TRANSPARENCY INTERNATIONAL
the global coalition against corruption
EU OFFICE

THE EUROPEAN UNION INTEGRITY SYSTEM

OVERVIEW

A 2014 Eurobarometer survey found that 70% of citizens believe that corruption is present in the EU Institutions[1]. Actual scandals – from the Cash-for-Amendments scandal at the European Parliament to the affair surrounding European Commissioner Dalli – showed that corruption and influence peddling can reach all levels of the institutions and contributed to a further weakening of citizens' trust in the EU.

In April 2014, Transparency International EU published the first ever comprehensive review of corruption and integrity risks in the EU institutions - the EU Integrity System report - to separate myth from reality and put forward recommendations for reform. The study is an analysis of how EU institutions promote integrity, how they deal with the risk of corruption and how their policies help the fight against corruption in Europe. It looks at both the rules and the practices in place in the ten leading EU institutions and bodies. The report provides a foundation for future efforts to strengthen the fight against corruption in the institutions and across the EU as a whole.

The report found that despite a good foundation in the EU treaties to support integrity and ethics, the system is vulnerable to corruption and fraud. Poor implementation, lack of political leadership, failure to allocate sufficient staff and funding, and a trend toward informal decision-making for example in trilogues undermine existing regulations and controls.

Since the publication of the report last year the EU Institutions have taken up a number of our recommendations. The new European Commission has pledged to only meet with registered lobbyists and publishes basic information on these meetings online. The European Court of Auditors and the Ombudsman have issued internal guidelines to better protect whistleblowers. The Ombudsman has also adopted a Code of Conduct. OLAF has clarified the arrangements for so-called 'clearing house' meetings with the Commission and finally the Commission has proposed to revise the financial regulations to improve the debarment system for corrupt companies. Despite these improvements, corruption risks persist at the EU level and more needs to be done.

This paper summarises the main recommendations from the EU Integrity System report for the European Parliament, the European Commission and the Council of the European Union, taking into account the progress since its publication last year.

1. TRANSPARENCY OF DECISION-MAKING

The general level of transparency across the EU system benefits from a strong legal foundation in the EU treaties.

However, public scrutiny of EU law-making is hampered by blind spots in the process. These include so-called 'trilogue' discussions where EU laws are negotiated behind closed doors between the Council, Parliament and Commission.

Moreover, despite the presence of an estimated 15,000-30,000 lobbyists in Brussels alone,[2] EU law-makers do not systematically record and disclose their meetings with or written input from lobbyists.

Transparency International (TI) welcomes the latest efforts and emerging practice at the EU level and supports European Commission Vice-President Timmermans' call for the Council and European Parliament to follow suit with the practice of publishing lobby contacts and only meeting registered lobbyists, as introduced by the European Commission in December 2014. The aim should be the creation

of an EU Legislative Footprint that provides a comprehensive public record of lobbyists' influence on legislation.

RECOMMENDATIONS

- **Create an EU Legislative Footprint.** Comprehensive public records of lobbyists' influence on EU programmes, policies and legislation. For more details consult the recent policy paper on the EU Legislative Footprint on our website.
- **Make the EU Transparency Register mandatory.** Only if registration is mandatory for lobbyists and if they face sanctions in case of non-compliance can it be ensured that the information they provide is accurate, complete, meaningful and up-to-date.
- **Publish all documents from each step of the legislative process on online public registers.** A policy of "transparency by default" should prevail when it comes to the EU legislative process. This should include for example member state positions in Council or 4-column-documents from trilogues.

2. ETHICS AND CONFLICTS OF INTEREST

The general rules governing staff conduct across the EU administration are a good basis to prevent corruption and low integrity standards.

The generally good controls on the conduct of staff contrast starkly with the weak checks on the behaviour of Members of the European Parliament (MEPs) and senior EU figures. For example, no evidence could be found of comprehensive and systematic verification of the financial declarations made by e.g. Commissioners, MEPs and members of the Court of Auditors.

In appointment procedures for many EU leadership positions, political decision-making often trumps concerns about integrity, undermining principles set down in law. Independence, for example, is a necessary pre-requisite for members of the Commission or ECA, yet no detailed, objective criteria are in place to assess any potential conflicts of interest held by candidates.

