

International Conference

Preventing and fighting corruption in the public administration in Europe

20-21 February 2006, Maternushaus Cologne, Germany

Presentation

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European Union initiatives in the fight against corruption

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1. INTRODUCTION

It is estimated that the global **costs of corruption** add up to approximately 5 % of the world economy. It discourages investment, including foreign investment, and hampers both the internal market and international trade. Moreover, it undermines democracy and the rule of law because it endangers **trust in public institutions**, especially if they fail to tackle or are seen failing to tackle fraud and corruption. For this reason, it is essential that institutions give high priority to the fight against this nuisance. Otherwise, they risk weakening the public service and fuelling the scepticism which many citizens have about large institutions as e.g. the European Union itself. It has never been so important to concentrate on this issue as nowadays when the “European project” is questioned.

However, corruption is not limited to the public sector. It may as well undermine trust in the institutions of the **private sector**, as e.g. the capital markets and so investment and entrepreneurship, which is not a less serious consequence. Therefore, despite most of the traditional definitions relate corruption to the behaviour of public officials, the EU is of the opinion¹ that the definition of corruption should be broader, for example: “*abuse of power for private gain*”, including both public and private sectors.

But since this conference is devoted to fight against corruption in the public administration, I will focus in my speech on the EU initiatives in this sector. My **presentation** has the following **structure**:

- (1) At the beginning, I will briefly summarize the **main initiatives** of the EU in the past years and the adopted **legal instruments** against corruption. Where possible, I will distinguish between the actions taken at EU level and those directed to the Member States and the outside world.
- (2) After the short summary of the EU achievements, in the next part, which is the core of my contribution, I will focus on the **issues which still need to be improved** to render our efforts even more effective.

2. ACHIEVEMENTS OF THE EU IN FIGHT AGAINST CORRUPTION

2.1. General overview of EU initiatives

Fighting corruption and fraud within the EU institutions and bodies has become an **absolute priority** for the EU after the crisis triggered by the fall of **Santer’s Commission** in March 1999. It revealed the necessity to set up more effective measures for the protection of the integrity of the European Public Administration. One should always remember that the Commission, together with the Member States authorities, is responsible for the distribution of EU funds and that the EU is one of the biggest donors in financing of development projects all around the world, which in total constitutes funds of about 100 billions of euros. It is clear that the EU needs efficient and transparent policy tools to fight corruption and fraud.

¹ Commission’s Communication on a Comprehensive Policy against Corruption (COM(2003) 317 final).

Following the events surrounding Santer's Commission resignation, **OLAF** was established as a specialized and independent office to help to achieve this task. OLAF does not only investigate directly allegations of fraud and corruption, but it also plays a pivotal role in **coordinating investigations** between Member States of the EU. It is common to find fraud and corruption activities extending over more than one Member State. To avoid duplication of effort, compartmentalised approaches, or information flow stopping at the borders of one Member State, OLAF takes on the responsibility of connecting up the relevant services of Member States in order to maximise cooperation and ensure the best use of resources. However, OLAF has no coercive powers and has to rely on the assistance of the Member States authorities.

Since its inception OLAF has invested considerable efforts in an increased cooperation with Member States investigative and prosecution services including anti-corruption departments to establish evidence on cases of financial fraud and corruption detrimental to the interests of the EU. Our activity as witnessed through regular reports addressed to the Institutions shows a continued effort and progress in introducing a culture of "zero tolerance" into the EU Institutions' and Member States' cooperation.

The **European Council of Tampere** in October 1999 and several EU action plans have asked the Commission and the Member States to develop a multidisciplinary approach towards the phenomenon of corruption.

Among them, the so-called *Millennium Strategy on the Prevention and Control of Organised Crime*² of 2000 points out to corruption as one of those offences where the Council "should adopt instruments with a view to approximating the legislation of Member States" by agreeing on common definitions, incriminations and sanctions and developing a more general EU policy towards this specific form of crime.

Following its *White Paper on Reform*³, the Commission has also introduced internal measures with a view to promoting accountability and preventing corrupt practices such as practical guide for sound financial management describing standards of conduct, the Decision of 4 April 2002 on raising concerns about serious wrongdoings, Codes of Conduct for Commissioners and Commission staff, standards for internal control within the Commission's services, a Guide to test for vulnerability to fraud and new rules on job rotation for sensitive posts.

