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Corruption as governance regime: a barrier to institutional efficiency and progress

Report¹
Committee on Political Affairs and Democracy
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Summary

The report analyses the root causes and drivers of corruption as well as transparency and accountability measures to fight against it and to promote a culture of integrity in governance. Different historical, political, social and cultural traditions along with anti-corruption policies are discussed in four case studies (Britain, Ukraine, The Netherlands and Spain).

The report also analyses a number of anti-corruption strategies in terms of legislation, institutions and education, and pays specific attention to the mandate and powers of national anti-corruption institutions. It offers a number of recommendations to member States, observer States and States whose parliament enjoys partner for democracy status with the Assembly, as well as to national parliaments, political parties and the Assembly itself, to step up the fight against corruption and promote integrity in governance. It also recommends a number of actions to the Committee of Ministers to enhance the Organisation's impact in this field.

¹ Reference to Committee: Doc. 13551, Reference 4063 of 29 September 2014.

A. Draft resolution²

1. The Parliamentary Assembly reaffirms that the fight against corruption remains not only a cornerstone of the rule of law but also a key component of a genuine democracy.

2. Frequent corruption scandals, both in national and European institutions, have led populist leaders to exploit the disenchantment of the people with the “corrupt elites”. Furthermore, the perception of corruption or misconduct negatively affects voter turnout and conditions citizens’ judgement regarding incumbent leaders and political institutions. Hence, the Assembly considers that stepping up the fight against corruption and restoring trust in the efficiency and effectiveness of democratic institutions must be a priority for many European democracies, including European institutions.

3. The Assembly, recalling, *inter alia*, its resolutions and recommendations on *Corruption as a threat to the rule of law* ([Resolution 1943 \(2013\)](#) and [Recommendation 2019 \(2013\)](#)), *Lobbying in a democratic society (European code of good conduct on lobbying)* ([Recommendation 1908 \(2010\)](#)), *Improving the protection of whistle-blowers* ([Recommendation 2073 \(2015\)](#) and [Resolution 2060 \(2015\)](#)), *Judicial corruption: urgent need to implement the Assembly’s proposals* ([Resolution 2098 \(2016\)](#) and [Recommendation 2087 \(2016\)](#)), *Transparency and openness in European institutions* ([Resolution 2125 \(2016\)](#) and [Recommendation 2094 \(2016\)](#)), stresses the importance of further promoting integrity in public governance.

4. While welcoming existing anti-corruption, transparency and accountability measures at national, European and international levels, the Assembly also lays stress on the need to favour a political and cultural environment which is conducive to a corruption-resilient society. It believes that any anti-corruption and transparency initiative at national and European level should:

- 4.1. take into account the diversity and richness of political, social, economic and cultural traditions in Council of Europe member States;
- 4.2. receive strong grassroots backing from a broad coalition of groups in society opposed to existing corrupt practices;
- 4.3. be flexible enough to adapt and respond to new forms of corruption as they emerge.

5. The Assembly takes note of the variety of functions, powers and mandates of national anti-corruption institutions, including multi-purpose anti-corruption agencies, law enforcement bodies, policy co-ordination and prevention bodies, and internal control mechanisms by other public institutions. It calls on Council of Europe member States that have established separate specialised anti-corruption bodies to provide them with specialised skills, a clear mandate and sufficient powers, subject to proper checks and balances, in line with the Committee of Ministers [Resolution 97 \(24\)](#) on the twenty guiding principles for the fight against corruption and the guidelines of the United Nations Convention against Corruption (UNCAC). It also calls on these bodies to develop their monitoring and evaluation mechanisms to examine their own performance and to improve public accountability and support, with the possible support of the Council of Europe.

6. In the light of the above, the Assembly invites all Council of Europe member States, observer States and States whose parliament is its partner for democracy, to step up the fight against corruption by:

- 6.1. promoting integrity and transparency in public life at all levels, in particular by:
 - 6.1.1 adopting sound rules on the declaration of assets, income and financial and other interests by members of government and parliament, by leaders of political parties and political movements and by civil servants, judges and prosecutors;
 - 6.1.2. making such declarations easily accessible to the public;
 - 6.1.3. setting up independent supervisory bodies and regulating lobbying activities, in line with Recommendation [CM/Rec\(2017\)2](#) of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision-making;

² Draft resolution adopted unanimously by the committee on 14 June 2017.

- 6.2. ensuring full co-operation with the Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and implement their recommendations;
- 6.3. ensuring the independence of the judiciary through transparent appointment and promotion procedures and, if need be, the use of appropriate disciplinary measures, applied by bodies free from political interference and other undue influence;
- 6.4. acknowledging the role of the media in denouncing corruption and ensuring that media regulation respects media freedom and responsibility;
- 6.5. implementing the Recommendation on Public Integrity issued by the Organisation for Economic Co-operation and Development (OECD), providing a blueprint for upholding and prioritising the public interest over private interests in the public sector;
- 6.6. considering establishing specialised integrity units in public institutions to promote ethics, accountability and transparency;
- 6.7. paying attention to the regional and local level and consider setting up an institutional source of confidential counselling to provide local representatives with guidance and advice on ethical and integrity questions and possible conflicts of interest, as well as dedicated training activities;
- 6.8. organising public awareness anti-corruption campaigns targeting various groups of citizens, media, NGOs, businesses, and the public at large;
- 6.9. developing integrity education programmes as part of primary and secondary school curricula, focusing on individual and social responsibility, with the support of the Council of Europe.

7. In addition to the traditional approaches based on legislation, specialised institutions, stricter compliance and enforcement, governments should pay proper attention, through further academic and policy research, to the ways in which corruption was and is embedded in social and cultural values, as these provide the essential environment in which institutional reforms and anti-corruption initiatives can succeed.

8. Furthermore, the Assembly calls on all parliaments of Council of Europe member States, observer States as well as those who are its partners for democracy to further promote transparency and accountability measures, in particular by:

- 8.1. developing a code of conduct covering guidance on the prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements, and making it easily accessible to the public;
- 8.2. considering setting up an institutionalised source of confidential counselling to provide elected representatives with guidance and advice on ethical and integrity questions and possible conflicts of interest, as well as dedicated training activities;
- 8.3. ensuring that parliamentary immunity does not protect members of parliament from criminal prosecution for corruption-related acts;
- 8.4. setting up specific parliamentary scrutiny procedures, with special emphasis on the implementation of recommendations emanating from GRECO's Fifth Evaluation Round, focusing on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies;
- 8.5. ensuring that co-operation with investigative media is based on reasonably sound proof and implementing Resolution ... (2017) on *Parliamentary scrutiny over corruption: parliamentary co-operation with investigative media*.

9. In accordance with the Code of good practice in the field of political parties of the European Commission for Democracy through Law (Venice Commission), the Assembly invites all political parties to exclude from their lists of candidates and from party membership any person convicted of corruption.

10. For its part, the Assembly resolves to:
 - 10.1. pay special attention to the revision and effective implementation of its own code of conduct;
 - 10.2. fully support the independent external investigation body to look into allegations of corruption within the Assembly;
 - 10.3. strengthen its own anti-corruption platform with the aim of promoting integrity campaigns in national parliaments;
 - 10.4. provide a sound regulation for lobbying activities.
11. Finally, the Assembly reiterates its call on the European Union to pursue full accession to GRECO, as soon as possible, and respect the principle of equal treatment among members of GRECO, which involves the evaluation of European Union institutions by GRECO's mechanisms, taking into account its specificity as a non-State entity.

B. Draft recommendation³

1. The Parliamentary Assembly, referring to its Resolution ... (2017) on Corruption as governance regime: a barrier to institutional efficiency and progress, stresses the need to favour a political and cultural environment conducive to a corruption-resilient society, which is a cornerstone of a genuine democracy.
2. The Assembly welcomes the Recommendation [CM/Rec\(2017\)2](#) of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision-making.
3. In order to further strengthen the implementation of existing anti-corruption standards and recommendations of Council of Europe member States, the Assembly invites the Committee of Ministers to pay proper attention, through further research, to the ways in which corruption was and is embedded in social and cultural values in individual member States, as these provide the essential environment in which anti-corruption initiatives can succeed.
4. Since anti-corruption and integrity strategies are more likely to succeed when they receive strong grassroots backing from civil society and other relevant actors in the fight against corruption, the Assembly calls on the Committee of Ministers to:
 - 4.1. strengthen dialogue between civil society and local, national and European institutions by launching a campaign on integrity and anti-corruption aiming at mobilising a network of policy-makers, experts, scholars, intellectuals, journalists, NGOs and students;
 - 4.2. give a prominent role to integrity and anti-corruption education in the Reference Framework of Competences for Democratic Culture, targeting primary and secondary schools and higher education and vocational training institutions throughout Europe;
 - 4.3. consider including integrity and anti-corruption aspects in a revised version of the European Charter on education for democratic citizenship and human rights;
 - 4.4. develop anti-corruption education projects in the framework of the Council of Europe – European Union joint programme “Human Rights and Democracy in Action”;
 - 4.5. pay specific attention to corruption in education, in particular regarding access to higher education and higher education qualifications, and start a reflection on a possible Convention on education fraud;
 - 4.6. ask Council of Europe member States that have established separate specialised anti-corruption bodies to ensure their independence and provide them with specialised skills, a clear mandate and sufficient powers, subject to proper checks and balances, in line with the Committee of Ministers [Resolution 97 \(24\)](#) on the twenty guiding principles for the fight against corruption and the guidelines of the United Nations Convention against Corruption (UNCAC);
 - 4.7. invite GRECO to provide a platform for anti-corruption authorities in its member States in order to gather and discuss good practice and current challenges in the fight against corruption and the promotion of integrity in public life, and consider setting up a network at European level.

