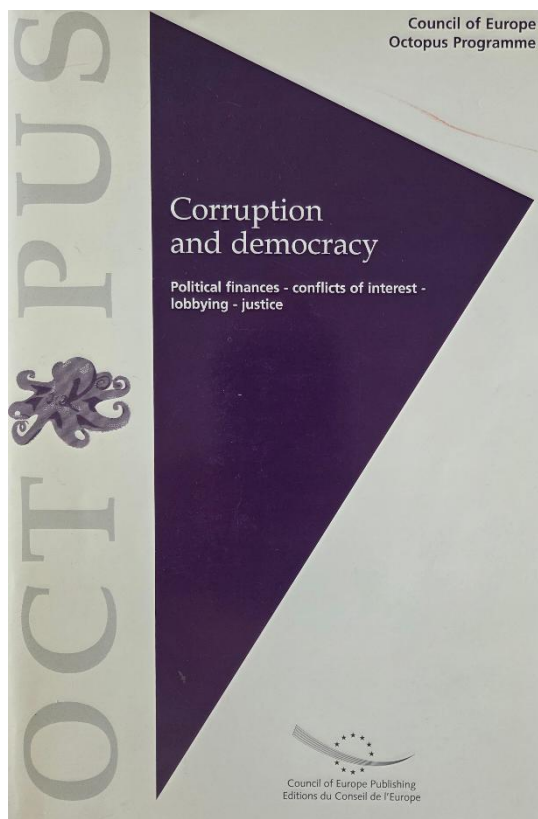


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Chapter 1 – The issues

Corruption and democracy: what are the issues?

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Introduction

The previous, 20th century has been referred to as “democracy’s century”. While in 1900 no government anywhere in the world had been elected by competitive multi-party suffrage, by the year 2000, 120 of the 192 existing countries representing 62.5% of the world’s population were “electoral democracies”.²

Following the fall of the Berlin wall in 1989, “democracy became the predominant mode of political organisation” also in Europe.³ By 2005, 41 of the 47 European countries House report for 2005, 36 of the 47 countries were judged to be “free”, a further eight partly free, and only three not free.⁴

Obviously, in a number of central and eastern European countries, further efforts are required to improve and consolidate democracy.⁵ However, not only these countries, but democracies all over Europe are faced with challenges. These include the decreasing confidence and participation in democratic institutions and processes⁶, the issue of globalisation with democracy being limited to the nation state while key decisions and processes affecting people’s lives take place at international or transnational levels, threats to security – including terrorism – and the threats to democracy by the fight against such security threats, challenges related to technological change and the network society, to demographic trends, to migration, to social cohesion and many others.

This raises a number of questions which go well beyond the scope of the present paper: How will Europe cope with these challenges? If the 20th was democracy’s century, what is the future of democracy in Europe in the 21st century?⁷ Is the process of democratisation irreversible and will Europe become an area of eternal democracy?

Over time, democracy has gone through many transformations and now exists in many variations. However, the basic principles of democracy remain the same, namely, the “sovereignty of equal citizens and the accountability of unequal rulers”⁸. In fact, a major concern of all democratic systems since the times of ancient Greece has been to ensure the accountability of rulers, to prevent the abuse of power and with it to prevent and control corruption.

Europe not only comprises countries which are predominantly democratic, but also a large number of countries with relatively low levels of corruption. In 2005, 15 of the 20 countries with the lowest level

¹ Economic Crime Division, Directorate General of Human Rights and Legal Affairs, Council of Europe. The views expressed in this chapter are those of the author only.

² Freedom House 1999.

³ Council of Europe 2004a: 34.

⁴ Freedom House 2005.

⁵ [Postscript: See also the report of the Parliamentary Assembly of the Council of Europe on the “The state of human rights and democracy in Europe” of 18 April 2007.]

⁶ At the same, people continue to believe in democracy. See Dahl (2000: 246) on this “democratic paradox”.

⁷ Council of Europe 2004.

⁸ Council of Europe 2004: 12.

of perceived corruption were European.⁹ At the same time, surveys suggest that the main corruption problem in Europe is that of political corruption. In two thirds of European countries people believe political parties to be the most corrupt institutions.¹⁰ Reports on corruption in politics are not only frequent throughout Europe, but also appear to influence the outcome of political processes and elections.

Are these simply scandals which help clean up politics and eventually reconfirm democracy? Or is corruption just an enemy which is currently en vogue¹¹. Or are accusations of corruption a tool to discredit political opponents, and is there a risk that the fight against corruption might result excessive controls limiting basic rights or the vitality of political life?

Or does corruption in politics indeed carry the risk of undermining democracies in Europe? Is corruption the cause for the loss in confidence in democratic institutions? Does corruption compound the challenges related to globalisation? Can corruption lead to a decay of democracies in Europe? In short: what does corruption mean for the future of democracy in Europe?

The present paper attempts to work out the issues involved. Following a short chapter on the principles of democracy in Europe, and an overview of the concept of corruption and the situation in Europe, the subsequent part will focus on the following nexus where corruption and democracy are interlinked and where corruption threatens key principles of democracy:

1. Political finance
2. Conflicts of interest
3. Lobbying
4. Political influence on the justice system.

The final chapter will draw some conclusions with regard to corruption and the future of democracy, both in terms of key challenges and possible solutions.

Democracy

Principles of democracy

Democracy is a very simple concept of political organisation, consisting of basic features that most people can agree upon and that have been applied in practice for almost 2,500 years. It is an extremely complicated and never ending process through which democracy continuously evolves and reinvents itself and which may take on an indefinite number of shapes.

