yes	Yes

The preceding evaluation has shown, however, that not much of this apparent harmony is to be found when the regulations are looked at more closely. The concrete arranging of the regulation areas does not for the most part follow a 'generally valid' pattern, but rather individual ideas. Nevertheless, the above overview does clarify that the predominant majority of the member

states also absolutely understands the political parties as starting points for corruption and makes every effort to take legislative countermeasures.

However, these efforts still come up short. This becomes clear when one focuses on those especially important regulations from a corruption-preventative point of view, which especially deal with the disclosure – in the ideal case punished under sanctions – and thus the driving back of possibly improper (individual) interests. Especially in the area of donation financing – particularly in the focus here – there are obvious, European-wide discrepancies to the regulation density in an overall view concerning the regulations on political parties. The following table (Figure 9), which complements the above Figure 8 with the column ‘Duties of Disclosure for Donations’ illustrates this. An identifying of external influences on the political parties – regularly provided through financial strength – facing the public is not designated in the majority of the member states.

Figure 9: Extended overview of the party financing regulations (by author)

	Direct State Financing	Donation Prohibition	Account for Income/Expenditures	Duties of Disclosure Donations	Sanctions
Austria	Yes	No	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Yes
Cyprus	Yes	No	Yes	No	No
Czechia	Yes	Yes	Yes	No	Yes
Denmark	Yes	Yes	Yes	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes
Finland	Yes	No	Yes	No	Yes
France	Yes	Yes	Yes	No	Yes
Germany	Yes	Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes	No	Yes
Hungary	Yes	Yes	Yes	Yes	No
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes
Latvia	No	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	No	Yes
Luxembourg	Yes	No	No	No	No
Malta	No	No	No	No	No
Netherlands	Yes	Yes	Partially	Yes	Yes
Poland	Yes	Yes	Partially	No	Yes
Portugal	Yes	Yes	Yes	No	Yes
Slovakia	Yes	Yes	Yes	No	Yes
Slovenia	Yes	Yes	Yes	No	Yes
Spain	Yes	Yes	Yes	No	No
Sweden	Yes	No	Yes	No	No
United Kingdom	Yes	Yes	Yes	Yes	Yes

From a democratic point of view as well as from the point of view of corruption abatement, the basic rule must be obeyed that money must not be allowed to buy influence. This, however, can only be guaranteed by a higher degree of transparency, stricter control and adequate sanctions. It must be guaranteed that the principle of democracy – one man, one vote – is not annulled by the higher influence of the larger donation. The knowledge of political corruption – just as the reasonable assumption there could be such (for instance the influencing of legislative acts

through money allowances for preservation of surroundings, secondary occupation possibilities and/or chances of lucrative positions after the political career) degrades the very power of the citizens which is guaranteed under the Constitution: The influx of money and opportunity for parties and politicians shows that there are more effective resources to influence the running of things – more effective than the cumbersome continuous participation in the will formation in the discourse and the sporadic participation in elections. In this way, political corruption attacks the basics of a modern democratic society. On this note, a more homogeneous disclosure practice also directed onto greater transparency with reference to the donation financing in the member states would be desirable.

Also in the further areas of regulation affecting the political parties, the legislation practice is characterized to a large extent by a lack of uniformity in the member states. Explanations for the considerable differences in the details can be found: On the one hand, there is a majority of starting points in all areas which seem fundamentally suitable to master the problems. In addition, the possibilities to become active in the different fields are perceived, combined and varied in different intensities. The measures of the prevention and abatement of corruption with reference to the political parties' areas of action regularly follow plausible considerations: The creation of general institutional and legal conditions for the abatement and prevention of corruption is in the foreground, for example by improvement of controls, greater transparency and strengthening of the role of the public in the fight against corruption. Also, multiple instruments for the fight against corruption are created for the justice system.

The causes of the openness to combination and the great variation of regulation details can only be speculated on. One possibility for example is the restraint of resource-intensive possibilities for the prevention and abatement of corruption – understandable in light of the usually limited public accounts – as for instance the setting up of specific supervisory bodies or the raising of the number of staff of existing instances of control with the objective of a more intensive, comprehensive supervision. The introduction of new standards also reaches its limits, standards which for example affect the internal construction, responsibilities and the handling of financial processes within the parties. Some member states have taken measures in this sense, as for instance the duty of setting up a financing plenipotentiary or also the introduction of auditors into the accounting procedure of the political parties themselves. Such types of initiatives are up against the challenge of preserving the organization sovereignty within the party and nevertheless creating proper guidelines for a corruption-resistant financial conduct within the party. It will also always need to be examined whether the legal guidelines can be put on the parties in their entirety, both from a staff as well as from a financial point of view. Here, especially when focusing on the political parties, corruption prevention and abatement generally have to face the problem that the legal regulation of the party system is about 'decisions on their

own behalf'.⁶⁷⁷ The legislative parliaments are staffed with party representatives whose motivation to impose restrictions on themselves and subject themselves to controls can be assessed as moderate at best.

In spite of this, initiatives for the improvement of the prevention of and fight against corruption are to be noted fundamentally. This is an expression of an apparently strongly developed need of both the actors (government, Members of Parliament and political parties) as well as the public to face the dangers which are connected to readiness for corruption by the political personnel – a readiness apparently perceived as growing.

In this way, the measures taken are a reflection of an increasing raising of awareness. To what extent they also actually might be able to prevent corruption, however, is currently difficult to assess from a scientific point of view. Moreover, all taken and apt measures should particularly allow for other essential aspects: They should indeed comply with the requirements of effectiveness and efficiency. But do the corruption-fighting measures actually fulfil their function? Which effects do they have? Certainly the different measures of the member states have caused changes in the respective political fields and moreover have had an influence on the requirements of the actors as well as the public to the standards of conduct. These observations should, however, not obscure the fact that there are not yet any research results on the effectiveness of concrete corruption fighting measures.

Even the measurement of corruption itself is a great challenge – as already explained in the introduction. In this sense, the annual Corruption Perception Index (CPI) of Transparency International attempts to represent the 'subjectively perceived scale of corruption within a country' and combines various sources and/or data records from several years for this purpose, including self-appraisals of nationals or appraisals by businessmen, experts and the public on corruption. Certainly, this evaluation of a country by nationals and foreigners must not be confused with reality; it is, however, the most acknowledged attempt up to now to measure corruption and to compare states. According to this, poverty, weak institutions and a planned economy are regarded as the most important mediums for corruption; less state, clear and stable rules as well as transparency are regarded the most important mechanisms of protection.

The precise effect of the protection mechanisms is, however, unclear. There are not (yet) any instruments which allow an evaluation of corruption-fighting measures with reference to their success. It can therefore be assumed that this is the reason why states take most promising

⁶⁷⁷ On this, see most recently *Thilo Streit*, *Entscheidung in eigener Sache*, 2006. The investigation on the 'decisions on one's own behalf' which, in Germany, are commonly understood as being problematic – from a democratic point of view – points out by means of an analysis under constitutional law and theory that, according to the matter at hand, it actually concerns 'decisions with a structural deficit of control'. The author goes into various possible solutions, and in so doing, opts especially for independent advisory expert commissions.

measures (from their point of view) without having the necessary qualifications for this evaluation at their disposal. With this as the background, the legislative activities with the purpose of the prevention of and fight against corruption still have a rather experimental character. In order to find a way out of this dilemma, criteria for the judgement of the effect of corruption-fighting measures must be defined: What does it mean when a corruption-fighting measure is effective, and how can an effective measure be distinguished from an ineffective one? The endeavours should therefore not only be aimed at the attainment of a certain minimum standard of legal regulations in the member states with reference to transparency and control of financial conduct of political parties, but also and above all at the exploration of the manner of functioning and the effectiveness of the measures.

D) Final Comments and Recommendations

I. The Anti-corruption Measures of the Member States

1. Comparison of the Anti-corruption Measures of the Member States

a) Procedure for Data Evaluation

The investigation served the exploration of the forms and the control of corruption in the public sector of the in total 25 member states of the EU (as of the start of the project). Special attention was paid here to the public service, the Members, political office-holders and the political parties.

The study was aimed at examining how the 25 member states prevent and/or fight against corruption on the state level and what practical meaning the anti-corruption measures have in practice.