³ Draft recommendation adopted unanimously by the committee on 14 June 2017.

C. Explanatory memorandum by Mr Michele Nicoletti, rapporteur

1. Introduction and scope of the report

1. The aim of my report is to analyse how corruption can affect democracy in different contexts and to better understand why, notwithstanding the long history and continuous spread of the phenomenon of corruption in today's society, it remains difficult to apply a unique 'recipe' which is guaranteed to produce effective results throughout Europe.

2. The original title of the motion for a resolution was *Corruption as governance regime: a barrier to institutional efficiency and progress*. I propose the following: *Promoting integrity in governance to tackle political corruption*, so that we shift the focus on tools and strategies to promote a culture of integrity, transparency and accountability.

3. Our Assembly took a firm stance on corruption as a threat to the rule of law by adopting [Resolution 1943 \(2013\)](#) and [Recommendation 2019 \(2013\)](#), prepared by the Committee on Legal Affairs and Human Rights ([Doc. 13228](#)), which was followed by a [Reply to Recommendation 2019 \(2013\)](#) by the Committee of Ministers on 21 January 2014. The Assembly underlined the need to provide for appropriate incriminations of corruption offences, to guarantee the independence of the judiciary and to ensure a high level of transparency in political, administrative and economic life. It also called for the mainstreaming of anti-corruption in various Council of Europe activities and programmes and stressed the need for domestic parliaments to actively contribute, in their respective national contexts, to the implementation of recommendations issued by the Council of Europe Group of States against Corruption (GRECO) and other monitoring bodies.

4. In my report for the Committee on Political Affairs and Democracy, I intend to focus primarily on political corruption, i.e. the misuse by government or political officials of their governmental powers and resources for illegitimate, usually secret, private gain.⁴ This issue goes to the very heart of what the Council of Europe stands for, as the fight against corruption remains not only a cornerstone of the rule of law but also a key component of a genuine democracy.

5. In some countries, corruption is considered to be a "pathology" of the social system, while in others it is perceived as something "physiological" and seems to play a structural role in society. In order to be effective, anti-corruption strategies cannot ignore the cultural background, that is different traditions and customs, and existing perceptions in a heterogeneous Europe. These strategies should also take into account the impact of the building of the modern State on corruption. Thus, the problem of corruption in Southern Europe cannot simply be solved by applying anti-corruption policies and structures that work in Northern European countries, which traditionally come at the top of various anti-corruption ratings. Also, former Eastern and Central European countries have gone through a political transition from a totalitarian to a democratic regime relatively recently (less than 30 years) and this element needs to be taken into account when trying to understand and analyse the phenomenon of corruption in these countries and design appropriate anti-corruption strategies. To illustrate this point, I have focused on four case studies, following fact-finding visits in three of them: Ukraine, which I visited in January 2016; The Netherlands, which I visited in November 2016, Spain, where I had some fruitful discussions in March 2017, and Britain, which was presented to me by Professor Mark Knights, historian at the University of Warwick.

6. My aim is not to name and shame individual countries but to understand the root causes of corruption and what can be done at national and European level to favour a culture of integrity, taking into account the national and local environment. I will also, *inter alia*, outline a number of anti-corruption strategies in terms of legislation, institutions and education, and pay specific attention to the mandate and powers of national anticorruption institutions.

7. I wish to thank the Committee for organising a number of hearings, namely: on 20 April 2015, in Strasbourg, with the participation of Mr Raffaele Cantone, President of the Italian Anti-Corruption Authority and Mr Sergei Guriev, Professor of economics at the Paris Institute for Political Studies; on 1 September 2015, in Paris, with the participation of Mr Giovanni Kessler, Director General of the European Anti-Fraud Office (OLAF) of the European Commission, Mr Bálint Magyar, Researcher and strategic consultant at Financial Research Plc., Hungary, and Ms Kathryn Gordon, Senior Economist, OECD Anti-Corruption Division; and on 8 March 2016, in Paris, with the participation of Mr Drago Kos, Chairperson of the OECD Working Group on Bribery.

⁴ IMF, Manual on Fiscal Transparency, 2007, Glossary.

8. Furthermore, on 4 June 2015, the Committee participated in a conference on *Towards a code of conduct for parliamentarians: a comparison of national and international experience*, organised by the Italian Chamber of Deputies in Rome, under the auspices of Ms Laura Boldrini, President of the Chamber of Deputies.

9. On 23 September 2015, I participated in an exchange of views with a delegation of the Constitutional Affairs Committee of the European Parliament (AFCO) in Brussels; and on 2 December 2016, I co-organised, in co-operation with the Council of Europe Directorate General of Human Rights and Rule of Law and Deputy Secretary General Gabriella Battaini-Dragoni, at the Council of Europe office in Venice, a hearing of experts to discuss *Corruption and its trends: a policy challenge*, whose discussions have greatly informed my report.

10. On 20 March 2017, I attended the launch event of the GRECO's Fifth Evaluation Round on the subject on *Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies*.

11. A number of other important issues, including lobbying, whistle-blowers' protection, money laundering, revolving doors and conflicts of interest, as well as the relevant work of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), have fallen outside the scope of my analysis. These issues are being dealt with successfully by the Committee on Legal Affairs and Human Rights⁵ and I also wish to refer to the proceedings of the Venice workshop as regards current European trends in the fight against corruption, including asset recovery and beneficial ownership.⁶

12. Last but not least, the Committee on Culture, Science, Education and Media adopted a report by Ms Gülsün Bilgehan on *Parliamentary scrutiny over corruption: parliamentary co-operation with investigative media*⁷, which will contribute to a discussion on how to rebuild trust in the media and in democratic institutions. A joint debate with my own report is scheduled for the June part-session.

2. Case studies

13. The following four countries, Britain, Ukraine, The Netherlands and Spain were selected on the basis of their historical, cultural, geographical and political differences.

2.1. *The impact of the building of the modern State on corruption: the case of Britain*

14. The morning session of the Venice workshop on *Corruption and its trends: a policy challenge* focused on corruption drivers and anti-corruption reforms. Corruption has reached and captured public structures since the early stage of the formation of the modern State. During the State's subsequent development, some societies managed to progressively prevent and eliminate corruption by addressing those risk areas or attitudes. In other societies, corruption continued to affect public policy as well as public life in general.

15. Professor Knights discussed what Britain's history can tell us about corruption, and I will borrow his analysis to show the impact of the building of the modern State on corruption.

16. Britain is today seen, according to corruption perception indices, as a country that is relatively uncorrupt⁸. But it has a long history of struggling with corruption, and anti-corruption strategies evolved over centuries rather than years or decades.⁹ Such strategies were often shaped by peculiarly British factors – Protestant reformation in the sixteenth century, two revolutions in the seventeenth century, and the expansion of State and Empire in the eighteenth century - suggesting that each State has to take measures which are adapted to its national history, culture and mind-set.

⁵ Resolution 1943 (2013) and Recommendation 2019 (2013) *Corruption as a threat to the rule of law, Lobbying in a democratic society*; Recommendation 1908 (2010) *European code of good conduct on lobbying*; Recommendation 2073 (2015) and Resolution 2060 (2015) *Improving the protection of whistle-blowers*, Resolution 2098 (2016) and Recommendation 2087 (2016) *Judicial corruption: urgent need to implement the Assembly's proposals*; Resolution 2125 (2016) and Recommendation 2094 (2016) *Transparency and openness in European institutions*.

⁶ The programme and proceedings of the workshop: <http://website-pace.net/documents/18848/3260386/AS-POL-INF-2017-09-EN.pdf/250e8ce9-a0fe-4539-aedf-0ff352bcdb75>.

⁷ <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23241&lang=en>.

⁸ Rank: 10th out of 176, according to Transparency International Corruption Perception Index 2016.

⁹ Professor Knight's analysis is based on a project funded by the Arts and Humanities Research Council, examining the history of corruption and anti-corruption in Britain and its colonies from the sixteenth century reformation to the nineteenth century reform movements. This will result in a book to be published by Oxford University Press. Some preliminary findings are summarised in a report for Transparency International which is available at <http://www.transparency.org.uk/publications/old-corruption-what-british-history-can-tell-us-about-corruption-today/>.

17. The understanding of what corruption was, or why and how it posed the greatest danger, changed over time; and what constituted corrupt behaviour was also contested, with rival versions at stake over time, from the idea of corruption of the Catholic Church in the sixteenth century Protestant Britain to the corruption of officeholders or the corrosion of the political system in the early nineteenth century. Also while the concept of 'self-interest' was seen as the root of corruption in the sixteenth and seventeenth centuries, it became the invisible regulator of the free market that could undermine corruption in the eighteenth and nineteenth centuries.