In June 2003, the Commission adopted a *Communication on a comprehensive EU policy against corruption*⁴. In this Communication, the Commission calls for the detection and punishment of all acts of corruption, confiscation of illicit proceeds and reduction of the opportunities for corrupt practices through the establishment of transparent and accountable public administration standards. It appeals to Member States to enact swiftly all relevant supranational and international anti-corruption instruments, in particular the Conventions of the EU, the OECD and the Council of Europe. In this regard, the Communication emphasises the crucial role of monitoring and peer review evaluation between countries participating in these initiatives. By suggesting a multidisciplinary approach, the Commission recommends integrity-enhancing strategies for both the public and the private sector and draws particular attention to pressure and interest groups, where the borderline between legitimate expression of interests and illicit influence peddling is sometimes very blurred.

² OJ 2000/C 124/01 3.5.2000

³ White Paper on Reforming the Commission of 1 March 2000, COM(2000) 200/2.

⁴ COM(2003) 317 final

2.2. Achievements at EU level

There has been a policy initiative implemented by **OLAF** that all allegations of corruption concerning an official should be investigated with a **high priority**. Even though they compose only 10% of all cases, 20% of OLAF staff is devoted to them. The Commission adopted a “**zero-tolerance**” strategy towards cases of corruption within the European institutions combined with rigorous prosecution of outsiders trying to obtain Community funds illegally. Staff Regulations imposed on all officials an **obligation to report any fraud and corruption** to its hierarchy or directly to OLAF.

With the creation of the **Investigation and Disciplinary Office (IDOC)**⁵, the Commission has set up a system, which better addresses corruption or generally conflict of interest situations from a disciplinary point of view. The cooperation between IDOC and OLAF should be considered as essential issue in assuring an efficient and uniform protection of the integrity of the European Public Administration.

New **Financial Regulation** No. 1605/2002 provides for the possibility to exclude all non-reliable operators, including those having been convicted of corruption (by definitive judgement) or found committing a grave professional misconduct (Article 93) within the centralised management of EU funds by the EU Institutions and agencies and by the authorities of third countries within the decentralised management.

2.3. Achievements to be implemented by the Member States

In the recent years, the EU developed or suggested to the Member States for adoption the following legislative instruments, among others, to fight corruption:

- **Protocol⁶ to the Convention on the Protection of the European Communities' Financial Interests (PIF)**⁷, which criminalises both active and passive corruption of national and Community officials, where such corruption damages or is likely to damage the **financial interests of the Union**.
- **Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union**⁸, which made active and passive corruption of officials punishable offences, even where financial damage to the **Union is not affected**. It covers the criminal liability for heads of businesses and contains provisions on jurisdiction, extradition and international cooperation.
- **Second protocol to the PIF Convention**⁹, which criminalises money laundering of **proceeds** generated also by corruption and introduced **liability to legal persons** in cases of fraud, active corruption and money laundering, and providing for the possibility of **confiscation** of these proceeds or the corresponding property (not yet ratified).

⁵ Decision C(2002) 540 on the conduct of administrative inquiries and disciplinary proceedings

⁶ OJ 96/C 313/01 23.10.96

⁷ OJ 95/C 316/03 27.11.95

⁸ OJ 97/C 195/01 25.6.97

⁹ OJ 97/C 221/02 19.7.97

- **Framework decision criminalising corruption in the private sector**¹⁰, which requires that Member States criminalise active and passive corruption in the private sector as well as instigating, aiding and abetting of such conduct. It also provides for Member States to apply effective, proportionate and dissuasive **criminal penalties**, with a maximum penalty of at least 1 to 3 years of imprisonment for active and passive corruption. Member States are also required to provide for liability of and **penalties for legal persons**, which shall include fines and may include temporary or permanent disqualification.
- sserted an obligation to **exclude all non-reliable tenderers**, including those having been convicted of corruption (by definitive judgement) or grave professional misconduct (Article 45).
- provide for a common definition of active and passive **corruption to the detriment of the Communities financial interests**, align substantive criminal law in the Member States as regards the definition of fraud, corruption and money laundering affecting Community financial interests as well as criminal liability and the criminal penalties applicable, in accordance with the PIF-Convention and its two protocols. The proposal is still pending.