The countless, ever growing number of definitions and opinions on democracy is in itself a reflection of the democratic project. In simple terms, democracy is “a procedure for taking decisions in any group, association or society, whereby all members have an equal right to have a say and to make their opinion count”.¹²

The origin of democracy can be traced back to the political system which emerged in ancient Athens around 470/460 BC. According to Thukydides¹³ “the name of our political order, for it is not based on

⁹ Transparency International Corruption Perception Index 2005. For data on the level of compliance of European countries with anti-corruption standards see the evaluation reports of the Council of Europe’s Group of States against Corruption, GRECO.

¹⁰ Transparency International Corruption Barometer 2005.

¹¹ Similar to drugs in the 1980s, organised crime in the 1990s and terrorism in the beginning of the 21st century. See also the novel *Globalia* by Jean-Christophe Rufin: “Un bon ennemi est la clef d’une société équilibrée”.

¹² Beetham 2005: 2.

¹³ Quoted in Papst 2003: 9.

a few but on the majority, is known as *demokratía*". In addition to the power by the people, the main features of Athenian democracy were "equality"¹⁴ and "freedom".

The crucial role of "the people" in democratic systems is very tellingly reflected in Abraham Lincoln's Gettysburg-formula of 1863: democracy is "government of the people, by the people, for the people".¹⁵

Beyond these basics, more precise but nevertheless universal definitions for the multitude of forms that democracy can take are more difficult to formulate. Attempts have therefore been made to find neutral definitions void of all moral connotations or prejudices that people could disagree on.

The so-called "procedural definitions" focus on the procedure for electing representatives, rulers and decision makers through competition for the votes of the people.¹⁶ Others underline the element of accountability. For Popper, "democracy is a possibility to get rid of rulers without bloodshed"¹⁷.

Combining the procedural approach with accountability, the authors of a recent Council of Europe publication define democracy as follows:

1. "Modern political democracy is a regime or system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting directly through the competition and cooperation of their representatives"¹⁸.

Others would argue that free, fair and equal elections and accountability to the people are not sufficient to ensure and in particular to sustain democracy, and that it may well be that anti-democrats are elected into a presidential office or a parliament with a majority that is sufficient to undermine or destroy the democratic order.¹⁹ Democracy therefore requires a constitutional state with an independent judiciary capable of ensuring the rule of law and the maintenance of the constitutional order.

The search for a definite definition of democracy that is neither too broad nor too restrictive is thus most interesting and is unlikely to come to a conclusion as long as democracy itself evolves. For the purposes of the present paper it may be sufficient to point to certain principles and processes of democracy, that have been agreed upon either internationally²⁰ or in Europe²¹. These embody, among others:

- Human rights and freedoms. A democratic state must promote, respect and protect the human rights and fundamental freedoms of its citizens. These include in particular the freedom of

¹⁴ Meaning that all male citizens of Athens could vote and take office, independent of their wealth. Obviously, women, slaves and other people living in Athens but were not full citizens were excluded.

¹⁵ Quoted in Nohlen 1995: 81.

¹⁶ Quoted in Nohlen 1995.

¹⁷ Karl Popper as quoted by Ralf Dahrendorf 2004: "Demokratie ohne Demokraten: was tun, wenn Antidemokraten ins Parlament oder gar an die Spitze einer Regierung gewählt werden? (Der Standard, 21 February 2004).

¹⁸ Council of Europe 2004: 21.

¹⁹ Ralf Dahrendorf in Der Standard, 21 February 2004.

²⁰ See in particular the "Universal Declaration on Democracy" adopted by the Inter-Parliamentary Union in 1997 or resolutions adopted by the United Nations (e.g. General Assembly Resolution 55/96 of 28 February 2001 on Promoting and consolidating democracy).

²¹ Although the Council of Europe has so far shyed away from a codification of democratic standards in a single document, there is an "acquis" of the Council of Europe of democratic standards and practices as reflected in a wide range of treaties, recommendations and other documents. See for example its European Commission for Democracy through Law (Venice Commission) 2004: Parliamentary Assembly Recommendation 1629 (2003) on the "Future of Democracy: Strengthening Democratic Institutions" - Opinion no. 282/2004. See also the analytical summary of the "acquis" in Council of Europe 2004a, as well as Council of Europe 2004.

thought, of expression, of assembly and association, of liberty and security, and the right to free elections.

- Elections (government of the people). The establishment of the government and legislature is based on the will of the people as expressed through universal, free, fair, equal and secret elections held at regular intervals.
- Political equality. Citizens should have equal influence over government and policies, and equal consideration should be given to the preferences and interests of all citizens. This is expressed in principles such as one person/one vote, equality before the law, equal rights of free speech and the possibility of equal political activity among citizens.²²
- Government for the common public interest (government for the people). Governments and parliaments reflect the will of the people and should govern for the common good, and not for their own personal interest or the interest of particular groups. This entails a clear separation of person and office, that those entrusted with public office do not misuse it for their personal gain and that possible or actual conflicts of interest are declared.
- Separation of powers. A democratic state is based on the separation of powers between the executive, the legislature and the judiciary. The executive defines and implements policies and directs the administration in the pursuit of government for the common good. The parliament is the main legislative body and must have sufficient means to controlling the use of executive power. The judiciary must be independent in order to ensure that the executive and the legislature act within constitutional limits and that the rights of individuals and minorities are not violated by the state.
- Rule of law. A democratic state is based on the rule of law. Nobody is above the law and everybody is to be treated equally before the law. Everybody must have equal access to justice. A democratic state must also be able to enforce its laws.
- Accountability. All those who hold public authority must be accountable to the public. This is not limited to elected holders of a public office and the possibility to hold them accountable through election or non-election, but applies to “all those who hold public authority, whether elected or non-elected, and to all bodies of public authority without exception. Accountability entails a public right of access to information about the activities of government, the right to petition government and to seek redress through impartial administrative and judicial mechanisms”.²³
- Transparency. Accountability thus goes hand in hand with transparency. The principle of transparency not only applies to those holding public office but also to other relevant actors and processes, including in particular political parties and their internal decision-making as well as their sources of financing. Furthermore, transparency and accountability require freedom of expression and pluralistic media that are independent from political influence. “Public life as a whole must be stamped by a sense of ethics and by transparency, and appropriate norms and procedures must be established to uphold them”.²⁴
- Competition of political parties. “No democracy exists without political parties”.²⁵ They help aggregate and articulate the political will of the people. They compete to have their candidates elected and play a role in forming the government. Given their crucial role in democracies, parties must themselves be democratic and transparent in order to avoid democratic deficits.²⁶
- Pluralism of interests. Democracy entails a diversity of interests, views and convictions of citizens which can peacefully coexist. It is legitimate for members of society to pursue their interests, to represent them and work for their realisation.