In order to draw a relatively precise picture, the project worked with a questionnaire which was answered with the aid of cooperation partners in the member states. The academic quality of the discussion stood in the foreground of the search for suitable cooperation partners, so that mostly experts from university teaching and here particularly from the area of political and legal science were consulted. The questionnaire itself was based on the consideration that the relevant characteristics of the member states' measures against corruption can be collected this way. The questionnaires are a core component of the entire investigation (for the procedure in detail see above, A.III.).

The questionnaire was not only written in German, but also in the English language, since it was to be expected that most cooperating partners would speak one of the languages. That the language knowledge differs slightly in detail, however, is a difficulty which the process of the European unification is generally confronted with and which had to be accepted in view of the 21 national languages in 25 member states. Thus both the questionnaire not having been written in the native language as well as answers not being given in the native tongue presupposes that those charged with the completion and/or the assessment of the questionnaire could understand the terminology and grasp the context. This was not always without problem. It cannot be entirely precluded that mistakes were made which can make an understanding less clear.

This language obstacle is also found in the collection and evaluation of the available legal regulations in the member states. As far as possible, which is to say, as far as was available in English or German, supplementary sources (literature, Internet) were fallen back on in order to explain the contexts of existing regulations. Often, however, translations were lacking and as far

as the regulations relevant for the completion of the study were available in English in addition to the original language, the quality varied again significantly.

The central part of this study is formed by 25 country reports which display the legal environment of the actors, the legislative measures for the prevention and abatement of corruption and their organizational implementation. It was also attempted to evaluate the practical experiences with anti-corruption measures in the member states. Due to obviously existing insecurities of the consulted experts with respect to the hardly definable success of such measures, the results of this data evaluation fell short of the expectations. In order to facilitate a comparison, the data evaluated from all examined 25 member states were analyzed according to a homogeneous pattern.

b) Summarised Result of the Data Evaluation

The measures taken by the member states for the prevention and abatement of corruption in the public sector affect all examined actors and therefore material-legal questions of most different natures. This circumstance necessitates that already on the member state level, anti-corruption measures are unable to be united within a consolidated, independent anti-corruption law, meaning within a closed regulation. Even the member states which recognise an anti-corruption law transfer the implementation of the aims and measures to regulations beyond the anti-corruption law. This is mainly in adjustments and/or changes of the criminal, civil servant and disciplinary law, accompanied by the creation of new or the modification of existing organisational regulations, supplemented by authority internal or actor-related behavioural guidelines.

An extensive system of controls of legitimacy and expediency of state actions through internal (internal revisions) as well as through external (Courts of Auditors) control organs, as well as the creation of complaint authorities for citizens which also investigate suspicious cases of corruption (Ombudsmen) are a secured part of the European prevention and abatement of corruption. Also the political parties exerting decisive influence on the state institutions are subject to governmental controls, mainly with regard to questions of financing, in all member states. Beyond this minimum balance, the development in the member states does differ from each other – sometimes even significantly. Some member states – but not the majority – have faced the challenge of establishing special (central) anti-corruption institutions. Austria takes a pioneer role in this development, which also endowed the authority with very extensive competences. The remaining member states were much more reserved with regard to this. On the parliamentary level, the insight that an effort (which has become necessary) for the prevention and abatement of corruption through the parliaments in addition to the legislative activities has not yet stabilised in the majority. Indeed, incompatibility rules exist; their contents, however, vary strongly. Also the handling of additional earnings of Members does not for the most part

show any distinct problem awareness. Only few member states have established parliamentary institutions that deal concretely with corruption-preventing and corruption-abating tasks, be it with reference to the behaviour of the Members or also to other state institutions (ministers, government etc.). The demand of the prevention and abatement of corruption can obviously not be satisfied with the instrument of the investigation committee which has been institutionalised in all member states in one or another way.

From this, a quite unanimous effort of the member states in taking measures against corruption can indeed be seen. This unanimity ends, however, at the concrete implementation practice of the member states.

In detail, it can be determined for all the examined potential actors in the public service – meaning on the level of administrative employees – that all examined 25 member states do counteract corruption under criminal as well as disciplinary law. These efforts found formal expression especially in offences of bribery, the realisation of which regularly result in fines and imprisonment. Next to that, work and/or civil servant-legal consequences are also mainly provided for, as for example the loss of the civil servant rights and/or the position. The homogeneousness of the legal situation ends, however, with regard to the concrete design of the general conditions under which the employees of the public service are employed in the member states. Neither the employment relations, or the employment structures, nor the social securities of the employees are predominately the same. Accordingly, not only the situations in which corruption occurs, but also the consequences of concrete actions under criminal and disciplinary law differ. The interpretation of the criminal and disciplinary laws depends on the concrete demands to the behaviour of the employees which can be derived from the legal general conditions of their employment, among other things. The sometimes large differences can also be seen in particular in the comparison of the member states' regulations of allowed and/or forbidden secondary activities of members of the public service. In part, such activities are only allowed with certain contents⁶⁷⁸, in part they are only allowed with individual basis of approval⁶⁷⁹, in part prohibitions exist only for certain ranks⁶⁸⁰. The situation presents itself still more differently in the area of the facilities institutionalized for the control of administration processes in the member states. Indeed there are both authority-internal as well as cross-authority control institutions in all examined member states. The concrete organizational forms as well as the actual ranges of tasks and competences clearly differ from each other, however.

678 France allows only secondary activities in the sciences, arts or teaching.

679 Here, on the other hand, it is inhomogenously regulated by the member states who decide according to which criteria whether a conflict of interest is to be feared and therefore the approval is not to be granted.

680 In Cyprus, Finland and Ireland, all secondary activities are only prohibited for employees of the higher service levels.

Also with view on the Members as potential starting points for corruption, a unified structure of the legal situation cannot be spoken of. Although position and tasks of the Members in parliamentary democracies do to a large extent fundamentally correspond with each other, this is not valid for anti-corruption measures with respect to the Member. The member states create very different standards even in the question of what is to be regarded as ‘sufficient’ financial securities of a member. The situation is similar with the determination of incompatibilities of the Member mandate with other public offices. The regulations on (private) secondary activities of Members seem to be only different at first sight – that, however, even in a negative sense: That is, all examined member states allow ‘their’ Members to achieve additional incomes through secondary activities, i.e. to possibly also put themselves in (financial) dependencies. The disclosure – in so far as to be categorized as corruption preventive – of such dependences is in turn regulated very differently. In part, an obligation for disclosure is lacking completely. Often, additional incomes are provided only as of the crossing of very different threshold values. The period for which a notification is to be made is also defined differently. Besides, in the majority of the examined member states, this information is not made accessible to the public. Even the member states’ handling of the bribery of Members does not follow any homogeneous path.

In all member states, either the regulations for the public service or those for Members or – depending on the concrete regulation – both areas are used for political office-holders. Thus the regulations concerning the political office-holders also participate in the heterogeneity already determined.

Also with respect to the political parties, a strongly distinctive heterogeneity can be found mainly in the area of regulations aimed at the prevention and abatement of corruption. Their financing, the accounting duties valid for them and the consequent handling of the information to be accounted (both with regard to their publication, but also with regard to their sanctioning in the case of faultiness) is regulated very differently in the member states. This becomes clear when looking at the regulations on donation financing, which from a corruption-preventive point of view are to be referred to even as being in deficit: The donation prohibition practice is marked by an extreme downward slope in the density of regulations and the duty for the publication of external influences (regularly provided through financial strength) on the political parties through a designation of the donors is not provided in the majority of the member states.

The heterogeneity of the implementation forms and detailed measures complicate finding the relevant regulations in 25 member states and require almost detective-like abilities. For a European-wide prevention and abatement of corruption, it would certainly be beneficial if the measures of the member states in this field were collected and centrally and publicly accessible.

2. Courses of Action for the Prevention of and Fight Against Corruption

In view of the heterogeneity of the member states' detailed measures and regulations, the focus is to be directed away from the individual measures onto the target directions of anti-corruption measures in general. In view of this, the state courses of action for the prevention and abatement of corruption can be described as follows: on the one hand, measures are targeted at the creation of a corruption-resistant environment of state decision processes and therefore aim at supporting the integrity of the actors and the institutions; on the other hand, a direct influence is to be exerted on the decision processes and results through institutionalization of control procedures and institutions. Furthermore, the preconditions for a controllable structuring of the decision processes are created through the establishment of transparency and publicity; ultimately, the demand for corruption-free, state decision procedures can be more strongly enforced through the activation of sanction possibilities.

a) Integrity

Integrity is a complex concept which closely describes the correspondence between abstractly formulated values and actual life practice. On the one hand, from this viewpoint a person is in part responsible for behaving with integrity. However, integrity partially depends on the social living conditions as well. It is therefore the objective of anti-corruption measures – which are supposed to create a corruption-resistant environment of state decision processes – to sensitise the actors within the public sector to the dangers of corruption in good time and immunise them from corruption as well as create a corruption-resistant organizational framework of action. Here, several things come into focus: the values, norms and thinking-attitudes, the attitude and the behaviour of all actors on the one hand, as well as the organisational structures and the procedural organization within the state institutions which set the framework of action of the actors on the other.

