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CORRUPTION IN EUROPE: RECENT DEVELOPMENTS

Ada-Iuliana Popescu*

Abstract: *Reducing corruption is one of the world's many challenges. The fight against corruption is often discouraging. Yet, Europe continues to advance its anti-corruption initiatives. While the fight against has seen some victories, significant gains are few, especially in the Central and South European countries, where corruption is deeply rooted in the ordinary life of their citizens. Indeed, the latest reports from private organizations and public bodies show that no European country is sheltered from corruption. This article discusses some of the latest European developments in the fight against corruption.*

Keywords: corruption; corrupt practices; anti-corruption initiatives; corporate corruption.

JEL Classification: D73; H83; K42.

INTRODUCTION

Corruption is testing even the most ethically robust nations. Due to corruption's corrosive effects on nations' social, economic and political structures, reducing corruption is on the agenda of most governments, international and regional organizations and NGOs. Yet, in some parts of the world, corruption is as strong as ever and is increasing political and economic instability and social inequality. Europe is not sheltered from corruption. Corruption is engrained in South Eastern and Eastern European countries. There and elsewhere, corruption is a part of everyday life, thus deterring economic growth and social progress.

The European Union's growth strategy depends on a strong economy. Economic growth alone, however, is not enough. Institutional factors such as good governance, the rule of law and the control of corruption also will matter. (Excellence in Public Administration, 2012).

The European Union has moved in the right direction on corruption by focusing on legislative initiatives and enhanced monitoring of compliance with these initiatives. Some of this stems from international legislation directed at fighting corruption in the international marketplace. For example, the OECD Anti-Bribery Convention has spurred most of its signatories to develop domestic laws that are consistent with the Convention's requirements. Similarly, if not uniformity, in the means and methods for combatting corruption facilitates mutual legal assistance and cooperation among the EU's member states.

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However, the EU's implementation of these means and methods is slow, and desired results are even slower in coming. Still, success stories exist. For instance, in 2010, the U.K. enacted the U.K. Bribery Act, a law inspired by the vigorously enforced and longstanding U.S. Foreign Corrupt Practices Act (FCPA). The U.K. Bribery Act has been praised by those in the U.K. and international community who advocate for more aggressive efforts to uproot corruption globally.

Different international reports show yearly the variations in the success of the anti-corruption fight at state level, including states within the EU. Though sometimes their accuracy is disputed, these reports reflect the extent of the problem and the fragility of the anti-corruption fight.

According to a Transparency International report, “political parties, public administration and the public sector are evaluated as the weakest players in the fight against corruption across Europe” (Mulcahy, 2012, p.3). Other reports draw attention on the size of the problem. The EU loses 120 billion euro to corruption annually. Public corruption practices are the source of most losses, 20 to 25% of the value of public contracts may be lost to corruption each year, while “public procurement contracts in the EU have an estimated worth of around 15 percent of the EU's total GDP” (Neilsen, 2013, p.1).

1. EU Legal Framework and Reporting Mechanism

The history of EU anti-corruption legislation is recent, spanning only a little more than a decade. Most EU members have implemented legal and institutional instruments to fight corruption. However, the positive results are not evident due to different national impediments. Also, to date, the EU lacks a legal text defining and addressing corruption in general, such as a framework decision or a directive. Instead, the existent legislation targets private sector corruption. However, the monitoring mechanism established in 2011 reaches both sectors.

In 2003, the EU released its Framework Decision on combating corruption in the private sector, aiming to criminalize active and passive bribery. The Framework Decision's Article 2(1) includes profit and non-profit business activities. According to Article 2(a), “active bribery” is “promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity an undue advantage of any kind, for that person or for a third party, in order that that person should perform or refrain from performing any act, in breach of that person's duties”. “Passive bribery” is defined in Article 2 (b) as “directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a

private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties”.