²² Verba, Sidney 2001: Thoughts about Political Equality. What is it? Why do we want it? Harvard University.

²³ See Paragraph 14 of the IPU Universal Declaration on Democracy.

²⁴ See Paragraph 15 of the IPU Universal Declaration on Democracy.

²⁵ Council of Europe 2004: 37.

²⁶ Council of Europe 2004: 38.

These principles and processes are found in European democracies in various forms and combinations.

Most countries of Europe have parliamentary systems in which the executive is dependent on the support by parliament. There are no pure presidential systems in Europe in which the president is both head of state and of government, but about a quarter of European countries have semi-presidential systems where both the president (who is directly elected) and prime minister as the head of government play active roles²⁷. Whether parliamentary, semi-presidential or presidential forms of government, all these systems as such can be considered to be democratic in essence.

In all European countries, elections are held at regular intervals. Some 60% of European countries apply a system of proportional representation and a further 30% a mix of proportional and majority systems. A few countries follow a preferential system, and only the United Kingdom elects its representatives in a “first-past-the-post” majority system. All these systems have advantages and disadvantages, but they are all considered to be democratic.

Since 1972, Freedom House has carried out an annual survey on “Freedom in the World” and rates countries according to their level of freedom.²⁸ Considering the criteria used, this is basically a comparative survey on democracy. The data of the 2005 report – covering 192 countries – indicate that Europe is blessed with democracy. From 47 European countries, 36 are considered “free”. Of these, 28 received the best possible rating of 1.0, four countries scored 1.5, two 2.0 and another two 2.5. Seven countries ranked “partly free”. Only three countries in Europe were considered “not free”.

There are concerns in a number of other countries, in particular in those that are “partly free” or “not free”. So, not all is well with democracy in Europe, but Europe is nevertheless in a better position than most other regions of the world.

Challenges to the future of democracy

If democracy takes many shapes among the many European countries, the same is true for the problems and challenges that democracies are faced with. However, some challenges are common to most if not all of them.

Loss in confidence and declining participation in democratic institutions and processes

According to Robert Dahl, democracies are faced with a paradox: while citizens possess little confidence in some key democratic institutions, at the same time most citizens continue to believe in the desirability of democracy as their preferred system of government.²⁹ This paradox is particularly pronounced with regard to political parties. The vast majority of people in many countries believe in the need for political parties for democratic development, while at the same time, they have little or no confidence at all in the very same parties.³⁰

Thus, citizens believe in democracy as an “enforceable set of rights and opportunities” (Dahl), but actual participation in political life is declining. This is reflected, among other things, in the voter

²⁷ Azerbaijan, Bulgaria, Finland, France, Georgia, Moldova, Poland, Portugal, Romania, Russian Federation, and Ukraine.

²⁸ Freedom House Combined Average Ratings 2005. “Free” = 1.0 – 2.5, “Partly free” = 3.0 – 5.0, “Not Free” = 5.5 – 7.0. Freedom House rates countries according to political rights – e.g. free and fair elections, political pluralism and participation, functioning of the government (do those freely elected determine the policies of the government, is the government free from pervasive corruption, is the government accountable to the electorate between elections, does it operate with openness and transparency) – and civil liberties (freedom of expression and belief, associational and organisational rights, rule of law and independent judiciary, personal autonomy and individual rights).

²⁹ Dahl 2000: 246.

³⁰ Linz 2000: 259.

turnout at elections. There have always been marked differences between European countries in the participation in national elections, with averages ranging from 50.3% in Poland, 52.7% in Lithuania or 54.1% in Switzerland to 89.3% in Italy, 91.3% in Austria or 92.5% in Belgium.³¹ However, the overall trend is towards decreasing participation in elections, not only at national level but in particular at local levels as well as the supranational level. While in 1979, voter turnout to the Parliament of the European Union reached 63%, it decreased ever since (to 56.8% in 1994 and 45.6% in 2004). An increasing number of citizens abstain from elections, in particular young people, mainly because of a sense of lack of involvement combined with distrust in political institutions.

This discontent has also been noted by the authors of a study on the “future of democracy in Europe” commissioned by the Council of Europe in 2004. The group of academics and political specialists concluded that among the many challenges democracies in Europe are faced with

2. “it is our collective judgement that the major generic problem of contemporary European democracy concerns the declining citizen trust in political institutions and participation in democratic processes”.³²

Globalisation and declining government capacity

Representative democracy is designed to make policies for a clearly defined territory, and elected governments are accountable to the citizens of that territory. However, in the context of economic globalisation, the capacity of democratically legitimised state power to legislate and to make and enforce policies within their nation state is diminishing. Governments may be held accountable for policies or developments which they seem to be decreasingly capable of influencing themselves. Governments, in most countries already struggling with employment and social policies, are confronted with transnationally operating corporations with ever increasing bargaining power.