18. Many corrupt practices were also embedded in social practices, customs and norms of the time and place. Britain's struggle with corruption was part of a larger story about notions of friendship, kinship, patronage and gift-giving, since 'bribes' were defended as 'gifts', 'presents' and 'acknowledgements' from a friend or someone who 'owed' thanks or who had incurred an obligation.

19. Therefore, if corruption is tied closely to the socio-cultural character of a country, we have to recognise that such attitudes and values change slowly and that such a process reflects an extensive debate that goes far beyond the institutions and administration of public office. Progress was not consistent and could reverse and anti-corruption strategies could require many attempts to achieve its aims, spread out over a long period.¹⁰

20. It is hence important to think of anti-corruption as a wave-like process that continually has to respond to new forms of corruption as they emerge, rather than a linear process leading to a State in which corruption has been eradicated.

21. Despite the favourable perception indices today, Britain's Brexit may in part be ascribable to a popular, expansive and very loose notion of corruption: that the system was only working for self-interested groups who were profiting at the expense of the people as a whole. Anti-corruption, like corruption, comes in many forms and can also be highly political.

22. Some remedies which might seem self-evident from our modern perspective were also double-edged swords in the past. Thus, before the representative system was overhauled in the nineteenth century, elections and political parties were seen as an important driver of corruption, rather than mechanisms restraining it. The press, which could expose corruption, could also pedal justifications for corrupt systems and the independence of the press could be bought off by the government. Whistle-blowers, who could expose corruption and offer solutions, were systematically denigrated, threatened and thwarted.

23. There was also a paradox at the heart of the pre-modern State. Its expansion created new opportunities for corrupt behaviour. However, such expansion also created greater powers and regulatory frameworks that curtailed corruption. The growth of the State was both part of the problem and the solution.

24. Interestingly, administrative reform worked best when non-political commissions examining every branch of governance were given political backing. It also seems to have coincided in the British case with waves of 'moral reform' which sought to purify both the elite and the nation as a whole. Institutional reform was thus seen alongside a wider process of self-scrutiny at personal and national levels. Some of that wider public debate and process of self-scrutiny took place around corruption scandals, which generated a lot of interest and discussion, as well as popular pressure for reform. But scandals also had the potential to – and frequently did – trigger *ad hominem* attacks that failed to follow through with any systemic reform.

25. To sum up, anti-corruption is a difficult balancing act. One of the most difficult challenges is to find a way of enabling discretion in office-holders that allowed them to be efficient, innovative and flexible in their work and at the same time restraining such discretion through frameworks that required adherence to rigid rules and protocols that could stifle initiative, impede the business of governance and even create new ways of extracting corrupt payments. Such balancing acts require constant calibration both by the State and the people.

26. Much of the scholarly literature on corruption has, for understandable reasons, focused on governmental, administrative and institutional corruption. However, Professor Knights concluded that we need more academic and policy attention to be paid to the ways in which corruption was, and is embedded in social and cultural values, which change slowly but provide the essential environment in which the institutional reforms take place.

¹⁰ The sale of some offices was first banned by law in Britain in 1389; but venality required further legislation in 1555 and in 1809, and commissions in the army were sold up until 1871.

2.2. Transitioning to democracy from the Soviet Union system: the case of Ukraine

2.2.1. Background information

27. In choosing Ukraine as a case study, I have privileged its rich historical past which it shares with its neighbours in the region as well as the current context marked by important and radical efforts to fight corruption. Clear and tangible steps to address corruption have become one of the main demands of the Euromaidan and its aftermath, as discussed during my visit in Kiev on 19-20 January 2016.

28. Some preliminary figures for Ukraine reveal that:

- the control of corruption measurement by the World Bank World Governance Indicators has remained almost unchanged in the period 2010-2014 with only 17% of world countries doing worse than Ukraine;
- Transparency International's Corruption Perceptions Index 2015: Ukraine is ranked 130th out of 167 States;
- despite envisaged sanctions for corruption offences, in 2013 only 3 public servants, as a result of investigations, were deprived of the right to occupy civil service positions according to an official Ministry of Justice report;
- despite criticism of high-level corruption cases, I was told that citizens regularly bribe state officials to "accelerate" inefficient public services and rarely see the damaging effect of petty corruption in nurturing an overall culture of bad governance and impunity;
- PACT Uniter survey¹¹ also indicates that over a half of citizens experienced corruption in 2015; moreover one third of the population believes that corruption today is more prevalent than prior to Euromaidan.

2.2.2. Historical background

2.2.2.1 The period under the Russian Empire (19th – the early 20th century)

29. In 1830, when most of current Ukraine's territory was part of the Russian Empire, one of the printing houses in Saint Petersburg published a book *The art of taking bribes*. In this book, the author set out, in a satirical manner, a classification of bribes – gifts or meals, money, reciprocal favours – and provided advice on how a civil servant could extract a bribe from the user. This reflected society's awareness about how corruption, in particular bribery, penetrated a strong State bureaucracy on which, together with the army, the public authority, represented by the monarch, was based. Some legislation aimed at better detection and deterrence of corruption was adopted in the course of the 19th century.¹² A special commission of the Senate, set up in 1862 to investigate the causes of the bribery of civil servants, found that corruption was due to inappropriate legislation, low salaries and the lack of the deterrent effect of penalties. In addition, the lack of independence of the justice, the strong hierarchical subordination within the State administration, the weak qualification of civil servants and the lack of openness in public affairs were also mentioned.¹³

2.2.2.2. The Soviet period

30. The Russian revolutions were followed by the setting up of the Union of Soviet Socialist Republics, some of which might have originally had different cultural and historical relations with public authorities. A harmonisation took place through the establishment of a new government machinery composed of the State apparatus (a pool of positions of political or bureaucratic responsibility in local and central bodies) and the *nomenklatura* (high ranking party management). This structure apparatus remained the State's bedrock until the end of the Soviet period.

31. The first interesting observation related to this period is that the term "corruption" was not used until the 1980s. Such an offence did not exist in relevant criminal codes of Soviet Republics, including Ukraine. Instead the terms "bribe" and "misuse of official position" were used, leaving the manifestation of favouritism

¹¹ http://kiis.com.ua/materials/pr/20161602_corruption/Corruption%20in%20Ukraine%202015%20ENG.pdf.

¹² History of fight against corruption in Russia, A.I Mizeriy, Publication of the Niznniy Novgorod University, 2001, p. 182.

¹³ Idem.

and nepotism outside the scope of reprimanded behaviour. Later some offences were also added to criminal codes to tackle the “shadow” market which had started developing as from the 1970’s to meet the growing number of citizens’ consumption requirements. This approach jeopardised and narrowed the understanding of corruption during the Soviet period. In addition, the official position to consider bribes as typical of an exploitative State did not enable classification as corruption of some actions by the new State apparatus.¹⁴ Still several bribery cases were reported, especially in the late Soviet period.¹⁵

32. The planned economy, state-owned enterprises with productivity objectives set in advance, fixed prices, the limited possibilities to acquire personal belongings and property as well as advantages attributed to elites in an official way reduced the volume of corruption transactions but accentuated growing social and economic discrepancies.

33. However, even though the Soviet Union system allowed little room for goods or services to be redistributed beyond official channels and procedures, the planned economy was reported as being an incentive for distorted practices. At the time, political objectives prevailed over economic realities. To meet these, sometimes realistic objectives or, alternatively, to falsify figures to maintain a successful appearance, the State needed to count on a strong apparatus of executives, ranging from local managers to officials in the capital cities, each of whom was bribing his own hierarchical superior.¹⁶ An example of such an organisation is provided in the famous “Cotton Mafia case” investigated in the 1980’s. Though this case concerned the Republic of Uzbekistan, the same system was more or less present in other Soviet Republics.

2.2.3. Fight against corruption and State-building in post-Soviet and modern Ukraine

34. The word “post-communist”, like “post-Soviet”, does not refer merely to a historical sequence, but rather to the fact that the conditions preceding the democratic transition had a decisive role in the formation of the system.¹⁷ Some authors claimed that, regardless of the monolithic appearance of the Soviet State, ultimate power and authority resided with the party rather than the State. Therefore, when the party collapsed there was “little of the latter to take its place”.¹⁸

35. Following the fall of the Soviet Union, elections took place in Ukraine, which brought to power, as was the case in some other post-communist countries, some former party elites who were used to a special inner structure and operation mode of the system.¹⁹ In addition to inheriting the operation and the decision-making structure, the former elite were able to acquire economic weight through a large scale privatisation. At the same time, corruption penetrated all levels of such public institutions such as the civil service, the custom and the tax services.

36. In this period, corruption started appearing as a major indicator of the weakness of the State. Basic State institutions started losing their autonomy vis-à-vis competing elites shaping policy making, regulatory and legal environment and they also saw their policy implementation power reduced.²⁰ In the wake of Euromaidan, distribution of positions in public institutions became an open form of commerce.