The first aspect aims at the integration of corruption prevention considerations into the professional understanding and the work culture of the actors, by anchoring the respect of certain values such as incorruptibility and transparency as a demand of one's own conscience to the framework of the service ethics. This can be influenced positively by information, public relations, improvement of the management culture, employee development, expansion of a praise and recognition culture, targeted training offers etc. Here, among others things, efforts which are aimed at the following are possible:

- to create a basic consensus and develop practical recommendations for ethical rules or codices of behaviour (for example on sensitive topics such as bias, acceptance of gifts,

secondary activities, lecture activities) within the institution under participation of as many as possible insiders⁶⁸¹;

- to strengthen competence and responsibility through conscientious selection and continuous further education of the employees;
- to see to an anchoring of corruption prevention considerations in the professional understanding of employees newly entering the service already through early educational measures in the specific basic training;
- to enable the managers through training and further education to recognise signs of corruption, to act effectively against them and to support them in showing exemplary behaviour in every situation;
- to anchor the ethical basic attitude of incorruptibility in the consciousness of as many as possible through increase of employee satisfaction and motivation (for example through a wage and salary system which is experienced as being just, through a specialised distribution of tasks which supports the personal responsibility and through independent working through increase of the self-esteem by praise and recognition).

Next to the actors as direct starting points for measures of the integrity promotion, the efforts must be valid for the organization in which the actors are integrated, as well as for the procedures. To be named here are measures which serve

- to ensure a quick and secure organisation of administrative processes through acceleration of the procedures which also takes the requirements for the abatement of corruption into account;
- to guarantee a high level of performance through transparent and quality-secured processes including the necessary controls;
- to achieve a lawful, correct and fair procedure through clear rules of responsibility and an efficient operational organisation;
- to create optimal basic conditions for the work, both in the organization as well as the equipment for the workplace;
- to achieve an adequate and balanced workload for the employees through a needs-oriented personnel planning (for example also through regulations for the case of overloading and/or under-utilisation);
- to establish forms and instruments for the integration of the individual into the work structures (for example through ensuring the flows of information, work meetings, initiative rights to special discussions).

681 The demanding of the observance of and compliance to these rules through others is each person's task. The sanctioning of misconduct within the frame of what is legally allowed (e.g. through exclusion of benefits which can not be legally claimed) is also possible. Such rules could not only be made known internally but also externally towards customers, contractors, and citizens, in order to strengthen the factual binding force and the character of a positive code of honour for the pursuit of a further purpose aimed at transparency and publicity.

What counts for the functioning of a democratically and constitutionally organised society is to strengthen the integrity of the individual as well as that of the institutions. In view of this, integrity is not only a question of value consciousness which is a matter of the individual, the office-holder, politicians and parliamentarians. Integrity also needs necessary adjustments on a structural level, an implementation into the organizational and office culture. Integrity has to shape the general understanding and has to be supported through concrete measures and rules.

b) Controls

Control institutions and control mechanisms are used for the guarantee and improvement of state decision processes which aim at producing reasonable legal and effective decisions which are in the public interest. In this sense, control is a non-delegable task of superiors, supervision and control organs and encompasses both the inspection of the procedure as well as of the result of the decision-making plus the arranging of corrections and, if included in the competences and necessary, the imposing of sanctions.

Internal and external controls can be distinguished. Mechanisms which are institutionalised within the individual authority and integrated into the authority's work processes are to be understood as internal control mechanisms; this means that they either occur simultaneously with the work process or are set immediately before or after. Contrary to that, external control is carried out from outside the organizational unit to be controlled; that is, the control task has been transferred to other superordinate legal entities (here, however, also state/governmental), such as supervisory and control authorities.

However, both internal and external control systems consist of systematically arranged organizational measures and controls for the compliance with laws, guidelines and for the defence of damages that can be caused by own personnel or third parties. The control systems can encompass activities as well as facilities.

Possible internal control activities are for example written or verbal instructions on the handling of personal data or on the defence of illegal processes in the area of the funds allocation or also the establishing of the 'four eyes' principle for commissioning of orders, which means that those who carry out one function must be checked by somebody else. Internal control facilities are for example the internal revisions at the individual authorities, the corruption or ethics committees of the parliaments, provided that they are used for the control of the internal parliamentary processes. In contrast to that, Courts of Auditors, central Ombudsmen, supervisory authorities and specific anti-corruption authorities belong to the external control facilities.

Here, control measures generally fulfil three functions: firstly a *confidence function*, by investigating in the sense of the organizational decision-makers, the superordinate instances and possibly also the public, whether and where appropriate that processes go properly, laws and

ordinances are complied with and so forth; secondly a *preventive function*, by increasing the discovery risk for persons that do not act or intend to act in accordance with the standards; thirdly an *information function*, by contributing to the support of the decision-making of the organization management through the creation of transparency on processes and organisational units.

c) **Transparency**

The term ‘transparency’ is frequently used in connection with the abatement of corruption; as an example, the probably best known private organization for the abatement of corruption – Transparency International – uses the term in its name. Despite this large distribution, it is quite unclear what exactly is meant by transparency.

In the sense understood here, measures of transparency serve a controllable organization of the decision processes and results as well as their documentation. Yet even according to this understanding, the term ‘transparency’ remains rich in presumption. According to this, transparency is dependent on different factors: on the one hand, on the selection of the information (what is documented), on the quality of the information (complete, true, clear, appropriate) and on the use of the information (who makes use of the documentation and in what manner, facilitating up to date and effective access).

In the markedness of the foreseeability and verifiability of the administrative action for those ‘subjected to standards’, a transparent administration in the public sector is also mainly aimed at the creation of publicity. On the one hand this concerns the questions of to which extent and in which manner the citizens can take cognizance of data, decision processes, files etc. On the other hand it is, however, also important to support and follow the abatement of corruption within the public sector using internal and external public relations. The publishing of anti-corruption efforts can act as a signal for citizens and the economy and it can help restrict loss of integrity and defamation of the public sector, in that values and standards of the institution and its members are communicated to the respective target group (citizens, voters), by which their attitudes towards the public sector in general as well as towards corruption in particular can then be influenced with a lasting effect.

Generally, limits can be set on the attempts of individuals to influence the situation by corruption by creating transparency and publicity. Transparency and publicity help to prevent unofficial agreements, the bypassing of procedures stipulated by law (for example tendering procedures), the shortening or illegal acceleration of administration processes and the buying of favourable decisions: because the fertile soil is taken away from corruption as being an ‘acting in secret’.

d) Sanctions

In sociology, the term ‘sanctions’ describes organisational forms of social processes and has a neutral meaning in this context – that is, is used for both negative as well as positive action consequences. In this sense commendations, appreciative remarks or a promotion would also be ‘sanctions’. This kind of positive action consequence should here, however, not be assigned to the area of sanctions, but – as is more appropriate from the point of view of the corruption research – to the organizational measures for a corruption-resistant environment (on that, see above, D.I.2.a)).

The term ‘sanctions’ should rather encompass negative action consequences exclusively as a reaction to a violation of standards, which is what the general use of the word implies. These consequences then, however, should be covered in a comprehensive sense, so that not only punishable offences, fines or dismissals are to be understood, but every kind of negative reaction in an environment where people are dealt with, therefore also negative quality assessments, criticism or disapproval.

Sanctions are supposed to influence the behaviour of persons in a manner that non-standard action loses its attractiveness. If a certain behaviour draws negative reactions from the environment onto itself, the acting person is discouraged. For this reason, it is to be expected that the unwanted behaviour becomes less frequent, and in the best case scenario even stops completely. An important influencing factor for the desired behavioural change and/or adaptation is the regularity with which the sanctions are made use of. There is an expectation connected to a steady regularity in the sanctioning of a certain kind of behaviour, namely that the negative action consequences will be able to bring the actors to permanently act in a way which complies with the standards.