While the policy-making capacities of governments and parliaments are already shrinking due to globalisation and corporate power, democratic decision-making appears to be further eroded by the transfer of responsibilities to administrative, regulatory or expert institutions. These “guardian” institutions are marked by autonomy and professionalism, but also by an absence of public accountability and scrutiny and thus by the risk of becoming oligarchic and corrupted.³³ The strength of such institutions limits the space for governments to make and implement policies and for citizens to participate in democratic decision-making.

European integration and the democratic deficit

The European Union is a unique experiment in European history and in view of the declining capacity of national governments it may well help its members cope with the challenges of globalisation while maintaining certain social and democratic standards. However, the European Union – which started as an economic project of the European Communities – has yet to become a political and democratic Union, and it is still confronted with the so-called “democratic deficit” that had already been identified in the 1970s.

Some observers reject the notion of such a “deficit” and point at the fact that members of the Parliament of the European Union have been elected directly since 1979, and considering the constitutional elements and checks and balances – on the contrary – suggest a “democratic overspill”:

3. The European Union has been endowed with a Court of Justice which ensures that the legally constituted State is rigorously respect. But, above all, no political system in the world possesses such a sophisticated set of rules, procedures and institutions guaranteeing respect for minorities and preventing the abuse of

³¹ IDEA 2002: 78-79. In Bulgaria in October 2006, only 42.1% of the registered voters participated in the first round of the presidential elections.

³² Council of Europe 2004: 131.

³³ So-called “guardian” institutions (Council of Europe 2004: 62 ff).

power or majority. Voting rules, for example, while they do not ensure the unanimity of Council members, are carefully calculated to avoid domination by number (the small countries) or power (the large countries). The Commission proposes but Council and Parliament dispose and can only act if the former proposes... As regards the Council of Ministers, it exists in the singular only in the form of an ideal type, since it covers more than twenty different Council formations depending on the nature of the problems being dealt with. The European Council, made up of the Heads of State and Government, finally completes this complex tangle of institutions, the most sophisticated of systems of "checks and balances" ever seen in the course of history. It is not a deficit we should be talking about concerning this constitutionalist aspect of democracy, but an overspill!³⁴

This complexity and the many checks and balances may be the very cause of the "democratic deficit". Decision-making in the European Union is hardly transparent and comprehensible for citizens. For most voters, it is not understandable whether there is any connection between votes cast at an EU Parliament election and subsequent policy-making at the EU level. It is thus virtually impossible to hold anybody accountable for decisions made. In consequence, although decisions at the level of the EU affect some 70% of national legislation, very few of these legislative decisions are subject to the sort of public scrutiny and democratic debate usually found in national political arenas.³⁵

While the majority of citizens abstain from EU democracy and put their faith in the hands of national governments to defend their interests in EU decision making, corporations and pressure groups have positioned themselves much better to lobby for their interest, thus gaining disproportional influence.³⁶

Lobbying and corporate interests

Democracy and public policy making appears to be increasingly shaped by the relationship between political institutions and economic power and less by the relationship between citizens and their elected representatives.

The pluralism of interests is a principal principle of democratic societies where people are free to organise and pursue their interests in the policy-making process either individually or collectively. Executive and legislative branches of the state benefit from or even need to rely on the expertise made brought into this process by interest groups. And – at least in theory – the balance of all interests expressed in this way reflects the common public interest.

On the other hand, not all groups of society have the same capacity to organise themselves; smaller and particularistic interests are easier to organise than larger ones. And finally, interest groups exercising considerable influence may have little democratic legitimacy.

Corporatism is one way for interest groups to participate in policy-making and has been well-established and institutionalised in many European countries.³⁷ While corporatism has often been instrumental in shaping consensual policies within a nation state, globalisation – and in Europe the transfer of policy decisions to institutions of the European Union – implies that interest groups

³⁴ Yves Mény on www.diplomatie.gouv.fr/label_france/English/dossier/presidence/07.html

³⁵ Thus, the rejection of the EU constitution by France and the Netherlands in 2005 appears to be less the result of a well-informed choice by citizens than of widespread ignorance of the contents and implications of the draft constitution.

³⁶ See Corporate Europe Observatory 2000: Europe Inc. Regional and global restructuring and the rise of corporate power. London/Sterling.

³⁷ "... corporatism can be defined as a highly institutionalised method of political participation, often with negotiations and agreements implying obligations for the participants. One important element of the corporatist system is representation of organisations on government boards, committees and councils, while tripartite negotiation between labour unions, employers' associations and the state is another" (Rommetvedt, Hilmar/Theisen, Gunnar 2005: Norwegian Corporatism in Decline? Preliminary results from the Norwegian organisation survey 2005. Stavanger. (DRAFT))

organised at the national level and anchored in society tend to be replaced by lobby groups promoting particularistic interests and the interests of transnational corporations whose links to the societies in which they make business are limited.

Lobbying is spreading in Europe. Many thousand organisations lobby in view of influencing European Union policies, and a similar trend can be observed at the level of national parliaments of many European countries. However, unlike in countries such as Canada and the United States with a long-standing culture of lobbying and regulatory frameworks permitting public scrutiny, in Europe it remains largely unregulated and thus “discret, obscure et souterrain”.³⁸

The economics of democracy

Elections at regular intervals and the competition of political parties are basic features of democracy, not only in Europe. Obviously, democracy is not free of charge. Resources are required to ensure the functioning of political parties and to mobilise citizens to participate in the competition of political ideas and positions during electoral campaigns. However, the cost for political parties and electoral campaigns appears to be ever increasing.³⁹

While on the one hand, objective costs are spiralling upwards and parties and candidates seem to be forced into an arms or propaganda race, generally party membership and with it members' contributions tend to decrease.⁴⁰

Whatever the reasons, political parties and candidates for elections are in continuous need of financing. Consequences include that political competition is less based on the competition of ideas but on economic success with increasing political inequality, that by relying on external funding parties become further disconnected from their members and voters, and, in particular, that they become vulnerable to corruption and undue influence as expenditures outweigh legal revenues:

³⁸ Le Figaro Magazine, 11 Mars 2006, page 44.