37. What was the impact of this new reality on forms of corruption? First of all, new forms of corruption, which were not regulated by criminal law, appeared such as misuse of public office for personal gain, misuse of public budget or the trading in influence and many others. Accordingly, Ukraine started, under the pressure of international institutions, to elaborate appropriate legal tools to counter these actions. However, even several years afterwards, these tools are still not appropriate given that there was no clear understanding between various forms of corruption, including bribery, embezzlement and misuse of the State

¹⁴ Letter of the Central Committee of the Communist Party of 29 March 1962 on “Reinforcing of fight against bribe and plundering of public good”, *idem*.

¹⁵ An internal note to the Central Party Committee of 1981 referred to 6000 cases of bribes which represented 50 % increase compared to 1975, as well as to cases of the organised crime within controlling bodies, ministries, regional prosecutor offices and courts, *idem*.

¹⁶ According to Mr Gorbachev’s Prime Minister Nikolai Ryzhkov, the “moral state of the society” in 1985 was its “most terrifying” feature: “[We] stole from ourselves, took and gave bribes, lied in the reports, in newspapers, from high podiums, wallowed in our lies, hung medals on one another. And all of this — from top to bottom and from bottom to top.” Nikolai Ryzhkov, *Perestroika: Istoriya predatel'stv* [Perestroika: The History of Betrayals] (Moscow: Novosti, 1992), 33, 94.

¹⁷ « Pre-Modern State-Building in Post-Soviet Russia », Ottorino Capelli, *Journal of Communist Studies and Transition Politics*, Vol. 24, No. 4 December 2008.

¹⁸ *Idem*.

¹⁹ *Idem*.

²⁰ *Idem*.

budget.²¹ Moreover, corruption continues to be qualified as such mostly when it concerns the misuse of State money and is performed by natural persons.²² The concept of criminal liability for corruption offences of legal persons raised great concerns as the introduction of such liability would require the resetting of the whole system of detection and investigation which is currently directed only against natural persons.

38. Secondly, according to some experts, as “it was a case of many transition economies, corruption took on a new image - that of so-called oligarchs manipulating policy formation”.²³ It has received the name of the “State capture”. “While most types of corruption are directed toward changing how existing laws, rules, or regulations are implemented with respect to the bribe payer, State capture refers to corrupt efforts to influence how those laws, rules, and regulations are formed. Bribes to parliamentarians to “buy” their votes on important pieces of legislation, bribes to government officials to enact favourable regulations or decrees, bribes to judges to influence court decisions - these are the classic examples of grand corruption through which firms can encode advantages for themselves into the basic legal and regulatory structure of the economy.”²⁴

2.2.4. The current situation

39. Clear and tangible steps to address corruption have become one of the main demands of the Euromaidan. In the aftermath of Euromaidan, after uneasy negotiations that follow each introduction of anticorruption draft laws into the Parliament, the legislators (the previous legislature) adopted a comprehensive anti-corruption package in October 2014, and voted through important legal instruments in 2015. For more recent updates, I refer to the report by the co-rapporteurs of the Monitoring Committee, Mr Jordi Xuclà and Mr Axel Fischer, which analysed ongoing domestic reforms in detail, including the fight against corruption.²⁵

40. In the ensuing [Resolution 2145 \(2017\)](#) on *The functioning of democratic institutions in Ukraine*, adopted on 25 January 2017, our Assembly noted that “the widespread corruption in Ukraine continues to be a main point of concern. The prolonged absence of marked and concrete progress in this area, including with regard to prosecutions and convictions, could potentially diminish the effects of the ambitious reform agenda of the authorities and, in the long run, undermine public trust in the political and judicial system as a whole. In this context, the Assembly is concerned that the pace of the fight against corruption is too slow, and concrete results are too limited. Moreover, it reiterates its concern about the intertwining of political and economic interests in the country’s political environment, which influences public perception and can hinder the fight against corruption. The Assembly therefore welcomes the establishment of the main institutional framework to fight corruption in the country and expects this to now lead to tangible and concrete results, including with regard to prosecutions and convictions. In particular, the Assembly welcomes the implementation of the e-declaration system and calls on the authorities to ensure that the National Agency on Corruption Prevention has the required resources to audit these asset declarations; calls on the authorities to ensure that the Specialised Anti-Corruption Prosecutor has sufficient resources to execute his/her tasks, including to open offices in all regions of the country; encourages the authorities to establish a specialised anti-corruption court, and to fight the widespread corruption in the judiciary, which is essential for the success of the fight against overall corruption; and welcomes the adoption of the law on the civil service and calls on the authorities to ensure the speedy adoption of all implementing legislation.”

41. These recommendations show that, in the case of Ukraine, a multifaceted approach is needed, along with international pressure and conditionality used by international bodies to persuade the authorities to show true progress in the fight against corruption. At the same time, understanding the difficult transition to democracy and the rule of law from a former Soviet system offers useful insight to better shape any anti-corruption support, including the one provided by the Council of Europe’s Action Plans for Ukraine 2015-2017 and any future plan.

²¹ « Political corruption: definition, manifestations, mechanisms and resources », Y.A. Nisevich, High school of economics, Moscow.

²² Since the responsibility of legal persons for corruption offences has been established two years ago no single case against a legal entity has been launched.

²³ “Confronting the Challenge of State Capture in Transition Economies” by Joel Hellman and Daniel Kaufmann, Finance and Development, IMF magazine, Vol. 38, No. 3 (2001).

²⁴ Idem.

²⁵ [Doc. 14227](#), 9 January 2017.

2.3. *Preserving trust in the democratic institutions: the case of The Netherlands*

2.3.1. *Background information*

42. On 8 November 2016 I paid a visit to The Hague. Despite the excellent co-operation and programme set up with the help of the Dutch parliament, discussing corruption in the Netherlands was somehow a more challenging task than my previous visit to Ukraine, in the sense that the authorities were less interested in what is considered “not to be a problem” for the country. My analysis is therefore less probing and articulate and mainly focuses on the reasons why the Netherlands was able to build a relatively corruption-resilient society.

43. During my discussions with the Dutch interlocutors, I focused in particular on the link between the quality of governance and the rule of law, on the one hand, and the current trends of corruption, including existing gaps, governance challenges, historical traditions, culture, societal and religious features of the Dutch society and political landscape.

2.3.2. *Corruption in history*

44. The Netherlands is a country with a puritan and Protestant background which has now largely secularised. Catholic communities, more prominent in the south of the country, are sometimes perceived as being more corrupt than Protestant communities. However, the religious background and differences between Catholics and Protestants are not so relevant.

45. A low level of corruption and a high level of trust are perceived by the Dutch not just as a moral value but also as an economic advantage, and it is often actively promoted by the government to attract foreign investment. In 2015, the Netherlands ranked fifth on Transparency International’s Corruption Perceptions Index and there is strong public demand for transparency and accountability and a collective understanding of the damaging effects of corruption.

46. I had an interesting discussion with researchers on the history of corruption, who stressed that the Old Dutch Republic in the 17th and 18th century was regarded as corrupt and the Dutch elites relied on gentlemen agreements to keep corruption under control. Following liberal reforms after 1848, the advent of free press, direct elections and the rise of stronger State institutions which collected taxes for the common good, new laws drew a sharper distinction between public and private interests.

47. The ‘gentlemen agreement’ way of doing politics and dealing with all problems in society still seems to be present in today’s mentality. Furthermore, preserving trust in the institutions also seems to be a key feature of Dutch politics and when a corruption scandal erupts, reports are made public and discussed in parliament, also through parliamentary inquiries, as well as through the press, and rarely result in convictions.

2.3.3. *Key features of the Dutch anti-corruption strategy*

48. There is no dedicated agency for the prevention and fight against corruption. However, anti-corruption and integrity policies are central to the Dutch public administration both at national and local level, with a focus on prevention. This was evident during my talks with various interlocutors, including the President of the Supreme Court and the Attorney General, the Ombudsman, members of the Senate, and the government’s integrity advisor for mayors and local representatives.

49. Many of them acknowledged that corruption still occurs but also pointed to a clear distinction between political corruption (few cases, mostly at local/provincial level) and bureaucratic corruption (mostly affecting civil servants and functions related to urban planning and the building sector). The burden of proof is often too high to follow through public prosecution of individuals and most corruption cases end in plea bargaining. It is generally accepted that fewer regulations are linked to fewer cases of corruption.

50. For combating corruption, since 1996, the Dutch police have a highly specialised investigation service (National Police Internal Investigations Department — *Rijksrecherche*), reporting to the Board of Procurators-General. This service is responsible for investigating cases of corruption involving police officials, members of the judiciary and prominent public office-holders. More recently, it has also been given the task of investigating foreign bribery, as the OECD called upon the Netherlands to do more to enforce its foreign bribery laws.

51. All recommendations by GRECO during the Third Round of Evaluations concerning incriminations had been implemented by 2010. During the Fourth Round of Evaluations of GRECO (Corruption prevention in respect of members of parliament, judges and prosecutors), launched in 2012, GRECO pointed out that in the Netherlands, prevention of corruption among MPs, judges and prosecutors relied to a large degree on mutual trust, openness and public scrutiny, but also voiced a number of concerns. With respect to members of parliament, positive developments have occurred, such as the revision of the Rules of Procedure of both chambers to include integrity aspects and conflicts of interest, the development of disclosure requirements and new awareness measures decided by both Chambers.