The monitoring that followed, however, revealed discouraging results. In 2007, the European Commission concluded that only Belgium and United Kingdom had complied. However, by 2011, nine EU members had transposed all elements of the offense in their legislation. Romania was not one of them. Romanian legislation was criticized for missing in the incrimination text of active bribery the reference of “a third party advantage”. Also, at that time Romania had not fully transposed Article 4 regarding penalties and other sanctions. However, Romania is one the 15 countries that transposed Article 5 concerning liability of legal persons, Article 6 regarding their penalties, and, partially, Article 7 regarding jurisdiction, though the information provided was not conclusive.

Unfortunately, the Commission concluded in 2011 that there could not be any practical impact evaluation of the decision transposed by member states due to their lack of statistics and figures on cases of private sector corruption. The most problematic areas were those referred by Article 2 and 5, the definition of the offense and the liability of legal persons (EC Report, 2011).

Consequently, this year, the Directive on Disclosure of Non-Financial and Diversity Information by large Companies and Groups was adopted to enhance business transparency on social and environmental matters. As a result, more than six thousand EU companies must release information about environment compliance, human rights, bribery and corruption issues. EU members will have two years to implement the directive that aims to improve corporate governance (EC Statement, 2014).

In 2011, the European Commission set up an anti-corruption reporting mechanism to periodically assess EU members’ efforts to fight corruption. This initiative was part of the Stockholm Programme that established a partnership with the Council of Europe Group of States against Corruption (GRECO) designed to create a comprehensive anti-corruption policy. The mechanism “will identify trends and weaknesses that need to be addressed, as well as stimulate peer learning and exchange of best practices” (EC Report, 2011, p.2). Reports are required every two years. The ultimate long-term aim of this reporting system is to provide international credibility to the EU anti-corruption system and its standards.

The first EU corruption report was released in 2014. The report evaluates each member state, highlighting some of their positive results and the weaknesses in their anti-corruption efforts. These evaluations are accompanied by recommendations to each member state aimed at increasing their efficiency and effectiveness in their respective anti-corruption efforts. These recommendations vary

for each member state because national factors that favor corruption are different among these states, as well as their interaction with each other on political, economic, social and cultural grounds. The key issues were selected and analyzed based on the severity and impact of the problem, potential spill-over effect for a range of policies and the ability to point to constructive and concrete future steps (EU Anti-Corruption Report, 2014).

The main areas of the report's research are the political dimension, control mechanisms and prevention, repression and risk areas. The report separately addresses public procurement and quantifies the extent of that problem at national and organizational level.

Public procurement remains one of the most vulnerable areas to corruption as revealed by the numerous corruption cases involving the mismanagement of EU funds. This is so despite the fact that the current EU public procurement legislation promotes "a fair, uniform and transparent platform for public spending" including provisions that are relevant to anti-corruption policies such as "exclusion from the tendering process of an entity against which a final court decision on corruption charges has been handed down, detailed provisions on publicity and transparency of various stages of the procurement cycle, minimum standards for remedies, specific provisions on abnormally low tenders, as well as provisions setting certain requirements for modification of contracts" and the award of works concessions (EU Anti-Corruption Report, 2014, p.21-22).

In practice, the Commission does not investigate whether public procurement was affected by corruption. It is the duty of member states to do so and to make the data public.

The EU legislative package on public procurement will be reformed and published later in 2014. The main modifications will cover procurement in the water, energy, transport, postal services sectors, and in public works, supply and service contracts and concessions regulated at EU level. A new provision will define and target conflicts of interest. Other provisions will better address centralized data on corruption, fraud, modification of contracts, exclusion criteria and monitoring of concluded contracts. At the practical level, the legislation will set up oversight monitoring of the implementation of public procurement rules, red flagging and alert systems to detect fraud and corruption.

As to the political dimension of the anti-corruption fight, a major setback in fighting corruption remains the continuing absence of an EU-harmonized definition of "public official" to include elected officials. The EU Commission admits there is an acute "need for a clear harmonization of criminal liability of elected officials for corruption offenses", but there is not political will to do so (EU Anti-Corruption Report, 2014, p. 9).