³⁹ In the United States, campaign expenditure for the presidential primaries increased by more than six times between 1996 (when candidates Robert Dole and Bill Clinton spent some US\$ 42 million each) and 2004 (when George W. Bush spent US\$ 275 million and John Kerry US\$ 253 million). With regard to the 2008 presidential race, “there is a growing sense that there is going to be a \$100 million entry fee at the end of 2007 to be considered a serious candidate” (Washington Post, 11 March 2006).

In Germany, the expenditures of the two main parties represented in the Federal Parliament, increased from some Euro 136 million in 2000 (a non-election year) to Euro 171 million in 2004 (also a non-election year) for the Social Democratic Party, and from Euro 110 million to Euro 157 million during the same period for the Christian Democratic Party (See the financial reports of political parties (Rechenschaftsberichte) published by the German Federal Parliament (Deutscher Bundestag)).

Substantial resources are also needed by political parties in other countries. In the Russian Federation in 2005, United Russia had more than Rb 1 billion available, while the Liberal Democrats (LDPR) spent some Rb 94 million and the Communist Party less than Rb 60 million. In France, the Parti Socialiste spent about Euro 43 million in 2003. In the United Kingdom, current legislation provides for spending limits for electoral campaigns. During the 2001 elections, with £ 27.7 million in total, political parties spent 17% less compared to the 1997 elections (United Kingdom Electoral Commission 2002: 7). However, this does not necessarily resolve the problem of increasing running costs and expenses for non-election related party activities. Expenditures for presidential elections are also limited by law in France. In 2002, the ceiling was Euro 14.8 million per candidate for the first round, and Euro 19.8 for the second round (At the 2002 elections, Jacques Chirac spent Euro 18 million, Lionel Jospin Euro 12.5 million and Jean-Marie Le Pen Euro 11.65 million (Le Monde 20 September 2006, page 12).

⁴⁰ See Council of Europe (2004: 38) noting that “declining membership is a pervasive trend in well-consolidated democracies”.

4. During the 1990s, scandals involving illicit party financing were frequent throughout Europe. Regardless of the political or party system, party organisation or ideological orientation, political corruption related to party financing has become a persistent problem. Despite differing institutional and policy arrangements, almost every European democracy has had serious difficulty in coping with providing sufficient funds to its political parties and ensuring that these funds were equitably distributed.⁴¹

Corruption

Defining corruption

While a definite definition of corruption is still outstanding, during the past ten years the preparation of international anti-corruption treaties and their subsequent implementation under national law contributed to a common understanding as to what societies consider corrupt behaviour.

Corruption may be commonly defined as the misuse of an entrusted position for private benefit. Such a definition is easy to understand and thus transparent and accessible and it underlines the principle of the separation of the position or office and the person. It is a useful starting point, but it is certainly too broad for legal purposes and not sufficiently precise for analytical purposes.

International treaties, rather than providing for a generic definition of corruption, have opted for an enumerative approach listing the offences which countries should criminalise under national legislation. For example, the Criminal Law Convention on Corruption of the Council of Europe (ETS 173) obliges countries to criminalise active and passive bribery of national, foreign and international public officials, active and passive bribery of members of national, international and supranational parliaments or assemblies, active and passive bribery of judges and staff of domestic, international or supranational courts, active and passive private bribery, active and passive trading in influence involving national and foreign public officials, laundering of corruption proceeds and bribery in auditing. In short, corruption in this treaty – and in most other international texts on corruption – means “bribery plus”. Active bribery of domestic officials, for example, was defined as:

5. Article 2 – Active bribery of domestic public officials

6. "Each Party shall adopt such legislative or other measures as may be necessary to establish as criminal offence under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself, for him or her to act or refrain from acting in the exercise of his or her functions".

This approach is rather broad, since it does not necessarily require a breach of duty or the actual acceptance of an advantage, but already the offer or promise or also the acceptance of an advantage without breach of duty constitutes bribery and thus corruption.

In addition to bribery, another offence to be criminalised is trading in influence:

7. Article 12 – Trading in influence

8. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

⁴¹ Council of Europe 2004: 40.

This is aimed at certain forms of corruption related to politics where those in the neighbourhood of power try to obtain advantages from their position. In a relationship involving three persons or parties, somebody with influence on a third person trades this influence against an undue advantage from another person. What distinguishes trading in influence from regular lobbying is that the influence must be improper and contain a corrupt intent.

From a normative point of view, the United Nations Convention against Corruption (UNCAC) broadens the scope of actions which are considered to constitute corruption. In addition to various forms of bribery and trading in influence, it also covers embezzlement, breach of trust or other misappropriation of property, abuse of functions by an official to obtain an undue advantage, the obstruction of justice, and other actions. Corruption in this sense thus is not limited to a corrupt relationship between at least two persons, but can also mean the action by an individual official.

Societies define in particular through laws what behaviour is not acceptable and considered corrupt in their respective country. However, such a normative approach to corruption has its limits. Not all behaviour that societies believe to constitute corruption is necessarily reflected in laws and regulations. Public pressure for regulations may be weak, since corrupt undertakings are clandestine and usually not known. Thus, the fact an act is legal does not necessarily mean that it is not corrupt.⁴²

The limits of normative, "legal" approaches become particularly obvious with regard to political corruption, that is, forms of corruption where politicians use public resources in their struggle for power, abuse their political position and confuse their political goals with the public interest. Many forms of behaviour in the political sphere are not regulated and thus not illegal but are nevertheless considered improper or corrupt by the public. These are mostly related to political finance, patronage, favouritism or forms of lobbying. Such phenomena are very difficult to grasp in definitions of corruption or of political corruption.⁴³

Apart from normative approaches, a wide range of other definitions has been developed, many of which do not refer to corruption as illegal versus legal behaviour.⁴⁴ However, these definitions do not further differentiate between public sector corruption in general and corruption in politics. In a way, under these definitions, any public sector corruption is political corruption. Attempts have also been made to distinguish bureaucratic or petty corruption from grand corruption which takes place at the highest level of political authority and involves politicians and decision-makers.⁴⁵ For example, Transparency International's Global Corruption Report 2004 focused on political corruption which

⁴² According to Kaufmann the focus on legal concepts of corruption may not only have obscured the fact that wealthy countries around the world face particular problems of "legal corruption" but also the role of the private sector. Such legal corruption includes in particular influence peddling, vested interests and outright capture of key public policies, laws and regulations. He suggests to define such legal forms of corruption as the "privatization of public policy" (Kaufmann 2004: 90).