It is a difficult balancing act to put the imposed sanctions in a reasonable relation to the severity of the infringement. Provided that the reaction to an infringement gives elbow room to the one imposing the sanction, it is a matter of bringing the deterring effect hoped for and a confidence-building effect to the environment with an adequate balance. Both excessive severity as well as exaggerated leniency can be counterproductive with regard to that; however, one will result often in the other. Initially, an exaggerated need for harmony, the fear of quarrels or the fear that advantages otherwise granted could fall away (for example in the political environment), can cause desisting from sanctioning. At crossing of the tolerance threshold, people intervene then, however, with exaggerated severity. The ‘conflict-shy’ refraining from sanctions raises doubts about the seriousness of the demand and about the credibility. Sanctions which are too strict often do not cause their addressees to become reasonable and to change their behaviour in the desired manner. Instead, defence reactions are often the consequence, which show in justifications or counter-attacks on the one hand and in self-doubt and insecurity on the other.

In order to counteract these dangers, the consequences of non-standard behaviour must be calculable and the criteria transparent. It must be recognizable and foreseeable for those 'subjected to standards' when and to what negative action consequences are reacted with. Then an orientation function befalls sanctions and they can unfold a controlling and correcting effect.

3. Mutual Dependencies of Courses of Action

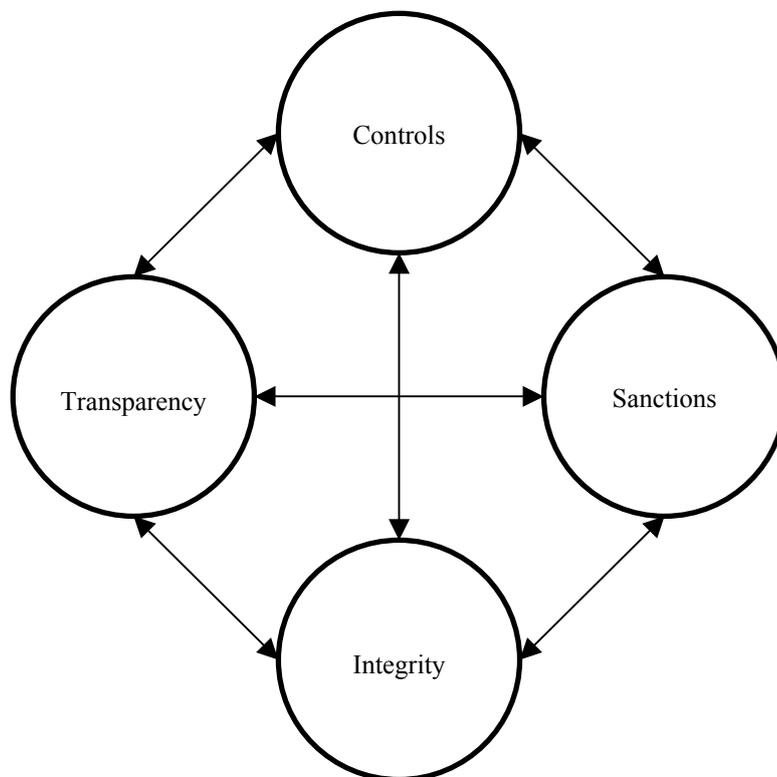
The different courses of action are not unrelated, they partially necessitate each other, presuppose each other or have effects on each other. Thus, control cannot occur without transparency. The public, if understood as an addressee of transparent procedures and decisions, is a control institution in itself. As a prevention measure, control can be in accordance with an integrity culture to be developed. Appropriate controls established to a reasonable extent can help to prevent irresponsibilities, performance drops and a scant regard for one's own work. On the other hand, overregulation and a too high control density can lead to demotivation, a general culture of distrust, loss of personal responsibility and thus to a lacking of identification with one's own work. The path to a sensible examination culture within the public sector which balances these target conflicts can also occur through ethics and value management. The aspects relevant for the integrity of the individual as well as the organization such as knowledge, trust and high ethical standards (as informal control measures) complement the formal ones such as legal and expert supervision, financial controls and instructions. Erroneous behaviour discovered by controls normally results in sanctions. The same is valid with regard to the non-observance of integrity standards.

These interdependences are indeed often obvious upon closer observation, but seem up to now – as the evaluation of the country reports show as well – not quite to have been integrated into the considerations of how the dangers of corruption are to be counteracted. The impression arises that the prevention and abatement of corruption hardly follows any superordinate idea of a mutual strengthening or support and thus could correspond to a structurally consistent procedure. Rather, measures which are too selective and confusing are frequently taken for the most varying correlating actions without them having been subjected to investigation on their effects on each other, as will be presented as follows (under D.I.4).

A consistent inclusion of these bidirectional dependences into the lists of measures of the corruption prevention and abatement of the member states would mean an important step in the direction of the development of an ultimately common European strategy of anti-corruption. The already suggested central, publicly accessible collection of anti-corruption measures of the EU member states (see above D.I.1.b)) could be made fertile here.

Generally, interweavements between all courses of action are possible, so that a graphic representation of the fundamentally possible interdependencies could resemble the following (Figure 10):

Figure 10: Model of Interdependencies for Anti-corruption Measures (IAM) – (author's representation)



However, not all concrete measures and rules have direct effects on all other courses of action, as the following figures (11 and 12) make clear, with the help of concrete example measures.

Figure 11: IAM – Example 1 (author's representation)

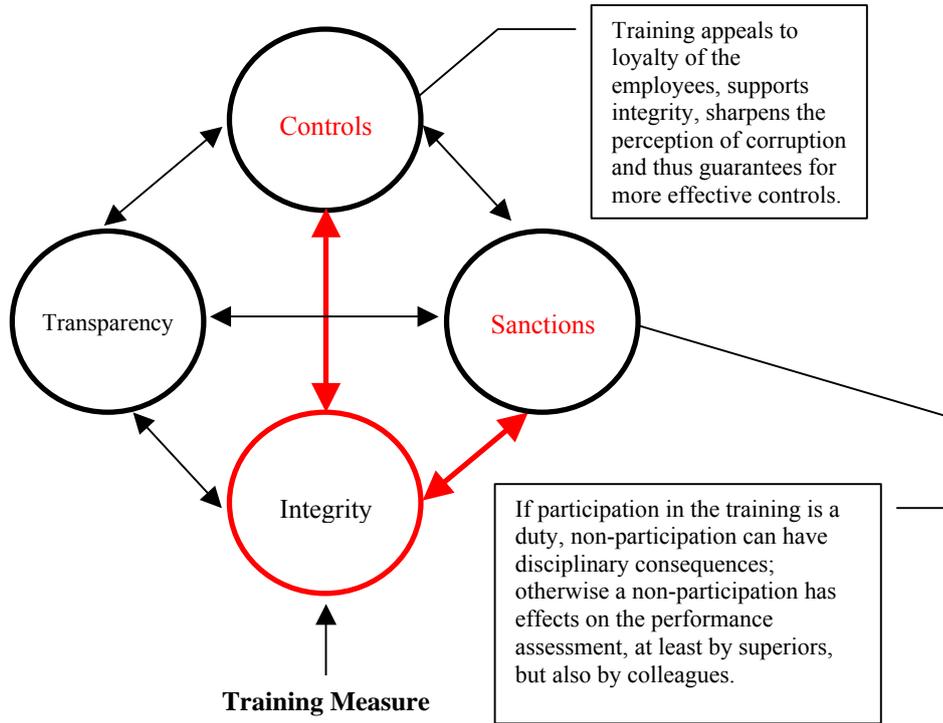
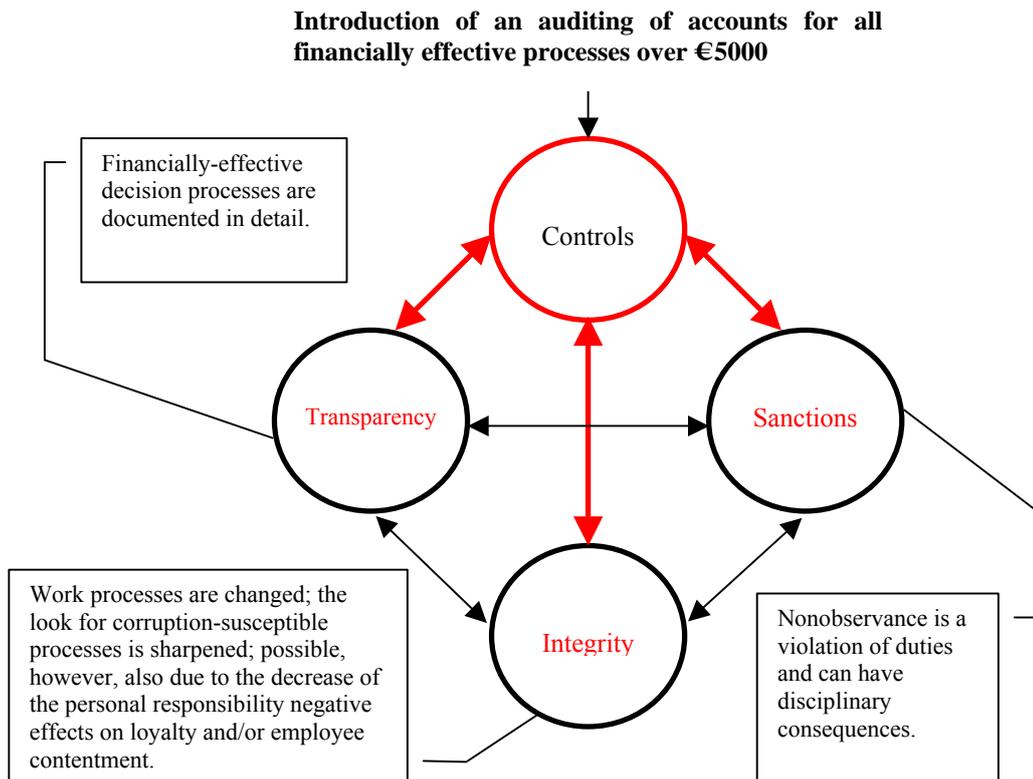