52. GRECO also recommended the establishment of guidelines for MPs' contacts with third parties and a recent paper on lobbying was drafted by some members of the House of Representatives (Second Chamber). According to my discussions, there seemed to be a disagreement in regulating this issue, which is perceived as "unnecessary".

53. My discussion with the Ombudsman confirmed that among the 40 000 yearly complaints, very few concerned cases of corruption. Most of them were related to integrity, good governance and nepotism, in particular in relation to the Dutch Caribbean, which experience a high level of corruption. He highlighted the importance for each institution to adopt internal integrity rules or codes of conduct, which play an important role in building citizens' trust in the institutions.

54. An independent Whistle-blowers Protection Committee has been in place since July 2016; however there are still concerns about the effectiveness of the legislation in place which may not fully guarantee the anonymity of whistle-blowers.

2.3.4. The importance of integrity at the local level

55. Integrity, transparency and accountability appear to be of great importance in the public sector, in particular at local level. Most Dutch cities have implemented a local integrity policy, which involves integrity counselling and coaching for elected local officials and public servants.

56. I had an interesting discussion with an advisor from the Ministry of Internal Affairs, Mr Hans Groot, who is tasked with advising mayors on integrity issues related to city management and city council members. The vast majority of issues raised by the mayors were related to conflicts of interests and misuse of funds. This also helps raise citizens' awareness of the behaviour that they can expect from their elected local officials and public servants. I found this to be a good practice which can be useful to other Council of Europe member States.

57. In all of my discussions, I was able to confirm that the environment and a certain social control play a crucial role. Over the past few years, corruption cases have resulted in a number of convictions and, when it was a matter of integrity, those who were found guilty have been ostracised or resigned from their position. The same day I was in The Hague, for instance, the Central Works Council, representing 65 000 police officers, resigned en masse over allegations of misuse of public funds, which were diverted to parties, dinners and luxury goods.

58. The same favourable environment, which is conducive to a misconduct resilient society, has been much more difficult to achieve in the Dutch Caribbean, former colonies once controlled by the Dutch crown and the Dutch West India Company. In the nineteenth century public administration was managed by governors, including local elites and Dutch civil servants, with little role given to the local population. The problems of high debt and general financial mismanagement, oversized bureaucracy and corruption continue to plague the region. Patronage is also an issue in these small islands with small populations, where close ties make it difficult to hold persons to account.²⁶ The spokesman on Caribbean affairs at the House of Representatives confirmed that corruption of public officials continues to be a major concern, despite major efforts to combat it.

59. This only strengthened my idea that looking at the environment and trying to understand corruption in a given social and political context is key to tackling this phenomenon effectively.

²⁶ Public administration and policy in the Caribbean, CPR press, 2016.

2.4. Drawing attention to local governance issues: the case of Spain

60. Spain, as a Southern European country, represents an interesting case study and political corruption scandals seem to be a constant in Spanish politics, often amplified by the media²⁷. Spain is also relatively new to democracy, which emerged in 1975 after more than three decades of authoritarian rule following a bloody civil war in 1936-39.

61. The country is member of the Council of Europe since 1977, joined the European Union in 1986 and adopted the euro in 2002. During this period, it experienced rapid modernisation and economic growth, including a boom in infrastructure spending and real estate development. The recent outbreak of corruption has also been linked to urban development and infrastructure, and to a flawed institutional design, particularly at the regional and local level. Since 2006, there has been growing concern and the government has invested in new staff and better regulation to fight corruption and improve the local integrity system. As a consequence of a wave of investigations, political scandals and indictments of politicians and administrators took place.²⁸

62. On 9-10 March 2017, in the margin of the Bureau and Standing Committee meeting, I was able to meet with representatives of the Spanish Council for Transparency and Good Government, the Centre for Constitutional Studies and the Public Prosecution Office, and I would like to thank the President of the Spanish delegation for arranging these meetings.

63. In 2014, GRECO issued a report on corruption prevention in respect of members of parliament, judges and prosecutors in which it alerted on the rise of political corruption in Spain. In a compliance report, adopted on 1 July 2016, GRECO took note of a number of reforms included in the "Regeneration of Democracy Plan", which involved greater control of the economic activity of political parties, a specific regulatory framework for senior positions in public administration, a major package of criminal measures contained in the reform of the Criminal Code (e.g. criminalisation of the offence of illegal party financing, extension of the statute of limitations and more severe sanctions for corruption offences, etc.). GRECO also noted that pollsters reserve the lowest levels of trust for politicians and political parties.

64. I was able to discuss this issue with the Spanish authorities, with a focus on a number of reforms to rebuild trust levels, in particular the 2014 Transparency Law, which represented a turning point in the fight against corruption in Spain. This bill introduced rules regarding the publication of public contracts, good governance, access to information, the development of website portals of public administrations, all of which is essential for fighting corruption, ensuring participation in public debate and restoring public trust in politics. When the government denies a request or does not supply sufficient information, citizens can appeal to the Transparency and Good Government Council, the organ tasked with overseeing compliance with the law. I also discussed the recent "Law 3/2015" on Senior Positions of the State General Administration passed in March 2015, which establishes rules aimed at preventing conflicts of interest of this category of officials coupled with monitoring and enforcement machinery.

65. Ongoing corruption scandals seem to have strengthened the political will to take transparency more seriously and recent convictions demonstrate that there is accountability for illegal acts of corruption. As stressed by civil society organisations, there is clearly a strong desire in Spain, both within government as well among the wider public, to move to a different, more open and participatory, form of governance²⁹. At the same time, these cases perpetuate the public's concerns about the lack of control over public spending, strengthening the gap between perception and reality.

66. A study of public perceptions based on a survey carried out in Spain in 2009 suggests that perceptions of administrative as well as political corruption are associated with less satisfaction with democracy and the performance of government, lower levels of social and institutional trust, and greater acceptance of rule-breaking behaviour. The findings also suggest that anticorruption efforts should not be limited to grand or political corruption, despite the high profile of such cases, and that equal attention should be given to preventing petty or administrative corruption at street level, where citizens are most likely to have face-to-face encounters with government.³⁰

²⁷ Rank: 41 out of 176, according to Transparency International Corruption Perception Index 2016.

²⁸ Social and political consequences of administrative corruption: a study of public perceptions in Spain, Public Administration Review, January-February 2013.

²⁹ <https://www.access-info.org/frontpage/27733>

³⁰ *Ibidem*.

67. Corruption in local government has become an increasingly recognised problem in Spain. A number of officials I had talks with in Madrid confirmed that serious difficulties remain at local level, which was described as a sort of “feudal society”, where a culture of impunity, especially amongst the political parties, remain strong. Of the over 8 000 Spanish towns, some 5 000 are small villages. A process of decentralisation has taken place in Spain since the 1980s, creating three levels of government: central, regional and local. With the economic boom in the 2000s, there was also a boom in political corruption at local level.

68. One possible structural explanation of the high level of corruption could be the high number of party political appointees who work in local government. In a typical mid-sized European city of 100 000 to 500 000 people, perhaps two or three people, including the mayor, depend on the victory of a certain party for their jobs. In a mid-sized Spanish city, the party that wins local elections can give senior posts to hundreds of people. This means that people need to get rich quick, in case they lose their jobs at the next election. It also means that corrupt elected politicians need not fear being denounced by impartial, independent civil servants.³¹

69. While prosecution and accountability for illegal acts of corruption is key, one should be wary of the overemphasis of the role of magistrates in the fight against corruption, as happened in Italy in the 1990s, which may have unintended consequences, such as deep-rooted pessimism concerning the integrity of political elites and reinforce the widespread tolerance of illegal acts.³²

70. In conclusion, I believe that the Spanish experience underlines the importance of paying close attention to the regional and local level and of setting up an institutional design and procedures that promote accountability and transparency in government and prevent corruption, which may help diminish disaffection and promote compliance with laws and social norms.

2.5. General remarks

71. The analysis of the historical, political, economic and social background in those four countries, representing the four corners of Europe, shows some important features which need to be taken into account in any anti-corruption strategy.

72. First of all, they all prove the importance of taking into account the impact of the building of the modern State on corruption. An absent State lacking an impartial, independent, non-political administration, as the history of Ukraine shows, will produce different results from Britain, where these conditions developed over the course of centuries. Independent administrative and supervisory bodies, free from political influence, are therefore key to any successful anti-corruption strategy.

73. Secondly, as shown by the Spanish and Dutch cases, the State’s impartiality is essential at all levels, be it the central, regional or local level, in the motherland and in overseas territories.

74. Thirdly, any anticorruption strategy needs to be supported by two essential pillars, namely economic growth and cultural developments, as shown by the Dutch and the British cases.

3. Strategies to fight corruption

3.1. Action by international and European institutions

75. In this chapter, I provide an overview of the main international actors which are actively supporting Council of Europe member States in the fight against corruption. This list is not exhaustive and does not include all the legal tools available in the fight against corruption.