Furthermore, the rules to prevent and to punish unethical behaviour by MEPs and senior EU figures are often inconsistent or contain gaps. One obvious example is the duration and scope of obligations that former members and officials of institutions have after leaving office: 'cooling-off periods'[3] range from 18 months for Commissioners, to 3 years for members of the European Court of Justice, while MEPs are free of meaningful post-term obligations. Inconsistencies also exist regarding the scope – or even mere existence – of codes of conduct: no code is in place for the European Council President, for instance. None of the ethics committees that exist to advise MEPs and Commissioners on compliance with ethics rules is genuinely independent. They are composed of current or former members of the institutions and normally they only respond to cases that are brought to their attention. In the case of the European Parliament not a single sanction against an MEP has ever been issued, despite evidence of several violations of the code of conduct. Without strong, independent ethics committees, there will be doubts about whether senior EU figures can really be held to account for breaking the rules.

RECOMMENDATIONS

- **Introduce objective and transparent appointment procedures** for all key institutional positions.
- **Bring conflict of interest policies for MEPs and senior EU figures up to international standards,** e.g. OECD guidelines[4] and the UNCAC[5].
- **Ensure independence of ethics bodies** to advise on, monitor and recommend administrative sanctions regarding the conduct of members of institutions, including the observance of post-service obligations.

3. WHISTLEBLOWING

When cases of corruption, fraud or maladministration come to light it often takes a courageous whistleblower. Indeed, the EU staff rules oblige all civil servants to report any illegal activity or misconduct they observe in the course of their work. The rules specify a number of ways for information to be reported, and lay down basic provisions for the protection of whistleblowers. This obligation has been in place since 2004, and as of 2014, all institutions are also required to set their own internal procedures to protect whistleblowers.

When the EU Integrity System report was released, only the Commission had complied with this obligation. Following the report, the European Ombudsman, Emily O'Reilly, conducted an own-initiative investigation and found the situation largely unchanged from a year ago. Only the Court of Auditors and her own institution had used the time to introduce adequate internal guidelines.

An inter-institutional committee is currently exploring the possibility to adopt a common approach to the obligations on whistleblowing for the remaining institutions. Hopefully the committee will swiftly conclude its work so that the remaining seven institutions can shortly comply with their legal obligation to adequately support and protect those reporting cases of corruption, fraud or maladministration within the EU administration without facing retributions or risking their careers.

RECOMMENDATION

- **Adopt internal guidelines to protect whistleblowers.** Harmonised, internal whistle-blowing procedures in line with the obligations under the EU Staff Regulations and with respect to existing standards are needed for all EU Institutions.

4. FINANCIAL CONTROL

The EU's general financial rules – the EU Financial Regulation – are a strong safeguard against mismanagement of public finances across the EU administration. All institutions assessed are required to abide by these rules, and are subject to external audits by the European Court of Auditors. The procedure (so-called 'discharge') for the European Parliament (EP) scrutiny of institutions' financial accounts is functioning.

However, the effectiveness of the discharge procedure is largely dependent on the good cooperation of the other institutions and the quality of the information they choose to provide to the EP.

All institutions do, though, have in place internal financial procedures which adhere to the general EU rules, including on internal auditing.

Nevertheless, the range of controls to prevent public money falling into the hands of corrupt individuals risks being undermined by the weak way in which the European Commission is currently using its powers to exclude and deter corrupt companies from participating in public tendering by EU institutions. The Commission has discretionary powers to exclude (or 'debar') companies for 'grave professional misconduct', yet only one was excluded for this reason at the time of writing. Moreover, only six entities were debarred for convictions of fraud, corruption, money-laundering or involvement in a criminal organisation[6], raising questions on how well member states and the Commission are sharing relevant information.

RECOMMENDATION

- **Exclude corrupt companies from EU public procurement.** The European Commission should exclude legal entities guilty of 'grave professional misconduct' from EU public procurement,[7] building on practice at international organisations such as the World Bank.[8] Names of debarred companies should be made public, as a further deterrent against fraud and corruption.

5. INVESTIGATING CORRUPTION

EU institutions are attaching increased importance to the fight against corruption.