Figure 12: IAM – Example 2 (author's representation)



Both the first (Figure 11) and the second example (Figure 12) clarify that the measures which are at first sight assigned to one certain course of action can respectively at a closer look even be immediately used for the implementation of other courses of action or can at least create conditions necessary for other courses of action. Though some measures have more intense effects, others have less distinctive effects on other courses of action. Thus the training described in the first example (Figure 11) affects the effectiveness of already introduced controls only indirectly and for its part creates preconditions for the taking effect of already available sanction possibilities. In particular the second example (Figure 12) shows, however, in which manner the courses of action can work in the sense of a bidirectional strengthening and support. The introduced auditing of accounts is also directly used for the creation of transparency, at least for the aspect of the authority-internal documentation of administration processes. Concerning the ‘integrity’ course of action, it becomes clear that the possible effects on other courses of action must not necessarily be of an intensifying or supporting nature for other courses of action but can even be quite negative. This in turn depends on the one hand on the concrete structure of the measures as well as on the other hand on the overall circumstances into which it is put.

From this point of view it becomes clear that the introduction, arranging and concrete implementation of anti-corruption measures is dependent on a superordinate, systematic planning, if individual measures are not to be even of counterproductive nature. In view of this, the member states’ measures are to be examined anew from a changed perspective.

4. The Heterogeneity of the Member States’ Prevention of and Fight Against Corruption

A classification of the member state anti-corruption measures into the categories of the four previously described courses of action promises a better overview and allows an evaluation of the member state anti-corruption strategies to a certain extent.

In general, the comparative evaluation of the member state anti-corruption measures cannot raise any claim to completeness since the results of the data evaluation – due to the methodological approach chosen – depend on the more or less distinct fondness for details by the respective consulted experts; their own research is often confronted with the problem of language barriers. Nevertheless, even an evaluation under these conditions is surely able to draw an almost authentic picture of the member states’ sometimes diffuse (as will be shown) and unbalanced practice of corruption prevention and abatement.

The attention here is supposed to be directed solely towards the specific anti-corruption measures, whereas general legality controls, which also put corruption into the focus (yet not in a targeted manner) will not be taken into consideration.

Concerning this, the member states' activities of corruption prevention and abatement are examined more closely with regard to the public service and the parliaments and/or the Members. The political parties are included, but the political office-holders are not, however: the latter, because they are subject to the provisions on the public service and/or the Members anyway, according to the member states' regulations; the former, as their special position within the state area contradicts a comparative interpretation within a general overview.

The allocation of the institutions described by the experts which are used for the corruption prevention and abatement to measures of control and/or integrity turned out to be sometimes difficult, since the competences of the facilities were described only fragmentarily when it came to details and/or were difficult to determine due to language obstacles. Such facilities which have investigative authority of their own and possibly executive authority going even beyond that, were – according to the annotation on the courses of action – generally allocated to the control entities; whereas such facilities with solely advisory functions were categorized to 'integrity'. Provided that facilities explicitly fulfil both functions, they will accordingly be presented with both courses of action.

Figure 13: Specific Measures of Anti-corruption in the Member States (author's representation)