2.4. Promotion of fight against corruption in third countries

The promotion of the **rule of law** and the principles of “**good governance**” have become a key objective of the foreign and development policy of the EU, which has been integrated in the different co-operation agreements with **developing countries** and is part of the regular political dialogue with partner countries.

Within this cooperation with third countries, the Commission has frequently recommended to improve **co-ordination** between different authorities responsible for fighting corruption and to raise **public awareness** in order to prevent corruption. The establishment of a single anti-corruption unit or a single co-ordinating body would represent a significant step forward in this respect.

Within the accession process with the candidate countries, the Commission promotes **ten general principles** attached to the Communication on a comprehensive EU policy against corruption and supports their effort to strengthen relevant administrative capacities. These principles include: support of the fight against corruption from the highest levels, implementation of the relevant legislation, establishment of strong and independent authorities, reform of the public administration to make it more transparent, introduction of rules on ethics, corruption reporting mechanisms, etc.

2.5. Global initiatives

The European Commission has also been active in relation to the development of international instruments by the OECD and the Council of Europe. These are respectively the **Convention on combating bribery of foreign public officials in international business transactions** and the **Criminal Law and Civil Law Conventions on Corruption**.

¹⁰ OJ L 192/54 31.7.2003

Furthermore, the European Commission was actively involved in the negotiations and also signed the **United Nations Convention against Corruption**.

3. CURRENT ACTIVITIES AND IMPROVEMENTS NECESSARY IN THE FUTURE

Whilst substantial criminal law legislation on corruption covering both active and passive corruption in the public and the private sector is already or will be shortly in place in all EU Member States and the candidate countries, the true problem seems to lie rather in the field of implementing these laws, i.e. preventing, investigating, prosecuting and adjudicating corruption cases.

Therefore, in this part of my presentation, I would like to discuss some key elements, which should be considered in order to render the fight against corruption more effective.

3.1. Transparency

One of the most effective instruments to **prevent corruption** and fraud is a maximal transparency in public decision-making and distribution of funds. It is also one of the reasons why the Commission launched the **European Transparency Initiative (ETI)** in the last year with a strong support of Vice-President Kallas. This initiative calls on the Institutions and the Member States to:

- Disclose information on all end beneficiaries of EU funds;
- Better cooperate in exchange of information on non-reliable economic operators, including notification of court cases, and to improve our debarment (blacklisting) systems;
- Establish clear rules on consultancy and lobbying in the EU Institutions;
- Further develop rules on professional ethics of EU public office holders and create a special expert committee, which would give guidelines on ethical issues to all Institutions; and
- Improve the rules on the access to EU Institutions documents and information.

3.2. Exclusion from contracts (debarment/blacklisting)

In January of this year, OLAF together with Transparency International (TI) organized an expert **seminar** focusing on a possible improvement of the European debarment systems, which could be applied in all EU policies and also allow OLAF to use **new innovative measures to fight fraud and corruption**.

In the following months, OLAF is going to outline the **reform** taken into account the conclusions and recommendations from this seminar prepared by TI. The EU currently has a debarment system, which is applied only to about 20% of the EU budget and relies mainly on the information collected from tenderers during the tender/grant procedures launched by the Commission. Therefore, it is evident that the reformed system should make much more use of the information held by OLAF and the authorities of the Member States, which have been so far reluctant to communicate them for various,

mainly legal, reasons. On the other hand, proper and transparent procedures should be developed to protect the **rights of an individual**. The system should be widely accessible and allow for **exchange of information** with all financial institutions around the world. Finally, the exclusion mechanism should be **applied to all EU policies**.

3.3. Ethics

Despite several documents on ethical behaviour have been adopted, there is still need to further develop or establish ethical standards for public officials and especially members of the EU Institutions. Therefore, the ETI incorporated this issue and the Commission decided to invite again the other EU Institutions to debate on it.

In July, the Commission will organize an Ethics day where these issues will be discussed within several workshops. My colleague Margarete Hofmann will provide more information on this event in her presentation.

3.4. Standards and codes of conduct

Soft laws and internal rules guiding the behaviour within public administrations as well as within private corporations are very useful in prevention of corruption.