3.1.1. Organisation for Economic Co-operation and Development (OECD)

76. On 8 March 2016, the Committee held an exchange of views with Mr Drago Kos, Chairperson of the OECD Working Group on Bribery, set up in 1994 to monitor the implementation and enforcement of the OECD Anti-Bribery Convention, the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business (2009 Anti-Bribery Recommendation) and related instruments.

³¹ See also Víctor Lapuente Giné, ¿Por qué hay tanta corrupción en España?, *El País*, 27/03/2009. http://elpais.com/diario/2009/03/27/opinion/1238108412_850215.html

³² Alberto Vannucci, The controversial legacy of « Mani Pulite »: a critical analysis of Italian corruption and anti-corruption policies, *Bulletin of Italian Politics*, 1(2): 233-64.

77. Mr Kos warned against the risk of a two-speed Europe, with some countries having advanced anti-corruption regulations and specialised anti-corruption bodies, while others are lagging behind, including some in the 'old' Europe. Many new EU member States set up strong anti-corruption systems as requested by the EU. However, they did not always enjoy government support and often lacked resources and staff. He noted that the powers of anti-corruption authorities, in particular, varied across Europe, with some only focusing on prevention, while others having law-enforcement power and that the right balance had to be found between prevention and repressive measures. Greece, for instance, even set up an anti-corruption ministry and its effectiveness had to be proven.

78. The OECD also issued guidelines for managing conflict of interest in the public service, aiming at promoting a public service culture in which conflicts of interest are properly identified and resolved or managed and supporting partnerships between the public, private and non-profit sectors. A toolkit provides examples and instruments for policy-makers and managers.

79. As stressed more recently by Mr Kos, one of the biggest challenges for the OECD is enforcement and more emphasis needs to be put on detection, mainly the protection of whistle blowers, media involvement and resources and knowledge of law enforcement agencies, and on international cooperation and companies' involvement. Since 1999, half of the 41 signatories haven't had one single prosecution for foreign bribery. "It is not lack of clarity or legal provisions but lack of will by governments for political, economic or personal reasons", he said.³³

80. The OECD also set out a Recommendation on Public Integrity providing policy makers with the blueprint for a public integrity strategy. That is based on the assumption that traditional approaches based on the creation of more rules, stricter compliance and tougher enforcement have been of limited effectiveness. A strategic and sustainable response to corruption is public integrity, which refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector. Integrity does not only concern the national government but should permeate all the way down to municipalities where individuals experience integrity first hand.³⁴

81. It is therefore important to support the tools available at the OECD also through national parliaments' initiatives, in synergy with the Council of Europe bodies, and spur all governments into action. The introduction of sanctions for non-compliance with OECD recommendations could also be considered.

3.1.2. Council of Europe

82. The European Committee on Crime Problems (CDPC), the Group of States against Corruption (GRECO) and the Economic Crime and Cooperation Division are part of the Organisation's anti-corruption support. Starting in the 1990s, the Council of Europe adopted the Criminal Law and Civil Law Conventions on Corruption, as well as a series of recommendations to member States on the twenty guiding principles for the fight against corruption, on codes of conduct for public officials, on common rules against corruption in the funding of political parties and electoral campaigns.

83. In 1999, the Council of Europe established GRECO, a monitoring body to evaluate compliance with these standards. This mechanism for mutual evaluation and peer pressure respects the equality of rights and obligations of all its 49 members³⁵.

84. On 20 March 2017, I attended the launch event of GRECO's Fifth evaluation round and stressed the importance of compliance. The recommendations issued by international and European bodies, such as GRECO and the OECD, need to be fully implemented, especially at the highest political levels, and parliaments can be more actively involved.

85. Regrettably, progress made by member States in implementing GRECO's Fourth evaluation round recommendations as regards the prevention of corruption in respect of members of parliament, judges and prosecutors, has been generally slower than in previous evaluation rounds. It is alarming that the closer we move to the central institutions, the more reluctant member States are to open up and co-operate with GRECO. This trend must be reversed with the 5th Evaluation round, targeting the very heart of the State, its top executive functions and law enforcement agencies. Ministers, deputy Ministers, State Secretaries,

³³ OECD, Fighting the crime of foreign bribery, 2017.

³⁴ OECD Recommendation of the Council of Public Integrity, 2017: <http://www.oecd.org/gov/ethics/Recommendation-Public-Integrity.pdf>.

³⁵ United States and Belarus, in addition to all 47 members of the Council of Europe.

members of a private office and senior political officials must set the tone for the rest of the central, regional and local administration, the private sector and each and every citizen, by whom they will be held accountable.

86. The Council of Europe has also been supporting countries in the implementation of European and international anti-corruption and anti-money laundering standards on the basis of country bilateral interventions and multilateral co-operation programmes, in areas such as good governance, corruption, ethics, conflict of interests, money laundering, asset recovery, terrorist financing, organised crime and mutual legal assistance in criminal matters as well as all related criminal law and judicial reforms pertaining to such areas.

87. These past two years as rapporteur have shaped my conviction that we need deeper synergies to step up the fight against old and new forms of corruption and increase compliance with the recommendations issued by Council of Europe bodies. Dialogue between civil society and national and international organisations can be deepened. One way to do that could be to set up an anti-corruption network of policy-makers, scholars, students, intellectuals, NGOs and human rights defenders, hopefully with the support of voluntary contributions by member States and by the European Union. Similar networks are already active and effective at Council of Europe level in the human rights field, for instance in combating violence against women and protecting children rights. It is high time to bring some attention to the field of the rule of law, of which the fight against corruption is an essential cornerstone.

88. Our own Assembly monitors the honouring of commitments by member States, including in addressing corruption, and issues reports of the rule of law. Furthermore, on 8 April 2014, it launched an anti-corruption platform, bringing together elected representatives from the parliaments of the 47 member States of the Council of Europe and of non-member States, with experts and other stakeholders to share information, spread good practices and debate how to deal with new forms of corruption.

89. On 25 April 2017, our Assembly decided to create an independent external investigation body carry out a detailed independent inquiry into the allegations of "corruption and fostering of interests" made against certain PACE members or former members. The investigation body shall verify whether there are any forms of individual conduct by members of the Assembly or former members of the Assembly which have not respected the provisions of the Code of Conduct for members of the Parliamentary Assembly and other relevant codes of conduct. It shall also identify any practices contrary to the Assembly's ethical standards, and determine the extent thereof. Finally, it shall draw up recommendations on the measures to be implemented to rectify the shortcomings and fill the gaps in the Assembly's ethical framework.³⁶

3.1.3. European Union

90. The European Commission issued the latest report on corruption in 2014, showing the nature and scope of corruption in EU member States and the differences in the effectiveness of anti-corruption policies. The EU urged member States to strengthen controls, put in place more "dissuasive sanctions", and improve transparency. No internal assessment was included in the report. A follow-up was announced for 2016 to take stock of progress.

91. However, in January 2017, EC Vice-President Frans Timmermans sent a letter to the chair of the European Parliament's civil liberty Committee, British socialist MEP Claude Moraes, stating that there was no need to publish any more reports, as the 2014 report provided an overview and created a basis for further work.

92. In September 2015, the Committee of Ministers considered that EU accession to key Council of Europe conventions, monitoring mechanisms and bodies should be promoted and facilitated. The EU accession to GRECO remains the sole credible response to confirm the EU commitment to anti-corruption. According to the EU priorities for co-operation with the Council of Europe in 2016-2017, the analysis of the implications of the EU's full participation in GRECO is still ongoing and no significant development has taken place regarding the EU accession.³⁷

93. A report on *Transparency, accountability and integrity in the EU institutions* by rapporteur Sven Giegold MEP, adopted in March 2017 by the Constitutional Affairs Committee of the European Parliament calls on the EU to advance its application for membership of GRECO and on the EC to include in the report

³⁶ <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6604&lang=2&cat=8>

³⁷ [Draft report on co-operation between the Council of Europe and the European Union](#), 127th Session of the Committee of Ministers (Nicosia, 19 May 2017).

an overview of the greatest corruption problems in the EU member States, policy recommendations to tackle them and follow-up measures to be taken by the EC, taking specific account of the detrimental impact of corrupt activities on the functioning of the internal market. It also called on the EC to publish its next EU Anti-Corruption Report as soon as possible and to include a chapter on the EU institutions and to carry out further analysis at the level of both the EU institutions and the member States of the environment in which policies are implemented, in order to identify inherent critical factors, vulnerable areas and risk factors conducive to corruption.

3.2. *Creating transparency in governance through anti-corruption specialised bodies*

94. The Italian case shows an interesting example of how new forms of corruption should lead to special measures aimed at creating transparency in governance, depending on the national context.

95. Mr Raffaele Cantone, President of the Italian Anti-Corruption Authority, speaking before our Committee in 2015, stressed that corruption has changed face in Italy over the past 20 years. Before the 1990s, it was seen as a means by which criminal organisations could achieve their objectives by bribing politicians, for instance, to award public procurement contracts. Investigations that started in the early 1990s led to convictions of senior political leaders. Since then corruption is now used to penetrate political life and cling to power. In 2014, corruption scandals in Rome disclosed a new approach whereby some politicians were financed to “foster” their careers and became an instrument of corruption. Investigations pointed to a network of corrupt politicians involved in the construction business. The usual relationship of a corrupt perpetrator paying a public official to obtain an undue benefit was not applicable. The perpetrator and the civil servant or the politician belonged to the same organisation. They were no longer remunerated for an unlawful action but for their membership of this organisation. A similar system was reportedly in place in areas such as the judiciary, public procurement and social assistant networks.