Member State	Public Service				Parliament/MPs			
	Controls	Transparency	Integrity	Sanctions	Controls	Transparency	Integrity	Sanctions
Austria	Office of Internal Affairs	general freedom of information; disclosure of received gifts (not public);	Office of Internal Affairs (training, counselling, guidelines)	criminal law, disciplinary law	Incompatibility Committee	disclosure additional income (public)	federal constitutional law on the limitation of income of public functionaries; Law of Incompatibility	general criminal law; loss of mandate for abuse of office with intent of profit (legal offence)
Belgium	no special authority	general freedom of information	Integrity Monitoring Department	criminal law, disciplinary law	no special institution	disclosure of secondary activities and income (not public)	Deontological Commission of the Flemish Community	general criminal law; pay cuts
Cyprus	no special authority (Coordinating Body Against Corruption)	no general freedom of information	Public Service Law (with rules of conduct)	criminal law, disciplinary law	Special House Committee on Declaration and Examination of Financial Interests	disclosure of financial relationships (law) (not public)	no special measures	bribing of Member; sanctions for violation of duty of disclosure
Czechia	no special authority (sporadic local anti-corruption agents)	general freedom of information	general ethics guidelines; sporadic internal ethics guidelines; Civil Service Act (in preparation)	criminal law	no special institution	disclosure of allowances, assets, secondary activities, interweavement of interests and income (public)	Act on the Conflict of Interests	general criminal law
Denmark	no special authority	general freedom of information	internal rules of conduct	criminal law	no special institution	no special measures	no special measures	general criminal law
Estonia	no special authority	general freedom of information	Public Service Code of Ethics	criminal law, disciplinary law	Select Committee on the Application of Anti-Corruption Act	disclosure of secondary activities and income (public)	rules of conduct	general criminal law, Loss of mandate
Finland	no special authority	general freedom of information	no special measures	criminal law	no special institution	disclosure of additional earnings via publicly accessible tax declaration	no special measures	bribing of Member
France	Service central de prévention de la corruption; Brigade centrale de lutte contre la corruption	general freedom of information	sporadic internal rules of conduct; sporadic local ethics commissions	criminal law, disciplinary law	no special institution	disclosure of assets and economic shares at the beginning and end of the mandate (not public)	no special measures	general criminal law, Loss of mandate
Germany	no special authority (sometimes local anti-corruption agents)	general freedom of information	predominantly internal rules of conduct	criminal law, disciplinary law	no special institution	disclosure of additional income in total (public)	rules of conduct	bribing of Member; Loss of mandate fine for violation of disclosure
Greece	no special authority	general freedom of information	Public Servants Code	criminal law, disciplinary law	Permanent Committee on Institutions and Transparency	disclosure of additional income (public)	no special measures	general criminal law, Loss of mandate
Hungary	no special authority	general freedom of information; disclosure assets and incompatibilities (public)	no special measures	criminal law	no special institution	disclosure of assets, secondary activities, economic shares and income (public)	no special measures	general criminal law
Ireland	no special authority	general freedom of information; disclosure of assets for higher officials (public); disclosure of connection to private enterprise (not public)	Standards in Public Office Commission; Ethics in Public Office Acts 1995 und 2001; Standards in Public Office Act 2001; Civil Service Code of Standards and Behaviour 2004	criminal law, disciplinary law	no special institution	disclosure of secondary activities and income (public)	rules of conduct	general criminal law; for violation of rules of conduct and duties of disclosure, imprisonment or fine, cancellation or cut in pay
Italy	High Commissioner for Prevention and Abatement of Corruption	general freedom of information	general rules of conduct (statutory order); time-limited prohibition of employment in private sector for higher officials after ending of service	criminal law, disciplinary law	no special institution	disclosure of secondary activities and income (public)	no special measures	general criminal law
Latvia	Office for Prevention and Abatement of Corruption; Committee on Supervising the Prevention and Combating of Corruption	general freedom of information; disclosure of received gifts (not public)	general rules of conduct (law); internal rules of conduct	criminal law, disciplinary law	Mandate, Ethics and Submissions Committee; Defence, Internal Affairs and Corruption Prevention Committee; Committee on Supervising the Prevention and Combating of Corruption	disclosure of assets, secondary activities and income (public)	rules of conduct (law); prohibition of employment in private sector after ending of office	general criminal law, Loss of mandate; warnings for violation of rules of conduct (public)
Lithuania	Special Investigation Service; Interdepartmental Commission for Coordinating the Fight against Corruption	general freedom of information	Internal ethics commissions; general rules of conduct (law); training (law); internal rules of conduct	criminal law, disciplinary law	Commission for Ethics and Procedures; Anti-corruption Commission	disclosure of complete income (public)	rules of conduct in preparation	general criminal law
Luxembourg	no special authority	no general freedom of information; notification duty for conflicts of interest (not public)	no special measures	criminal law, disciplinary law	no special institution	disclosure of financial allowances, secondary activities and earnings (public)	no special measures	Bribing of Member; Loss of mandate
Malta	Standing Committee against Corruption	no general freedom of information (but extensive right of press to be informed); notification duty for conflicts of interest (not public)	Standing Committee against Corruption; general (law) and internal rules of conduct; training	criminal law, disciplinary law	no special institution	no special measures	rules of conduct	general criminal law
Netherlands	integrity agents; integrity agencies	general freedom of information	guideline catalogue on measures of integrity (legal obligation to be created for every public facility)	criminal law, disciplinary law	no special institution	disclosure of additional income (not public) and assets (partially public)	no special measures	general criminal law, Loss of mandate; pay cuts for violation of duties of disclosure
Poland	Central Office of Anti-corruption; local ethics councillors	general freedom of information; sometimes disclosure of additional income from secondary activities (partially public)	general ethics guidelines; sometimes internal rules of conduct	criminal law, disciplinary law	Committee for Ethics/Integrity	disclosure additional income (public)	Law on the fulfilment of mandate- holders and the senator	general criminal law
Portugal	no special authority (an authority established in 1983 was dissolved in 1986)	general freedom of information	Disciplinary Statute of the Public Service (law); general rules of conduct	criminal law, disciplinary law	Parliamentary Ethics Committee	disclosure of additional income, economic shares and allowances (public)	Statute of MPs	Bribing of Member
Slovakia	no special authority (Ministry of the Interior, Ministry of Justice and Public Prosecution Anti-corruption network)	general freedom of information	National Program for Corruption Abatement; general ethics guidelines; internal ethics guidelines; time-limited prohibition of employment in private sector for leading officials after ending of service	criminal law, disciplinary law	Incompatibility Committee	disclosure of assets, secondary activities and income (public)	Law on the protection of public interests in the exercising of functions of public functionaries	general criminal law, fine and/ or loss of mandate for violation of duty of disclosure
Slovenia	Commission for the Prevention of Corruption	general freedom of information	Prevention of Corruption Act; Resolution on Prevention of Corruption Act; Public Servants Act; rules of conduct	criminal law, disciplinary law	Commission under the Prevention of Corruption Act	disclosure of additional income and assets (public)	Prevention of Corruption Act	bribing of Member
Spain	no special authority	general freedom of information	no special measures	criminal law, disciplinary law	no special institution	no special measures (but extensive incompatibilities)	no special measures	bribing of Member; loss of mandate
Sweden	no special authority	general freedom of information	internal rules of conduct; training	criminal law, disciplinary law	no special institution	voluntary disclosure of secondary activities and income (public)	no special measures	bribing of Member; loss of mandate
United Kingdom	no special authority	general freedom of information	Committee on Standards in Public Life; general rules of conduct	criminal law, disciplinary law	Parliamentary Commissioner for Standards	disclosure of secondary activities and income (public)	rules of conduct	Bribing of Member

The above overview (Figure 13) confirms the impression gained through the comparative evaluation of the country reports (see above, C. and D.I.1.b)) that the member state anti-corruption attempts are shaped by a distinct heterogeneity. The fact that this heterogeneity does not apply only to the concrete individual measures and their structure in detail, but is also to be found with respect to the anti-corruption strategy pursued by the individual member states, proves the need for action given from a European viewpoint.

It turns out that the member states act very differently under the changed perspective of the allocation of anti-corruption measures to the four courses of action as well. While some member states are active in all areas, other member states concentrate their efforts on corruption prevention and abatement only in sections, either regarding the courses of action or the public sector in general.

Only a few states are continuously active, Latvia and Austria in particular. While Austria chose a compressed and centralized approach and pursued a consistent line of corruption prevention and abatement concerning both the public service as well as the Members, the Latvian activities seem less complex and less targeted. Both for the public service as well as in the parliaments, there are several control facilities whose tasks lie particularly in the prevention and abatement of corruption. A scattered and shattered distribution of tasks, however, complicates unambiguous competence allocations, increases the probability of competence gaps and can cause cooperation and voting problems between the institutions. A great number of institutions, general rules and special regulations could lead to an inefficient organisational structure of the administrations themselves which in turn favours corruption. In the case of Latvia, however, this apprehension does not seem to be confirmed (yet). The ranking of Latvia in the CPI of Transparency International has steadily improved since the year 2003, in which it still ranked no. 57, (2004: 57th place, 2005: 51st place, 2006: 49th place). Apparently Latvia has taken a path which has led to a more positive perception of the public sector in the consciousness of the population. Whether this is a lasting value change that can shape the political culture of Latvia in the long run and initiate general anti-corruption ethics will have to prove itself over the course of time.

Most of the other East European member states, in particular Lithuania, Poland, Slovakia and also Slovenia are on a similar path to Latvia's. The simultaneous establishing of several institutions, the enactment of numerous laws aiming at corruption prevention and abatement and behaviour guidelines can partially be explained in view of these states all being young democracies. On the one hand, the deep-rooted political change offers the chance to reform and redesign the state and its institutions. Through this, more is created with regard to especially integrating the institutions for corruption prevention and abatement into this design right from the start. On the other hand, a need for counsel, information and education is to be quenched in all these reformed or newly created organisations which then finds expression in comprehensive and manifold laws, guidelines and ordinances. At the same time the young democracies still have

to carry a heavy burden dating from the heritage of their previously socialistic systems which entailed a fundamentally different situation for the actions of the actors. Poor rule of law, weak public, planned economy controlled by bureaucracy and the party monopoly furthered nepotism and corruption; the acceptance of state rules was rarely practised and the necessity of bypassing them – in order ‘to get somewhere’ – was widely recognised. The overcoming of these structurally-institutional characteristics of state socialism and the behavioural patterns learned and traditionalised from that cannot be completed ‘overnight’ but has to occur through a (slow) change of mentality. In addition, the radical renewal of the East European societies, shaped by the decay of old power structures and the turning towards market economy, offered new avenues of opportunity. Nevertheless and especially because of that, the increased anti-corruption activities are undoubtedly an expression of a persistent will-power and the determination of especially the East European member states to counter the dangers of corruption with all means available.