3.4.1. Public sector

As I have already mentioned, the Commission, with a strong input of OLAF, has developed such rules recently. The rules governing the organization of public administration should also include impartial and transparent **selection of staff**, their appropriate **remuneration** to attract people of the highest quality and regular **rotation** in sensitive posts.

The Commission should campaign to promote such principles of public service worldwide. In fact, even many Member States do not fulfil the criteria of modern public administrations yet.

3.4.2. Private sector

Companies and their representatives are usually both **offenders** of corrupt practices and **victims** when they do not succeed in competition with those who bribe. But they may be victims also in the sense that they are excluded from receiving public funds for corruption committed by an individual manager on its own initiative.

Furthermore, it seems that only few companies are aware of the OECD Convention on bribery of foreign public officials in international business transactions and the national implementing legislation. **Awareness** raising within the entire private sector should therefore be improved with a view to sensitising companies to the damaging consequences that corrupt practices might have on companies and their reputation and thus preventing corruption.

Companies should establish **clear rules** on “whistleblowing”, include training and monitoring of these rules with a view to making it clear that corruption is unacceptable, and encourage employees to expose it. They should promote corporate responsibility and liability on the basis of international standards and principles, including the development

and implementation of modern accounting standards, adoption of adequate internal audit schemes, codes of conduct and their implementation.

It is also one of the ideas for the reform of the EU **debarment policy** to give incentives to companies to establish internal anti-corruption rules to mitigate possible sanctions.

An open and fruitful dialogue has started with representatives of the **legal professions**, accountants and auditors, in order to identify possible gaps or inconsistencies, develop basic ethical principles at EU level and strike the right balance between professional secrecy and public interest. Charter of the European professional associations in support of the fight against crime was signed in 1999, which encourages adopting standards within the existing or future Codes of conduct to protect the professionals from being involved in fraud, corruption and money laundering or from being exploited by organised crime.

3.5. Corruption networks in the political arena

Severe **political corruption scandals** are part of the everyday life in many EU Member States. They show that public administrations and political parties, public officials, business circles and representatives of social partners and other interest groups, such as trade unions and employers' associations, or foundations, establish connections and **networks** that provide opportunities for illicit exchange of favours, donations, payments, etc. to influence public decision-making and distribution of funds.

Only utmost **transparency** in financing of social partners and interest groups, election spending and certain restrictions on business activities of representatives of these entities can ensure that they act free of potential conflicts of interests. The Commission is very concerned about this development and suggests the **EU-wide adoption of clear and transparent rules** on the financing of these entities of special nature and an increasing role of the civil society.

The Member States should strive for such rules that **separate the state and the political parties** as much as possible and ensure the complete independence and wide operative capacities of the investigative authorities and judicial systems.

As already mentioned, within the **ETI** the discussion is going on how to establish clearer and more transparent rules on lobbying and consultancy within the EU Institutions and the rules of ethical behaviour of the decision-makers.

3.6. Investment into fight against corruption

Yet, only prevention could not be sufficient without a real threat that the offences will be **prosecuted and punished**. Organised crime uses up to 30 % of their proceeds to bribe police, prosecutors, judges and public administration in general to "purchase exemption" from law enforcement measures. However, comparatively little public money is used to investigate corruption cases, although experience shows that higher investment into specialised anti-corruption services could multiply the detection and prosecution of offenders and thereby the effectiveness of any anti-corruption policy. Therefore, the investigation of fraud and corruption should be intensified.

Specialised anti-corruption authorities and Member States' officials fighting against corruption and related economic crimes such as fraud, money laundering, tax and accounting offences must enjoy appropriate **independence, autonomy and protection** in the exercise of their functions, be free from improper influence and have **effective means** for gathering evidence and **protecting those persons helping the authorities** in combating corruption. One could think also about ways to facilitate the burden of proof for law enforcement authorities.

Member States should, where appropriate at the proposal of the Commission, introduce **common standards for collection of evidence, special investigative techniques, protection for whistleblowers, victims and witnesses of corruption and the confiscation of proceeds** of corruption with a view to facilitating the detection, investigation, prosecution and adjudication of corruption cases. They should ensure that appropriate **remedies are available for victims** of corruption.