⁴³ Philp (1997: 438) uses a case from New South Wales, Australia, from 1992 as an example to illustrate these difficulties: The then Prime Minister Nick Greiner, was struggling to keep the support of a majority in the Parliament of New South Wales. In this connection, a behind the scenes deal was struck under which an independent member of Parliament, Tony Metherall, resigned from Parliament and was on the same day appointed to a well-paid position in the public service. The case was investigated by the Independent Commission against Corruption (ICAC) – which had previously been established by Greiner – and which accused Greiner of partial exercise of office and breach of trust. Despite the fact "that he did not knowingly engage in wrongful conduct, that he made no clear private and personal gain from the transaction and that he could make a case for his behaviour being a normal part of the political process within the traditions of New South Wales' political culture". .

⁴⁴ See Nye (1967: 417) for a public-office-centred, Van Klaveren (quoted in Johnston 1996: 323) for market-centred, Friedrich (1966: 74) for public-interest centred, Klitgaard (1988: 24) for principal-agent-client definitions, or Della Porta/Meny (...) referring to corruption as "un échange clandestin", combining public interest and market centred approaches.

⁴⁵ Amundsen 1999.

was defined as “the abuse of entrusted power by political leaders for private gain”.⁴⁶ This appears a useful working definitions but also raises many questions and offers little explanation. With this definition, political corruption is basically conventional corruption by political leaders. But it is not clear whether a treasurer or secretary of a political party can be considered a “political leader” and whether it can still be considered corruption if the gain obtained serves a political party rather than individual politician.

According to Philp the main difficulty lies in defining the nature of “political”, and in particular what constitutes the “naturally sound condition of politics”.⁴⁷

Others believe that there is no point in trying to find a general definition of corruption or of political corruption.⁴⁸ Heywood argues that an all-encompassing of political corruption is not possible as it depends on politics and thus varies according to context. And “political corruption in democracies can have distinctive definitional characteristics compared to political corruption in non-democratic regimes”.⁴⁹ According to him, one of the “most sinister forms” of political corruption in a democracy is when the “democratic transcript” is betrayed, that is, when democratic principles such as transparency and accountability are circumvented.

In this connection, Heywood refers to the concept of “mediated corruption” (beyond “conventional corruption”, that is, bribery) introduced by Thompson. It is called “mediated corruption” because:

9. ... corrupt acts are mediated by the political process. The public official’s contribution to the corruption is filtered through various practices that are otherwise legitimate and may even be duties of office. As a result, both the official and citizens are less likely to recognise that the official has done anything wrong or that any serious harm has been done.⁵⁰

10. Mediated corruption ... includes the three main elements of the general concept of corruption: a public official gains, a private citizen receives a benefit, and the connection between the gain and the benefit is improper. But mediated corruption differs from conventional corruption with respect to each of these three elements: (1) the gain that the politician receives is political, not personal and is not illegitimate in itself, as in conventional corruption; (2) *how* the public official provides the benefit is improper, not necessarily the benefit itself, or the fact that the particular citizen receives the benefit; (3) the connection between the gain and the benefit is improper because it damages the democratic process, not because the public official provides the benefit with a corrupt motive. In each of these elements, the concept of mediated corruption links the acts of individual officials to qualities of the democratic process. In this way, the concept provides a partial synthesis of conventional corruption (familiar in contemporary political science) and systematic corruption (found in traditional political theory).⁵¹

⁴⁶ Transparency International 2004: 1.

⁴⁷ Philp 1997: 438.

⁴⁸For example, Johnston considers corruption as a “politically contested and unresolved concept”. He proposes to study instead the conflicts that shape corruption as an issue, such as the distinction between public and private interests, roles and institutions, or between politics and administration (Johnston 1996: 333).

⁴⁹ Heywood 2001. For European democracies, changes in this context since the 1980s include the end of the Cold War and the “blurring of the boundaries between public and private interests, associated with the hollowing out of the state”. In his opinion, “high level political corruption is a function of particular and specific incentives”. In order to understand political corruption, he suggests to analyse incentive structures.

⁵⁰ Thompson (1993: 369) quoted in Johnston 1996: 332.

⁵¹ Thompson (1993: 360) quoted in Johnston 1996: 332. Thompson applies this concept to the case of the “Keating Five”, that is, the collapse of savings and loan institutions (“thrifts”) in the USA in the 1980s which cost more than US\$ 100 billion. Following the deregulation of the banking industry in the 1980s, thrifts were allowed to invest deposits in commercial real estate. Attempts by the Federal Home Loan Bank Board, the federal agency overseeing the industry, to prevent increasingly risk investments by thrifts, were undermined by the Reagan administration that declined to seek additional funding from Congress for regulatory efforts. In 1989, the Lincoln Savings and Loan Association collapsed and its chairman, Charles Keating, was faulted for the thrift’s failure.

This approach provides a bridge between different concepts and a link to the question of democracy, that is, the theme of the present paper.