96. The 2012 Italian law on anti-corruption focuses on transparency of all kinds of activities by public authorities. All public authorities have to disclose remuneration and actions taken which allowed for a global oversight by civil society. Also, each public institution must prepare a risk assessment report and set up preventive measures. Furthermore, an anti-corruption authority was set up to monitor compliance with transparency rules, and to implement article 6 of the United Nations Convention against Corruption (UNCAC), thus entrusting the task of preventing corruption to one single and independent institution. Its President is proposed by the government, approved by Parliament’s Committees with a two-third majority for a 6-year period and appointed by the President of the Republic. Regrettably, the anti-corruption law cannot target private organisations which are actively involved in public life but are not subjected to transparency requirements. Furthermore, the authority cannot target parliamentarians, judges and extraordinary commissioners, which represents a gap in the monitoring system.

97. Ms Nicoletta Parisi, member of the Italian Anticorruption Authority, speaking at the Venice workshop, highlighted the institution’s main challenges, including “the sheer bureaucratic attitude in implementing plans and strategies for prevention of corruption and increase of transparency; difficulties in incorporating whistleblowing in the Italian legal system; large size of administration to supervise and monitor over public administration duties and tasks.”³⁸

98. Transition, emerging democracies and developing economies often establish separate specialised anti-corruption bodies often due to high corruption-levels in existing agencies, or in response to pressure from donors and international organisations. This is seen as a way to reduce widespread corruption, as existing institutions were considered too weak for the task, or were considered to be part of the corruption-problem and could, therefore, not be part of the solution for addressing it. These bodies must have specialised skills, a clear mandate and sufficient powers, such as investigative capacities and effective means for gathering evidence, subject to proper checks and balances. Any new institution needs to adjust to the specific national context taking into account the varying cultural, legal and administrative circumstances.

99. According to the OECD³⁹, corruption-prevention and combating corruption through law enforcement involve a large number of multi-disciplinary functions, including:

- anti-corruption policy development, coordination, monitoring and research (also to understand the extent of the problem and what areas and sectors mostly exposed);

³⁸ <http://website-pace.net/documents/18848/3260386/AS-POL-INF-2017-09-EN.pdf/250e8ce9-a0fe-4539-aedf-0ff352bcdb75>.

³⁹ OECD, Specialised anti-corruption institutions – Review of models, 2013.

- prevention of corruption;
- anti-corruption education and raising awareness;
- investigation and prosecution of corruption-related crimes.

100. Different models of specialised institutions fighting corruption include:

- multi-purpose anti-corruption agencies, based on key pillars of repression and prevention of corruption;
- law enforcement bodies, including specialised police and prosecution services, which can result in a combination of detection, investigation or prosecution of corruption;
- policy co-ordination and prevention bodies, which normally have research, analysis, coordinative as well as prevention functions, but do not have law enforcement powers;
- internal control mechanisms by other public institutions (for instance, conflict of interest prevention and internal ethics and integrity units in the public administration or in elected bodies, judicial councils or dedicated ethics commission for judges, central election commission to enforce rules on financing of political parties and electoral campaigns).

101. It is important that all Council of Europe member States that have established separate specialised anti-corruption bodies ensure their independence and provide them with specialised skills, a clear mandate and sufficient powers, subject to proper checks and balances, in accordance with the Committee of Ministers [Resolution 97 \(24\)](#) on the twenty guiding principles for the fight against corruption and with the guidelines of the UNCAC. In this respect, as also shown by GRECO's monitoring work, several Council of Europe member States are on the right track (among others Italy with ANAC⁴⁰, Slovenia with the Commission for the Prevention of Corruption⁴¹ and Latvia with the Corruption Prevention and Combating Bureau⁴²), while others need to strengthen the effective functioning of anti-corruption bodies or enforcement authorities, and enable them to carry out their functions free from undue influence.

102. As recommended by the OECD, it is of key importance that anti-corruption agencies develop their monitoring and evaluation mechanisms to examine and improve their own performance and to improve public accountability and support.

103. The experience shows that establishing a dedicated anti-corruption body alone cannot help to reduce corruption. Anti-corruption bodies need the support of all other public institutions, including various specialised integrity and control bodies, and internal units in various public institutions in a harmonised system aimed at preventing and detecting corruption in the public sector. This is something that our Assembly could encourage member states to develop further.

3.3. *Focus on integrity, transparency and accountability*

104. I have not discussed a number of indexes and rankings available at European and global level, such as the well-known Corruption Perceptions Index by Transparency International, mainly because they are largely based on perceptions of citizens and experts. Most anti-corruption recommendations also fail to take into account the local environment and specific circumstance and needs.

105. As I mentioned in the Dutch case study as well as in the previous paragraph, integrity, transparency and accountability should have a place of honour in all public policies.

106. Despite significant investment, contemporary anti-corruption efforts seem to lack effectiveness and some scholars have developed a new index, the Index of Public Integrity (IPI), which offers a transparent, evidence-based approach to controlling corruption and measuring progress.⁴³

⁴⁰ <https://rm.coe.int/16806dce15>.

⁴¹ <https://rm.coe.int/16806f333e>.

⁴² <https://rm.coe.int/16806c6d36>.

⁴³ Alina Mungiu-Pippidi, The time has come for evidence-based anticorruption, *Natural Human Behaviour*, 1, 0011(2017), 10 January 2017. Ms Pippidi attended the workshop in Venice on 2 December 2016 and leads ANTICORRP, an EU funded research project).

107. The IPI focuses on judicial independence, administrative burden, trade openness, budget transparency, e-citizenship and freedom of the press. Evidence shows that establishing effective control of corruption goes beyond the adoption of specific tools and strict legal regulations and relies on the State's ability to reduce the possibility of abuse (for instance by decreasing the amount of red tape and the number of bureaucratic processes and by opening opportunities to external actors to participate in the budget process) and society's capacity to hold its government accountable (by strengthening accountability and, in particular, civil society actors and free press).

108. This research also highlights that a good anti-corruption strategy is context-dependent and cannot be transferred from one country to another. It also acknowledges that, despite the need for common reforms to improve democracy and the rule of law, each country should research the reasons for its own underperformance and should then develop its own strategy.

109. Rather than just focusing on tackling corruption, it seems sensible to also step up efforts to build public integrity, an area where the Council of Europe has extensive expertise, in particular when it comes to judicial independence, freedom of the press and citizenship education.

3.4. Educational measures

110. Our colleague Ms Eleonora Cimbro (Italy, SOC) is currently preparing a report on *Youth against corruption* and analyses in detail issues related to youth involvement in anti-corruption activities, corruption within the education system, and the use of Internet, social media and media by young anti-corruption activists. Nevertheless, I think it is important to briefly refer to two major areas related to education in which the Council of Europe plays an important role.

3.4.1. Education for democratic citizenship and human rights

111. To fight corruption effectively we need a bottom up approach, which starts in the early years with education, which should be part of primary and secondary school curricula. Children must be taught to recognise corrupt behaviour early in life and training youth in sound morals and a sense of civic duty is at the root of addressing a whole range of social and political problems.

112. The Council of Europe is developing a Reference Framework of Competences for Democratic Culture, to be adapted for use in primary and secondary schools and higher education and vocational training institutions throughout Europe as well as national curricula and teaching programmes. In this framework, I believe that specific attention should be given to anti-corruption education.

113. In 2010, the Council of Europe also adopted a European Charter on education for democratic citizenship and human rights⁴⁴, as a reference point for all those dealing with citizenship and human rights education, and a way of disseminating good practice and raising standards throughout Europe and beyond. The Charter focuses chiefly on discrimination, prejudice and intolerance and preventing and combating violent extremism and radicalisation. A first review cycle of the implementation of the Charter took place in 2012 and a second review cycle is under way and the report will be discussed at a Conference on the State of Citizenship and Human Rights Education in Europe, which will take place in Strasbourg on 20-22 June 2017.

114. I was surprised to note that the word 'anti-corruption' is mentioned neither in the Charter nor in the ensuing implementation reports. I believe the Charter should draw more attention to the rule of law component of citizenship education, and more specifically to anti-corruption education, which could be possibly considered for revised version of the Charter, currently under discussion.

115. On a more practical level, a joint programme "Human Rights and Democracy in Action" was launched in May 2013 by the Council of Europe and the European Commission, providing funding to enable at least three States party to the European Cultural Convention to cooperate on projects of common interest within the field of education for democratic citizenship and human rights education. Current projects focus on promoting school governance for inclusion and competences for democratic action in the digital era. Once again, the Organisation could consider developing anti-corruption education projects, with the support of EU funding or national voluntary contributions.

3.4.2. Tackling corruption in the education sector

⁴⁴ Based on Recommendation CM/Rec(2010)7 on Education for Democratic Citizenship and Human Rights Education.

116. There is worldwide concern over corruption in education in all member States and at all levels of education, and this form of corruption is difficult to quantify. It is most widespread regarding access to higher education and higher education qualifications.