3.7. Collecting information, whistleblowing, voluntary disclosure

Corruption is often referred to as the crime without (direct) victim. Hence, there is rarely an affected party being able to report a corruption case to police and judicial authorities and indeed very few cases of corruption are reported. Therefore, to collect maximum information, we have to give the **right incentives** to those who can report on corruption.

We should further develop appropriate **safeguards** to convince witnesses to report corruption cases. This can only be achieved by an effective protection of **whistleblowers** against victimisation and retaliation (loss of job, personal threats etc.). Formal rules show not to be sufficient if **real protection** is not guaranteed. It is also an idea to consider whether whistleblowers should be rewarded for their action, e.g. in pecuniary way as a portion on the funds saved thanks to the information. On the other hand, the information coming from whistleblowers should be treated with **caution** since the reasons for reporting are not always honest, pursuing personal objectives.

In general, the **communication of information should be facilitated** as much as possible. Therefore, for example, OLAF established its **Free Phone** where anybody can denounce fraud or corruption cases from all Member States free of charge and in the first stage also anonymously.

However, very often there are **no witnesses at all**, so that the only way to reveal corrupt practices seems to be to give **incentives for persons directly involved** in these practices to report their accomplices. OLAF would like, best in connection with the reform of the debarment systems, to develop a **voluntary disclosure mechanism** (as e.g. recently developed by the World Bank) rewarding those who come forward with information with a release or lowering of sanctions. There are many legal, mainly penal, obstacles to be resolved at EU level to introduce such a mechanism. However, the Member States and other countries and organizations should incorporate such rules into their anti-corruption legislation.

3.8. Cooperation of relevant authorities

No office can have sufficient resources to fight corruption effectively alone. For example, the European budget is spent throughout the entire world. Therefore, it is essential to

establish **close cooperation with all relevant authorities**. On bilateral basis, OLAF cooperates closely with investigative authorities of all Member States and also with international organizations as e.g. the UN.

For the future, we would like to develop a **platform** of other services, which OLAF could offer to the Member States authorities. Interagency cooperation and **joint investigations**, focusing on financial investigations should be enhanced and networks and national contact points specifically dealing with corruption cases should be set-up in order to facilitate international cooperation.

The Commission has also advocated the creation of an independent **European Public Prosecutor** responsible for detecting, prosecuting and remitting for trial the authors of offences against the EC financial interests including corruption¹¹, which would guarantee effective criminal law enforcement.

On multilateral basis, OLAF participates in two **groups for cooperation**, which have as their overriding objective the improvement of cooperation and hence efficiency in fight against corruption: **International Investigators Conference** and the **Interpol Group of Experts on Corruption**. These groups produced important documents: Uniformed Guidelines for International Investigators (IIC) and the Global Standards to Combat Corruption (Interpol).

On political level, the Commission is actively involved in developing **initiatives and strategies** with the Council of Europe, UN, OSCE and others that contribute to the aim of creating a European area of freedom, security and justice. Examples of such cooperation include: Working with the UN Office on Drugs and Crime (ODC), to explore how to work together to combat drugs trafficking, organised crime, corruption and money laundering. OLAF also assists, for example, the UK Serious Fraud Office to develop a new comprehensive anti-corruption legal framework.

4. CONCLUSIONS

I hope that the EU Institutions will keep or even increase their **political commitment** to improve the administrative structures to fight better all forms of corruption as shown recently e.g. in the Commission's European Transparency Initiative, and especially against **political corruption** and illicit financing of various interest groups.

I hope that the Member States will quickly **ratify and effectively implement all remaining legal instruments** and enhance their activities and cooperation by allocating more resources and staff, preventing corruption through transparent and accountable administrative structures and removing all barriers of cooperation.

I hope that the Member States and the Commission will continue their permanent dialogue with acceding, candidate and other **third countries**, include corruption-related issues in its policies and further assist these countries in their efforts to set-up and

¹¹ See Commission Green Paper on the protection of Community financial interests and the establishment of a European public prosecutor, COM(2001) 715 from 12/12/2001 and its follow-up report COM(2003) 128 final of 19/03/2003.

implement national anti-corruption policies and that they will further support the private **sector** in its efforts to raise integrity and corporate responsibility.