Following Heywood's argument that there is no all-encompassing definition of political corruption because of their dependence on context and the political frame, it should nevertheless be possible, to define it for countries which do share a common context and common principles which are affected by corruption.

This is the case for European countries which share a common set of principles of democracy, such as human rights and freedoms, elections at regular intervals, political equality, separation of powers, the rule of law, accountability, transparency, competition of political parties and pluralism of interests and others as outlined earlier in this paper.

For the purposes of this paper, political corruption will thus be considered to mean:

11. the abuse of an entrusted public or political position in exchange for an undue political or other advantage in violation of democratic principles or processes.

Under this approach, the concept of a public or political position is rather wide. It includes public officials as defined in the UNCAC⁵² but also people holding other political positions, in particular in political parties, foundations or associations. Political corruption is therefore not just a question of political leaders, but may also involve party functionaries, mediators and others.

The advantage may be material or immaterial, but may in particular be political, and may not only be for private benefit of the corrupted person but also for his or her party, government or others.

The important point here is that political corruption is less about the illicit enrichment of a politician. It is about distorting and damaging democratic principles and processes.

Corruption in Europe

Corruption is a highly sensitive topic of public debate and data on the extent and trends of the corruption situation are the subject of controversies. Different types of surveys are carried out in an increasing number of countries. To date, however, the only regular surveys covering all or a large number of European countries are those by Transparency International and the World Bank.⁵³

Public perception and experience of corruption in Europe

Keating then accused the FHLBB and its former head, Edwin Gray, to have pursued a vendetta against him. Gray in turn stated that he had been approached by several senators to discontinue the Lincoln case. Further investigations showed that several senators (the "Keating Five") had received US\$ 1.3 million in campaign funding from Keating. All five senators who were then investigated by the Senat's Ethics Committee claimed that they had done nothing wrong and just followed normal campaign funding practices. One of the senators, former astronaut John Glenn argued that there was a difference between pressure and questioning: "I learned quickly that as a senator I can ask any question that I want. How [the regulators] answer is their decision" (Source: Wikipedia, 1 February 2006).

⁵² According to UNCAC (article 2) public officials, among other things, means any person holding a legislative, executive, administrative or judicial office, whether permanent or temporary, whether paid or unpaid ... any other person who performs a public function ... or provides a public service ..."

⁵³ The Corruption Perception Index of Transparency International is the most often quoted survey, but it certainly has some shortcomings (for a critique see for example Galtung 2005). Nevertheless, and in particular in countries where the perception of corruption has worsened, it has often contributed to useful policy debates on the question of corruption.

Table1: Transparency International Corruption Perception Index⁵⁴

Country	Transparency International Corruption Perception Index Score										CPI rank
	1995	1998	2000	2001	2002	2003	2004	2005	2006	2006	
Albania					2.5	2.5	2.5	2.4	2.6	111	
Andorra											
Armenia			2.5			3.0	3.1	2.9	2.9	93	
Austria	7.13	7.5	7.7	7.8	7.8	8.0	8.4	8.7	8.6	11	
Azerbaijan			1.5	2.0	2.0	1.8	1.9	2.2	2.4	130	
Belarus		3.9	4.1		4.8	4.2	3.3	2.6	2.1	151	
Belgium	6.85	5.4	6.1	6.6	7.1	7.6	7.5	7.4	7.3	20	
Bosnia and Herzegovina						3.3	3.1	2.9	2.9	93	
Bulgaria		2.9	3.5	3.9	4.0	3.9	4.1	4.0	4.0	57	
Croatia			3.7	3.9	3.8	3.7	3.5	3.4	3.4	66	
Cyprus						6.1	5.4	5.7	5.6	37	
Czech Republic		4.8	4.3	3.9	3.7	3.9	4.2	4.3	4.8	46	
Denmark	9.32	10.0	9.8	9.5	9.5	9.5	9.5	9.5	9.5	4	
Estonia		5.7	5.7	5.6	5.6	5.5	6.0	6.4	6.7	24	
Finland	9.12	9.6	10.0	9.9	9.7	9.7	9.7	9.6	9.6	1	
France	7.0	6.7	6.7	6.7	6.3	6.9	7.1	7.5	7.4	18	
Georgia					2.4	1.8	2.0	2.3	2.8	99	
Germany	8.14	7.9	7.6	7.4	7.3	7.7	8.2	8.2	8.0	16	
Greece	4.04	4.9	4.9	4.2	4.2	4.3	4.3	4.3	4.4	54	
Hungary	4.12	5.0	5.2	5.3	4.9	4.8	4.8	5.0	5.2	41	
Iceland		9.3	9.1	9.2	9.4	9.6	9.5	9.7	9.6	1	
Ireland		8.2	7.2	7.5	6.9	7.5	7.5	7.4	7.4	18	
Italy	2.99	4.6	4.6	5.5	5.2	5.3	4.8	5.0	4.9	45	
Latvia		2.7	3.4	3.4	3.7	3.8	4.0	4.2	4.7	49	
Liechtenstein											
Lithuania			4.1	4.8	4.8	4.7	4.6	4.8	4.8	46	
Luxembourg	6.85	8.7	8.6	8.7	9.0	8.7	8.4	8.5	8.6	11	
Malta							6.8	6.6	6.4	28	
Moldova			2.6	3.1	2.1	2.4	2.3	2.9	3.2	69	
Monaco											
Netherlands	8.69	9.0	8.9	8.8	9.0	8.9	8.7	8.6	8.7	9	
Norway	8.61	9.0	9.1	8.6	8.5	8.8	8.9	8.9	8.8	8	
Poland		4.6	4.1	4.1	4.0	3.6	3.5	3.4	3.7	61	
Portugal	5.56	6.5	6.4	6.3	6.3	6.6	6.3	6.5	6.6	26	
Romania		3.0	2.9	2.8	2.6	2.8	2.9	3.0	3.1	84	
Russian Federation		2.4	2.1	2.3	2.7	2.7	2.8	2.4	2.5	121	
San Marino											
Serbia and Montenegro*		3.0	1.5 ¹			2.3	2.7	2.8	3.0	90	
Slovakia		3.9	3.5	3.7	3.7	3.7	4.0	4.3	4.7	49	
Slovenia			5.5	5.2	6.0	5.9	6.0	6.1	6.4	28	
Spain	4.35	6.1	7.0	7.0	7.1	6.9	7.1	7.0	6.8	23	
Sweden	8.87	9.5	9.4	9.0	9.3	9.3	9.2	9.2	9.2	6	
Switzerland	8.76	8.9	8.6	8.4	8.5		9.1	9.1	9.1	7	
"The former Yugosl. Republic of Macedonia"						2.3	2.7	2.7	2.7	105	
Turkey	4.1	3.4	3.8	3.6	3.2	3.1	3.2	3.5	3.8	60	
Ukraine		2.8	1.5	2.1	2.4	2.3	2.2	2.6	2.8	99	
United Kingdom	8.57	8.7	8.7	8.3	8.7	8.7	8.6	8.6	8.6	11	