However, there is no EU criminal law and a lack of judicial and prosecutorial powers at EU level: the Court of Justice does not have the power to adjudicate on EU-level corruption cases nor is there an EU-level prosecutor competent to deal with transnational cases. This leaves the investigation of criminal cases involving corruption to national authorities across the EU and leads to inconsistencies and deficiencies in judicial follow-up.

Furthermore, OLAF cannot compel member states to act on its recommendations or initiate prosecutions. According to OLAF, only 46% of the cases handed over to national authorities are followed up by the judiciary. The perception – and potentially the actual degree – of OLAF's independence, and how vigilantly alleged fraud and misconduct are investigated within the Commission, is undermined by its current status as part of the Commission. Establishing watertight operational independence for OLAF, with well-functioning mechanisms to ensure it is still accountable for its actions, is crucial for the effective investigation and sanctioning of corrupt activity within the institutions.

RECOMMENDATIONS

- **Create a European Public Prosecutor** with a mandate to investigate serious cross EU border crimes as part of its mandate.
- **Establish OLAF's full organisational independence,** with appropriate accountability mechanisms towards the Commission, Council and European Parliament.

THE EU INTEGRITY SYSTEM IN FIGURES

70% EU citizens who believe corruption is present in the EU institutions	**6,014** Public access to documents requests to Commission in 2012	**1,549** Trilogue meetings during the last legislative term	**15** Days in which most EU institutions have to reply to an access to document request
0 Trilogues documents proactively disclosed to the public	**7** Companies debarred from EU tendering because of evidence of fraud or corruption	**8,170** Entities registered on the EU's lobby register by 19/03/2015	**95** Number of OLAF investigations into Commission staff in 2012
195% Rise in cases opened by OLAF, between 2011 and 2012	**2,358** Pending number of cases at Court of Justice in 2012	**3/10** Institutions have internal whistleblowing rules	**25,000** Questions asked by the EP to the Commission between 2011 and 2013
23 Average months taken by OLAF to close a case in 2012	**40,000** Civil servants working for the European Institutions in 2013	**15,000 - 30,000** Estimated number of lobbyists in Brussels	**3** Commission staff dismissed between 2010 - 2012

POST-EMPLOYMENT OBLIGATIONS BY INSTITUTION

Institution	Cooling off period[9] (months)	How long after leaving must inform of proposed new work (months)	Can the institution prohibit new work?
EUROPEAN PARLIAMENT			
Member (MEP)			
Accredited assistant[10]		24	√
Local assistant			
COUNCIL			
Minister			
National official			
EUROPEAN COMMISSION			
Commissioner	18	18	
ALL INSTITUTIONS			
Special Advisor			
Permanent staff member (Official)		24	√
Senior official (AD14+)	12	24	√
Fixed-term staff (Temporary agent)		24	√
Fixed-term staff (Contract agent)[11]			
Seconded National Expert (SNE)[12]			

For more information on the study visit:

http://www.transparencyinternational.eu/focus_areas/eu-integrity-study/

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ADESSIUM FOUNDATION

1. European Commission: Special Eurobarometer 397 *http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf*
2. See Corporate Europe Observatory, 'Brussels: The EU Quarter', (Brussels; CEO, 2011), pg. 7, at http://corporateeurope.org/sites/default/files/publications/ceolobbylow.pdf
3. A period during which an individual is prohibited from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their time at the institution.
4. See OECD, 'Managing Conflicts of Interest in the Public Service', (Paris; OECD, 2003)
5. See United Nations Convention Against Corruption (UNCAC), especially articles 7, 8 and 12
6. Information provided in email of 18 October 2013 from the European Commission Directorate General for Budget to the Transparency International EU Office
7. See Regulation 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, art. 106 (1c)
8. See the World Bank listing of ineligible firms and individuals available at www.worldbank.org
9. Period during which an individual is prohibited from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their time at the institution
10. Rules apply if they serve for 5 years
11. At the Commission, obligations applying to officials also apply to contract agents if they had access to "sensitive information"
12. At the Council, former SNEs must inform the Council General Secretariat for 3 years after secondment, of any duties or tasks which could raise a conflict of interest in relation to the tasks carried out during secondment