In striking contrast to this, some countries take hardly specific anti-corruption measures. Particularly the Nordic countries (Denmark, Finland and Sweden) are to be named here. The transparency principle is valid there in a very comprehensive sense and often does not even need a legal specification for its implementation, as is shown by the disclosure of secondary activities and the income of the Members as well as the accounting reports of the political parties on a voluntary basis – as practised in Sweden. In spite of this restraint in the use of specific anti-corruption measures, the Nordic countries regularly occupy top positions in the CPI in the annual corruption report by Transparency International. There are several explanatory approaches for that. On the one hand, the wealth of a country, the distribution of the standard of living, the rule of law and democracy can be drawn upon for explanation and be summarized in the empirical formula: the more prosperous, more just and more democratic, the less corrupt. The Nordic countries with their relative prosperity and the developed social system can count themselves as belong to the top group in this respect. Another aspect plays a role not to be neglected here, however: the tradition and political culture consolidated in the Nordic countries, in which an especially high significance is attributed to the public principle and the freedom of information. In Sweden, the principle of administration transparency has been valid since the introduction of the freedom of the press law in the year 1766. This principle became established as the ‘Principle of Public’ (*Offentlighetsprincip*) in the Swedish constitution and according to this principle, all information and documents that were produced or obtained by an authority have to be made accessible to everyone. Finland followed the Swedish tradition of the 1766 freedom of the press law for historical reasons (Finland was under Swedish domination at the time). Denmark picked up the Swedish concept after the 2nd World War, not least due to the experiences with German occupation and the connection between totalitarianism and state secrecy (*Lov nr. 280 af 10.juni 1970 om offentlighed i forvaltningen*, which goes back to a commission established in 1958), although essential improvements were carried out only in 1985 (*Lov om offentlighed i*

forvaltningen. Lov nr. 572 af 19.december 1985, last amended in 1995). These cultural and traditional backgrounds play an important role in the distribution and societal acceptance of corruption and, in combination with high wealth with relatively high social equality, the Nordic societies do not offer fertile grounds for corruption, all things considered. The development which has started in the last years in the other member states following the recommendation of the Council of Europe from the year 1981 (Recommendation No. R (81) 19) of introducing information freedom laws is therefore to be welcomed. The hostility a legal culture has towards corruption is essentially determined by external circumstances whose change is decisive in a value change. Such developments, however, need considerable time.

In an overall view of the tabular summary (Figure 13), incidentally what is striking is that there is a strong downward slope in the regulation density with regard to the public service on the one hand and with regard to the Members on the other. The widespread restraint which can be inferred from that – particularly of the Parliaments to submit themselves to transparency and integrity regulations and related controls – is an attitude which is to be overcome in view of the dangers of corruption. The member states should become more aware of the role model function, which is held by the Parliament and the individual Member and take the opportunity to shape and strengthen the public anti-corruption consciousness through the practicing of their own corruption prevention and abatement.

The extended transparency duties in the public service practised by a total of seven of the examined member states (Ireland, Latvia, Luxembourg, Malta, Austria, Poland, Hungary) are not very widely spread, but are reasonable measures in the sense of the corruption prevention and abatement. The transparency rules refer to personal dependences and/or possible conflicts of interest of (mostly leading) members of the public service. This disclosure of possible interest collisions is almost continuously provided for the Members (except for Denmark, Spain and – rather astonishingly in view of the regulations existing for the public service – Malta). It is, however, also suitable with members of the public service to strengthen the citizens' confidence in the independence and integrity of the public administration, and the more this is done, the more public-effective the regulations are. In particular, the activation of the public ordered in Hungary and in Ireland as well as partially provided in Poland, by making the data publicly accessible, could be pointing the way for the prevention and abatement of corruption.

5. Possible Causes of Heterogeneity

It is to be determined that meanwhile, corruption has been recognized and is being fought as an evil in all examined 25 EU member states. The existing heterogeneity of the anti-corruption measures indicates that there are still gaps and weak points in the fight against corruption.

Among other things, this can be traced back to corruption prevention and abatement having moved into the public focus only since a relatively short time ago. Good-governance strategies

and anti-corruption attempts have found special attention only since the beginning of the nineties, in the public as well as in research. The foundation of Transparency International in the year 1993 can be regarded as a landmark here. Since this time, the member states' efforts on this field as well as the promotion of relevant projects and programs, have been significantly intensified (as a general trend, though not uniformly dynamic).

In all examined member states, anti-corruption measures are integrated in good-governance ideas which aim at an increase in performance and improved management in the public sector, accounting duty of state and administration actions, transparency and improvement of the general legal conditions. However, these good-governance ideas vary considerably in detail and it seems – problematic from the corruption research point of view – as if no elaborated anti-corruption strategies embedded in these ideas exist.

This in turn can be traced back to that anti-corruption measures having not been researched more closely neither with respect to their interactions nor with respect to their effectiveness. In addition to their explicit target (such as the control of administration processes through anti-corruption authorities or the legal anti-corruption legislation), anti-corruption activities regularly also contain 'implicitly' corruption-preventive or corruption-combating measures for the general strengthening of the functional and performance ability of the public sector and democratic processes. It is often the latter ones which first create the preconditions for the setup of previously mentioned measures or give contents-related informative value to them and/or describe their legal frame. It is decisive, however, that the anti-corruption activities must still prove their long-term sustainability even though they seem plausible and promising experiences have been possibly made with them already.

There is a lot in favour of the success of anti-corruption measures depending on a combination of different factors; that the structure of the state organisation and decentralisation, public finance administration and financial controls, the reform of the public service, long-term planned management of capacities have an influence as well as positive incentives and supportive changes in the actor-related and political environment or consequences under criminal and disciplinary law. The development of strong anti-corruption strategies means to consider the corruption topic in all areas of action and on all levels of intervention. Initially this requires identifying the systems and incentives that have an influence on corrupt behaviour, and then increasingly anchoring the principles of integrity, transparency as well as the accounting duty through suitable, area-specific approaches and carrying the feedback of political actions of the representatives to the interests of the people represented by them. In this way, corruption prevention must be consistently included in reform attempts and anti-corruption strategies which balance the individual measures under consideration of their interaction in the sense of maximum reciprocal support and strengthening. Despite of a general trend towards improved coordination of anti-corruption measures (which can be determined in 25 of the examined member states)

through the establishment of central anti-corruption authorities or at least of anti-corruption networks (in France, Italy, Latvia, Lithuania, Malta, Austria, Poland, Slovakia, Slovenia and Cyprus), there is a further reaching need for harmonization which, however, is dependent on a better understanding of the effect and the success of anti-corruption measures.

A significant role in corruption measurement has certainly been played by the Corruption Perceptions Index (CPI) of Transparency International (TI), published for the first time in 1995 and since then annually, the objective of which it is to assess the subjectively felt occurrence of corruption within a state. In their evaluations, the authors of the CPI rely on the definition by Joseph Senturia which was also taken as basis for this study. According to this, and from the point of view of the CPI, corruption is the abuse of a public power for private benefit. The CPI deliberately counts on several data which become established in the index. On the one hand, the evaluated sources inquire as to the appraisal of residents of the respective states and on the other hand take into consideration such of business persons and experts which express an external appraisal. The CPI can thus be understood as a mix of perceptions which increases the reliability of individual information; it does this by reducing the influence of a mistake from other data by combining sources. The CPI particularly drew criticism to itself as it discloses corruption openly, but does not examine the offenders, however – for example, the givers of bribes. TI took up the criticism and has now been additionally publishing the Bribe Payers Index (BPI) since 1999. Meanwhile it is problematic that both the CPI as well as the BPI do not approve any determination of time series concerning the level of corruption, since every year the sources used can change as well as the selection of the interviewees or the applied methodology. What complicates things further is that the indexes build on perception and evaluation. With view on the collection of – in this sense – ‘perceived’ corruption, the development of strong and lasting anti-corruption measures and strategies is, however, not sufficient.

Due to lack of other evaluation methods for the measurement of corruption, and in view of the effect measurement of anti-corruption measures so far not having been included in the field of corruption research, it can be stated that the effectiveness (or to say it differently the success of anti-corruption measures) cannot be measured according to the current state of research.

The usage of anti-corruption measures therefore follows only considerations of plausibility. These are certainly understandable most of the time and are also accompanied by a certain likelihood of correctness. However, a more or less large amount of insecurity always remains which in turn results in the attempt of implementing all conceivable anti-corruption measures at the same time. A procedure which is to be classified as problematic for various reasons. One of these is certainly that also the public authority with its resources is capable of acting only to a limited extent and therefore cannot act in the sense of (presumably) maximum effectiveness in all areas of activity. Here, the member states approach their limits regarding both staff as well as finances. This again leads to cutbacks being made. That insecurity poses a threat becomes clear

also within the framework of the study carried out. Thus for example the consulted experts could regularly not give any information about best-practise-examples. They obviously lacked the categories in order to be able to judge this.

In order to reach an improvement here, both on the member state level as well as with view to a European prevention and abatement of corruption, the plausibility considerations need to be complemented by further criteria which offer more reliable clues for assessing in which manner anti-corruption measures are effective. Special attention should therefore be paid to research projects aiming at this.