The EU Commission also hopes the report will be the basis of a mutual experience-sharing programme for member states, local NGOs and other stakeholders for good practices, whistleblower protection and training in identifying and tackling corruption (EU Anti-Corruption Report, 2014).

Judicial and police cooperation are vital for any enforcement measure taken at national and organizational level. The EU has the advantage of the already functional Europol that facilitates law enforcement operations, the Eurojust that facilitates the exchange of judicial information on transnational corruption cases, and the EU contact-point network against corruption (EACN) that is focusing on operational issues of relevance for corruption investigators. However, so far, the Commission admits that national data for investigated, prosecuted and sanctioned cases is scarce, member states' statistics being unreliable or inexistent. This remains one of the most shameful challenges and cripples the reporting mechanism.

2.The Anti-Corruption Fight in Western EU Countries

There is much work to be done on reducing corruption by the member states, both at the national and the organizational levels. As have recent reports by GRECO, Eurobarometer, OECD and Transparency International, the EU report shows both positive and negative developments.

For example, recently the OECD in its Phase 3 reports criticized Austria, the Netherlands, and Spain for their poor anti-bribery enforcement. Austria's anti-bribery law enforcement was criticized as "far too weak", the Netherlands was criticized for "failing to vigorously pursue foreign bribery allegations", and Spain was criticized for its "extremely low" anti-bribery law enforcement. Neither Austria nor Spain has convicted anyone, either a natural or a legal person, since 1999, when the Convention entered into force. The Netherlands has left 14 out of 22 allegations uninvestigated (ABA, SIL, 2013). France was criticized for the same reasons in February 2012 because since 2000, when France ratified the Convention, it had launched only 33 criminal investigations for bribing a foreign public official and had obtained only five convictions, notwithstanding the large role that French companies are playing in global economy. Thirty-eight allegations against French companies remain uninvestigated (IBA, 2013).

Even though these countries are behind when it comes to prosecuted cases, the EU report lauds the Netherlands for actively promotes public sector integrity at national and local government level. The Office for the Promotion of Public Sector Integrity (BIOS), an independent organism supports the design and implementation of public sector integrity policies in the Netherlands (EU Anti-Corruption Report, 2014).

The EU report also notes that the central Spanish specialized anti-corruption prosecution office has achieved solid results in investigating and prosecuting complex schemes of illegal party funding. Catalonia Anti-Fraud Office also leads the way, being the only regional Spanish agency of its kind, specialized in fraud and corruption detection (EU Anti-Corruption Report, 2014).

Germany, Switzerland and United Kingdom remain strong in their respective anti-corruption fights concerning corporate transactions (OECD Progress Report, 2013). In this field, one of the most comprehensive European anti-bribery laws is the U.K. Bribery Act of 2010. GRECO praised the U.K. for its efforts to fight bribery (GRECO, 2013). The EU report also praises U.K. for its legislation and enforcement and recommends it as a viable model to EU members (EU Anti-Corruption Report, 2014).

The Bribery Act is similar to the U.S. FCPA, and it is in accord with the provisions of OECD's anti-bribery convention ratified by the U.K. in 1998.

The U.K. Bribery Act combines the fight against domestic and international corruption, detailing four separate offences: paying bribes (Section 1); receiving bribes (Section 2); bribing a foreign public official (Section 6); and failing as a commercial organization to prevent bribery (Section 7). Section 6 addresses bribing foreign officials by prohibiting the offering, promising or giving a financial or other advantage to a foreign public official with the intention of influencing the official in the performance of his or her official functions and thereby intending to obtain or to retain business or a business advantage. The U.K. Bribery Act contains one exception - when payments are permitted or required by the local written law - but no affirmative defences. Section 7 of the U.K. Bribery Act creates a unique offence so far, criminalizing the failure of commercial organizations to prevent bribery. By its broad language, Section 7 stretches the law even more than FCPA, which contains no such provision. This provision encourages companies to be proactive and implement their own internal control systems for a bribery-free business environment.