117. In 2015, the Council of Europe launched a Platform on Ethics, Transparency and Integrity in Education (ETINED), a network of specialists appointed by member States of the Council of Europe and of States Parties to the European Cultural Convention (50 States).⁴⁵ Its mission is to tackle corruption and fraud in education by sharing good practices in the field of transparency and integrity in education, defining guidelines and developing capacity-building for all actors. Activities include the promotion of ethical behaviour of all education actors, academic integrity and plagiarism, recognition of qualifications and contribution to the global action against corruption.

118. In some countries, such as Ukraine, corruption in higher education is a serious problem, but diploma mills, ghost writing and a culture of cheating exist all over Europe. Hence, a Convention on education fraud could be a relevant contribution that the Council of Europe could bring and I hope that the Committee on Culture, Science, Education and Media will give proper consideration to this issue in a forthcoming report.

4. Conclusions and recommendations

119. Corruption scandals erupt almost daily in many Council of Europe member States as well as in national and European political institutions, including our own Assembly. In many European countries, insufficient accountability has generated a perception of quasi-impunity of political elites. When core institutions in a democratic society, i.e. political parties, parliament, public administration and the judiciary, are systematically implicated with corruption, they cease to be regarded as responsive to people's needs and problems.⁴⁶ This trend has led populist leaders to exploit the disenchantment of the people with the "corrupt élites" and to present themselves as the "only solution" while, in reality, they fail to address the problem and can even significantly increase it. Fighting corruption therefore also means restoring trust in democratic institutions, also through the active participation of civil society.

120. Furthermore, corruption continuously infiltrates new sectors, beyond the traditional ones such as the building sector. For instance, over the past years, the Italian *mafia* has infiltrated some of Europe's largest reception centres for migrants, creaming off state funds that were earmarked for the care of new arrivals. Corruption also takes a serious toll on the environment, from embezzlement during the implementation of environmental programmes to grand corruption when permits and licenses for natural resources exploitation are issued.

121. In addition, what is perceived as inadmissible corruption is evolving rapidly. For instance, the 2017 French Presidential election campaign shows that politicians employing family, a widespread and accepted practice in many parliaments, is no longer to be accepted and that the argument that this would protect the integrity of the parliamentarian from potential lobbying pressure by external employers is weakening. In 2009, the United Kingdom parliamentary expenses scandal, concerning expense claims made by members of the UK Parliament over the previous years, also shows that what had been accepted as a widespread practice is no longer so. The perception of corruption is therefore changing in many Council of Europe member States.

122. This report focuses primarily on the drivers of corruption. It tries to understand why existing transparency and accountability measures to control corruption have limited success and how to favour an environment which is conducive to a corruption-resilient society. As the case studies have shown, this is also inherently related to the diversity and richness of political, social, economic and cultural traditions in Council of Europe member States, and, in my view, to a lack of focus on building integrity in public institutions and in the society as a whole.

123. When designing effective anti-corruption strategies national and European institutions cannot ignore the cultural background and existing perceptions, and should also take into account the impact of the building of the modern State on corruption. History shows that it is important to think of anti-corruption as a wave-like process that continually has to respond to new forms of corruption as they emerge, rather than a linear process leading to a State in which corruption has been eradicated. Britain, for instance, a relatively un-corrupt country, has a long history of struggling with corruption, and anti-corruption strategies evolved over centuries rather than years or decades. This suggests that each State has to take measures which are adapted to its national history, culture and mind-set.

⁴⁵ Based on Recommendation CM/Rec (2012)13 on Ensuring quality education.

⁴⁶ Transparency International, Europe and Central Asia: An overall stagnation, 25 January 2017.

124. The buzzword often repeated in anti-corruption circles is “lack of political will”. In Francis Fukuyama’s words “without a political strategy for overcoming this problem, any given solution will fail. Corruption in its various forms – patronage, clientelism, rent-seeking and outright theft – all benefit existing stakeholders in the political system, who are generally very powerful players”.⁴⁷ According to Fukuyama, transparency initiatives on their own often fail and only collective-action mechanisms can bring about change, when received by committed leadership. Also, anti-corruption institutions and special prosecutors have success when they receive strong grassroots political backing from citizens.

125. Hence, the real challenge is to create a broad coalition of groups in society opposed to an existing system of corrupt politicians. In my view, that should be the target of the Council of Europe, in addition to the good work already done to monitor and strengthen legal mechanisms and transparency initiatives in the democratic institutions of our member States. Public campaigns and education tools and projects focusing on the fight against corruption and the promotion of integrity in various layers of society, including schools and universities, should be a priority for the Organisation. The regional and local level should not be left behind and the Congress of regional and local authorities could also consider similar initiatives targeting regional and municipal councils.

126. National anti-corruption institutions can have various functions, including multi-purpose anti-corruption agencies, law enforcement bodies, policy co-ordination and prevention bodies, and internal control mechanisms by other public institutions. Where appropriate, separate specialised anti-corruption bodies can be necessary and governments must provide them with specialised skills, a clear mandate and sufficient powers, subject to proper checks and balances. These bodies should develop their monitoring and evaluation mechanisms to examine and improve their own performance and to improve public accountability and support. The Council of Europe could provide a platform for anti-corruption authorities in all GRECO member States to gather and discuss good practices and current challenges in the fight against corruption. It could even set up a network at European level.

127. For its part, the Assembly should pay special attention to the effective implementation of its own code of conduct and full support must be given to the independent external investigation body to carry out a detailed independent inquiry into the allegations of corruption made against certain Assembly members or former members.

128. The Assembly’s anti-corruption platform can be strengthened and given the tools and the resources to promote integrity campaigns in all parliaments, with the support of national contributions or EU funding.

129. Furthermore, all parliaments of the Council of Europe member States, observers and partners for democracy can further promote transparency and accountability measures, in particular by:

- developing a code of conduct covering guidance on the prevention of conflicts of interest, gifts and other advantages, accessory activities and financial interests, disclosure requirements, and make it easily accessible to the public;
- considering setting up an institutionalised source of confidential counselling to provide elected representatives with guidance and advice on ethical and integrity questions and possible conflicts of interest, as well as dedicated training activities;
- ensuring that parliamentary immunity does not protect members of parliament from criminal prosecution for corruption-related acts;
- setting up specific parliamentary scrutiny procedures, with special emphasis on the implementation of recommendations emanating from GRECO’s Fifth Evaluation Round, focusing on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies.

130. In accordance with the Code of good practice in the field of political parties of the Venice Commission, if the membership of a person who has been condemned on corruption charges is maintained, this will lead citizens to believe that the whole party is corrupt (and they may even extend this view to apply to all parties) and contributes to questioning the fairness of politics in general. The Assembly could therefore reiterate the Venice Commission’s recommendation to political parties to exclude from their lists of candidates and from party membership any person convicted of corruption.

⁴⁷ Francis Fukuyama, What is corruption, policy paper, 12 May 2016.

131. Council of Europe member States could also be invited to step up the fight against corruption by:

- adopting sound rules on the declaration of assets, income and financial and other interests by members of government and parliament, by leaders of political parties and political movements and by civil servants, judges and prosecutors, and making such declarations easily accessible to the public, and by setting up independent supervisory bodies and regulating lobbying activities;
- ensuring full co-operation with the GRECO and the MONEYVAL and implement their recommendations;
- ensuring the independence of the judiciary through transparent appointment and promotion procedures and, if need be, the use of appropriate disciplinary measures, applied by bodies free from political interference and other undue influence;
- acknowledging the role of the media in denouncing corruption and ensuring that media regulation respects media freedom and responsibility;
- implementing the OECD Recommendation on Public Integrity providing a blueprint for upholding and prioritising the public interest over private interests in the public sector;
- considering establishing specialised integrity units in public institutions to promote ethics, accountability and transparency;
- paying attention to the regional and local level and consider setting up an institutional source of confidential counselling to provide local representatives with guidance and advice on ethical and integrity questions and possible conflicts of interest, as well as dedicated training activities;
- organising public awareness anti-corruption campaigns targeting various groups of citizens, media, NGOs, businesses, and the public at large;
- developing integrity education programmes as part of primary and secondary school curricula, with the support of the Council of Europe.

132. The European Union accession to GRECO remains the sole credible response to confirm the EU commitment to anti-corruption.

133. In addition to the traditional approaches based on the creation of more rules, specialised institutions, stricter compliance and tougher enforcement, governments should give proper attention, through further academic and policy research, to the ways in which corruption was and is embedded in social and cultural values, as these provide the essential environment in which the institutional reforms can succeed.

134. In conclusion, democracy remains a powerful tool to control corruption, if democratic institutions increase transparency, promote integrity and enhance systems of accountability. Some of the elements to strengthen democracy are well known: an independent and impartial judiciary; a meritocratic, well-paid and competent bureaucracy; mechanisms of transparency, such as a mandatory asset disclosure system; free and responsible media; the development of a democratic civic culture, through public schools and universities.

135. At the same time, political will remains the key ingredient for anti-corruption strategies to succeed and political parties need to be more resolute in tackling corruption in their own ranks and in promoting integrity in public life.