II. Recommendations

The study has been able – with comparably modest resources in view of the large number of the examined states and the broadly designed investigation topic – to draw a refined picture of the anti-corruption measures in the public sector in the EU member states. Taking the results as a starting point, further discussion on the improvement of the anti-corruption efforts should take following considerations as a basis:

1. Improvement of the State of Knowledge

The actual circumstances in the 25 examined member states regarding the implementation of anti-corruption measures are exceptionally difficult to grasp. Here, a reporting system that obliges the member states to name the national rules and measures that are used for the implementation of anti-corruption efforts could be a progressive step. The relevant regulations should be translated into English by the member states. General access to this information would be desirable, if possible via the Internet.

In the sense of a better coordination of future anti-corruption measures and in order to fulfil a function of orientation, the regular preparation and publication of reports on the development of the member state anti-corruption attempts based on the shared data should be strived for.

In view of the present variety of data collections on corruption at a member state level (see above C.I.), it would be desirable to achieve a medium-term structured and standardized homogeneity here. This can be achieved when several instruction-independent state agencies are charged with the task of data collection and a cooperation with existing private agencies is established within the member states. Here, an equally structured minimum stock of data collections on corruption is to be worked towards for the member states. An establishing of common standards which set the rules according to which the data are to be collected is therefore recommended. The data must be publicly accessible without problems. An independent expert commission which continuously evaluates the data collection according to standards would be ideal.

2. Intensification of the Legislation Against Corruption

Over the last years, the European Union has undertaken great efforts in the development of instruments for the fight against corruption in the member states, has suggested their implementation, and has issued numerous legislative activities, preliminary and other legal acts⁶⁸² in the fight against the corruption. Yet the abatement of corruption should still be considered as being nationally orientated. At the same time, anti-corruption politics is also confronted with basic social changes, modern forms of criminality and an increasing internationalization of crime. This development is favoured by the ongoing realization of the internal market and the economical interweavements intensified by that. This demonstrates the necessity of a Europeanization of the fight against corruption. The European Union continues to be dependent on taking influence on the creation or where appropriate the change of national state regulations by virtue of its instruction authorization. Due to the restricted competences of the European Union in this area, presumably less ordinances or guidelines⁶⁸³ are possible. The anti-corruption activities of the member states can be increasingly influenced, however, by common points of view on frame decisions for the approximation of the legal and administration provisions of the member states as well as decisions and agreements which are recommended to the member states for acceptance.

The arrangement of the member state anti-corruption measures, the introduction and development of European standards as well as the cooperation of control organizations in and between the member states belong to the spectrum of tasks to be discussed.

3. Implementation of Anti-corruption Measures

The cooperation of the member states in the prevention of and fight against corruption is a particularly important factor for the development of a European anti-corruption culture. The cooperation of the member states during the planning, realisation and coordination of anti-corruption measures is therefore to be supported. This can occur on the one hand through the reporting duties already mentioned above. Also to be considered, however, is the supporting of the member states through European institutions as for example – according to the model of the European Judicial Network (EJN)⁶⁸⁴ – through the establishment of a European anti-corruption

682 Cf. only http://eur-lex.europa.eu/de/dossier/dossier_19.htm#2, 17th July 2006.

683 To be mentioned here is for example the Guideline 2005/60/EG of the European Parliament and the Council of 26th October 2005 for the prevention of the usage of the financial system for the purpose of money laundering and the financing of terrorism as well as the Guideline 2006/70/EG of the Commission from 1st August 2006 with implementation provisions for the Guideline 2005/60/EG of the European Parliament and the Council regarding the definition of the term ‘politically exposed persons’ and the determination of the technical criteria for simplified duties of care as well as for the exemption in cases in which financial business is carried out only sporadically or to a very restricted extent.

684 The EJN consists of judiciary contact agencies in each member state of the European Union and within the European Commission. It is supposed to help judges and public prosecutors to carry out cross-border

network which aims at the simplification of cooperation as well as the exchange of information and experiences of the different member state anti-corruption institutions.

This exchange does not only promise to be fertile for the adaptation and/or change of existing regulations of the member states, as for example in the field of criminal, civil servant and/or disciplinary laws or the state, authority-internal and/or actor related behaviour guidelines. Also a positive effect on the development and implementation of aims and measures of new member states towards the prevention and abatement of corruption is to be expected.

In order to coordinate the member state anti-corruption activities and to provide orientation for the contents-related design, a development and definition of European standards for the handling of existing or feared interest collisions is suggested. For example, the introduction of a transparency duty for executives of the public service could be recommended (following the example of some states (for example Ireland and Hungary) which is oriented towards the duties of disclosure – these duties are prevalingly valid for Members. The general supplementation of corruption-preventive transparency duties with a public function by publishing the data is to be worked towards for a strengthening of the public as a control institution, but also in the sense of a desired and possible long-term development and creation of common European socio-cultural general conditions which reflect a basic corruption-hostile climate.

Where the member state corruption abatement is still comparably incomplete, particularly in the area of the internal parliamentary controls, the member states are to be put to task in that the European Union makes use of its courses of action and stimulates the implementation of corresponding anti-corruption measures.

4. Promotion of Corruption Research

The comparative evaluation showed that the member states of the EU are not only conscious of the dangers of the corruption but that they are also willing to oppose these dangers. All examined 25 member states of the EU introduced measures of the most different kind for this purpose. They are however considerably impeded by the fact that there is almost no knowledge about the effectiveness of anti-corruption measures, thus they cannot pursue a targeted anti-corruption strategy.

Research results or also even research efforts with regard to the assessment of the effectiveness of anti-corruption measures do not exist up to now or only in areas so narrowly defined that the meeting of general and continuative statements in this field is not possible. The already developed methods for the measurement of corruption supply few sound results for this range of

investigations and prosecutions, and thus should contribute to the improvement of the legal cooperation in connection with cross-border criminality.

problems. The available indexes for the collection of corruption, particularly the ones of Transparency International, contain only area-specific data and are therefore not suitable to supply instructing and further-reaching findings for the answer to the question about the effectiveness of specific anti-corruption measures. Instruments for the success of anti-corruption measures are missing entirely. This leads to the impossibility of the development of purposefully effective anti-corruption strategies with the existing know-how of research – especially a further development or a new creation of anti-corruption measures is completely out of the question. If the attempts to control corruption are not to stagnate, the efficiency of anti-corruption measures must be evaluated. Since the exploration of the effectiveness of corruption abatement measures is therefore an indispensable precondition for a purposeful and effective corruption abatement, the presumably most urgent recommendation must therefore be to intensify the research promotion in this field.

Here, the development of a functioning, generalisable method of measurement for the success of corruption abatement should be in the foreground, for example in the form of a new type of comprehensive index based on which recommendations for the setting of priorities for anti-corruption measures and suggestions for the development of improved instruments for the corruption embankment are possible.

E. Summary of the Recommendations in 15 Points

- I. Improvement of the state of knowledge on corruption
 1. A report system is to be introduced on the national rules and measures of the preventive and repressive corruption controls.
 2. Reports are to be created on the shared information by an independent expert commission.
 3. The reports are to be published annually in the national language and in English, also on the Internet.
 4. A structured and standardized minimum stock of information is to be developed for the reports.
- II. Intensification of the legislation on corruption
 5. Corruption abatement is now nationally targeted and must be Europeanized.
 6. Ordinances or guidelines are difficult to realize due to lack of competence of the EU.
 7. Common points of view, general agreements for the balancing of the legal and administrative provisions are to be preferred to binding guidelines.
- III. Implementation of anti-corruption measures
 8. Development and promotion of a European anti-corruption culture through cooperation of the member states concerning corruption prevention and abatement.
 9. Common planning, realisation and coordination of anti-corruption measures in the member states.
 10. Establishment of a European anti-corruption network for the coordination of the member state anti-corruption facilities (according to the model of the European Judicial Network – EJN).
 11. Cooperation and coordination concerning member states' regulations in the field of criminal law, civil service law, and/or disciplinary law or the state, authority-internal and actor-related conduct guidelines.
 12. Development of European standards to deal with office-holders' conflicts of interest.
- IV. Promotion of corruption research
 13. The instruments for the measurement of corruption are inadequate and must be refined in order to be able to define the success of anti-corruption measures.
 14. The efficiency of anti-corruption measures in the repressive and preventive areas is not well-enough known and must be investigated further.
 15. A new index on the spread of corruption is to be developed in order to be able to evaluate anti-corruption measures.