To date, the EU Commission admits that the transposition of the Framework Decision 2003/568/JHA on combating corruption in the private sector “is still uneven” (EU Anti-Corruption Report, 2014, p. 13).

The U.K. Bribery Act and the FCPA are good examples for any European country to use, especially for Central and Eastern European countries, including Romania, where the fight against corruption is weak due mainly to the lack of enforcement and political will.

Other EU members are noted for their legislative and enforcement progress made in other areas relevant to anti-corruption. For example, Germany is noted for registering positive results not only in prosecuting corruption cases but also for taking preventive measures concerning public

procurement at the local level, meaning towns and municipalities, especially in the construction sector, one of the most vulnerable to corruption. Some of these measures include establishing codes of conduct and central authorities for tender and awarding, rotation of staff, clear regulations on sponsoring and the prohibition on accepting gifts, organisation of tender procedures, increased use of e-procurement, black lists or corruption registers, and other similar measures (EU Anti-Corruption Report, 2014).

Following GRECO's recommendations, Finland has made significant progress towards a transparent political party financing. Today, Finland may serve as a model for other EU members in this respect.

Italy has registered some progress in the field of establishing risk management and public procurement platforms. Several regional and local administrations have taken action against mafia infiltration in public structures and in public contracts to enforce transparency of public procurement at the regional level (EU Anti-Corruption Report, 2014).

All these efforts are salutary. They strengthen a synchronic anti-corruption fight in Western Europe. However, their impact at the population level is not always obvious. Some Western Europeans are not convinced by the positive results achieved so far by their national governments. For example, the local perception of widespread corruption registered 97% in Italy, 95% in Spain and 90% in Portugal. At the other end of the spectrum are the Nordic European countries, also EU members, where corruption is widely perceived as rare (Eurobarometer Report, 2014).

3. Anti-Corruption Fight in Central and Eastern EU Countries

International cooperation is imperative because of the transnational nature of business corruption. Synchronized legislation, information sharing, and cooperative enforcement are essential.

The Southeastern European countries, including the region's non-EU members, are involved in the fight against corruption but, in general, they are not keeping pace with other European countries, mostly in enforcement.

Anti-corruption cooperation exists in Central and Eastern Europe, and it is sustained and coordinated by the OECD, the UN, and other international organizations. Thus, Eastern European countries, EU members and nonmembers alike, are the beneficiaries of the Istanbul Anti-corruption Action Plan (ACN) initiated by the OECD. Their anti-corruption reforms are being monitored and supported and information on their respective achievements and from examples of good practices for preventing and combating corruption (OECD, 2011).

However, the Czech Republic, Greece, Romania, Slovakia, and Slovenia stand out among countries perceived to have increased corruption (Mulchany, 2012). According to OECD, since 2004, when the Czech Republic, Hungary, and Slovakia joined the EU, they have been regressing in the fight against corruption. In spite of having relatively robust legislation, their enforcement is poor.

The EU Anti-Corruption Report takes note of good practices concerning anti-corruption agencies in Slovenia, Romania, Latvia and Croatia, the newest EU member (EU Anti-Corruption Report, 2014). Slovenia and Croatia have put in place electronic databases intended to remove corruption from public procurement contracts by tracking public money. The Slovenian database “Supervizor” contains information regarding contacting parties in business transactions using public money. It also provides information related to the management of all state-owned and state-controlled companies and their annual financial reports. The Croatian 2013 web portal and e-database is similar, providing information on public procurement procedures, on companies dealing with public funds and on public officials’ patrimonies (EU Anti-Corruption Report, 2014).

Estonia, Lithuania, Poland, and Slovenia have made good progress in consolidating the fight against corruption. But the business and civil society sectors in these countries are relatively weak, affecting the integrity of the system (Mulchany, 2012). Nevertheless, the initiatives of Slovakian civil society have led to positive results concerning the accountability of local administration with regard to transparency of public spending. Transparency International runs a project in this field, focusing on independent monitoring. The Open Local Government Initiative of Slovakia ranks a hundred Slovakian towns using a set of criteria such as “transparency in public procurement, access to information, availability of data of public interest, public participation, professional ethics and conflicts of interests” (EU Anti-Corruption Report, 2014, p. 28).

Lithuania and Estonia have succeeded in implementing an e-procurement practice. More than 50% of the total value of public bids is done electronically, in total transparency, in Lithuania. The Estonian State Public Procurement Register is an electronic system providing for e-procurement and for other e-services. Its use tripled in just one year (EU Anti-Corruption Report, 2014).

Romania is badly suffering from corruption, its manifestations being present both, in public and private sector. The Government has picked up the challenge of fighting it but results are somewhat weak due not to the absence of laws, but mainly to the absence of ethical norms, actions and behavior. This is worrying because an anti-corruption framework needs all of these. Public procurement, public administration and party funding are the areas where corruption thrives.

Romania has ratified only the UN Convention against Corruption and the Council of Europe Criminal and Civil Law Conventions on Corruption. As an EU member, Romania partially transposed the Framework Decision on combating corruption in the private sector.

Lately, legislative reform has produced a new criminal code. Its provisions criminalize the bribery of foreign public officials and include legislative and executive representatives in the category of public officials, facilitating the prosecution of corruption criminal offenses committed by them. However, these positive doings may be undone, according to the political interests of the moment. State capture is a common practice in Romania and this is another challenge to face.

It is also true that during the last two years, the number of prosecuted and sanctioned corruption cases has risen. The European Union has made a positive note on the activity of the Romanian National Anti-Corruption Directorate (DNA) a specialized prosecution office for combating medium and high level corruption cases. During its seven year of activity so far, the DNA has indicted around “4700 persons, 90% of these cases being confirmed and finalized by court decisions resulting in 1500 convicted persons” (EU Anti-Corruption Report, 2014, p.14). The results are impressive, indeed, but the difference these cases make is not visible in the everyday life of Romanians. Romanians still perceive their country as excelling in bribery and corruption. Indeed, 93% of Eurobarometer respondents see Romania as corrupt. The same perception is registered across Central and South Eastern and Eastern Europe, in countries such as Greece (99%), Slovenia (91%), Slovakia (90%), Czech Republic (95%) and Croatia (94%) (Eurobarometer Report, 2014).

CONCLUSION

Corruption remains one of the biggest challenges to take at international, regional and national level. Fighting it takes commitment, resources, cooperation and time. The European space is also one of the battlegrounds, one difficult to conquer due to the diversity of its many nations. The EU is trying to be one of the leaders of anti-corruption fight alongside with OECD, UN, Council of Europe and other international organizations. However, the task is difficult and the paces are small.

The EU legislative anti-corruption framework is under constant adjustment, covering public procurement, business corruption, and money-laundering and other corruption related issues. While the law is improving, its enforcement by the EU members mostly stagnates. One big problem remains the great disparity between West and Eastern EU members. As the first Anti-Corruption EU Report proves, corruption receives a more appropriate and efficient response in most Western European EU countries than in Eastern ones. In Southeastern and Eastern Europe, old habits

triggered by an inherited social mentality, poverty, political instability, lack of education, lack of information, and lack of law and its enforcement is stumping EU anti-corruption efforts.

With the anti-corruption report mechanism in place, the European Union tries to pressure its members to real fight corruption and to do it more efficiently. Since this is the first report of its kind, it is certain, that in time, the monitoring system will be improved; determining EU member states to provide reliable data on corruption assessment in public and private sector and on enforcement, more specifically on prosecuted and finalized corruption cases. Fighting an invisible enemy and not knowing the results make any combat nonsense.

Gaining the trust of Europeans and proving that the European Union is a strong anti-corruption combatant are among the long-term goals of its development strategy Europe 2020.

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