* For 2006 Serbia only

According to the Corruption Perception Index (CPI) of Transparency International 2006, seven of the ten countries with the lowest level of perception of corruption are European, namely Iceland, Finland, Denmark, Sweden, Switzerland, Norway and the Netherlands, and a further six countries are among the twenty countries with the lowest levels of corruption from among 163 countries included in the survey. Overall, Europe is thus better off than other regions of the world. At the same time, five countries rank lower than 100, of which two lower than 130. Thus, the CPI points at a wide discrepancy in the perception of corruption among European countries.

Over time, the CPI data suggest that the perception of corruption consistently improved in some countries (such as Austria, Estonia, Latvia or Slovakia) or improved again during the last three to four years thus reversing a previous trend (such as in France and Germany). In many countries – annual fluctuations aside – the situation remained more or less stable. For a few countries, on the other hand, the CPI suggests a worsening situation.

⁵⁴Source: www.transparency.org

Another indicator published by Transparency International is the Global Corruption Barometer, which among other things, looks at the actual experience of bribery.⁵⁵

For some countries, data on the experience of corruption seem to confirm the perception. Most of the top ranking countries of the CPI fare again rather well (in Denmark 1%, Finland 3%, Iceland 1% and Switzerland 1% of the respondents had experienced bribery). No bribes were paid in the Netherlands and Spain (0%) and very few in Ireland (1%), the UK (1%), France (2%), Germany (2%) and Portugal (2%). Bribery was particularly experienced in Lithuania (28%) and Moldova (29%) followed by Romania (22%), Serbia (19%) and the Czech Republic (18%).

In some countries, however, the actual experience of bribery was much less than the perception of corruption, in particular in Bosnia and Herzegovina (6%; ranking 93rd in the CPI), Bulgaria (7%; 57th), Croatia (7%; 66th), “the former Yugoslav Republic of Macedonia” (8%; 105th), Poland (8%; 61th) and also Georgia (7%; 99^h).

Institutions and sectors at risk

In-country surveys on corruption show that citizens typically experience bribery in their interaction with police, customs, health and education services, public procurement and public institutions issuing licenses and permits.

However, perception data on the most corrupt or clean institutions and sectors – such as Transparency International’s Global Corruption Barometer⁵⁶ – show a different picture.

⁵⁵ “In the past 12 months, have you or anyone living in your household paid a bribe in any form?” (Transparency International 2005). The Global Corruption Barometer 2005 included only 29 of the 47 European countries.

⁵⁶ The reports for previous years suggests a similar overall scenario.

Table 2: Global Corruption Barometer 2005 (Transparency International)⁵⁷

Country	Corrupt or clean institutions and sectors			Impact of corruption on		
	Most corrupt	Polit. Parties	Parliam. / Legis.	Political life	Business envir.	Personal and family life
Austria	Political parties	3.6	3.1	2.5	3.0	2.4
Bosnia and Herzegovina	Political parties	4.5	4.2	3.9	3.0	3.2
Bulgaria	Customs	4.3	4.2	3.6	2.4	2.0
Croatia	Political parties	4.0	3.8	3.5	3.6	3.2
Czech Republic	Political parties, police	3.7	3.3	3.4	3.1	1.8
Denmark	Business, media	2.7	2.5	2.4	2.6	1.6
Finland	Political parties	3.1	2.7	2.6	2.4	1.3
France	Political parties	4.1	3.4	3.4	2.4	1.4
Georgia	Legal system	3.6	3.6	3.5	3.5	2.8
Germany	Political parties	3.7	3.2	3.2	2.1	1.7
Greece	Political parties	4.1	3.5	3.7	3.6	2.5
Iceland	Political parties	3.3	2.6	3.1	3.0	1.9
Ireland	Political parties	3.7	3.1	3.3	3.0	1.7
Italy	Political parties	4.2	3.6	3.4	3.5	1.5
Lithuania	Political parties	4.3	4.1	3.6	3.4	2.2
Luxembourg	Political parties	3.4	2.8	2.8	2.8	1.8
Moldova	Police, customs	3.8	3.6	3.1	3.0	2.5
Netherlands	Business, media	3.0	2.8	2.5	2.8	1.5
Norway	Business	3.2	2.7	2.8	2.9	1.3
Poland	Political parties	4.2	4.1	3.6	3.4	2.1
Portugal	Political parties	3.9	3.3	3.6	3.5	2.0
Romania	Political parties, customs	3.8	3.6	3.2	3.2	2.5
Russian Federation	Police	4.0	3.9	3.4	3.1	2.0
Serbia	Political parties, customs	4.2	3.8	3.2	2.9	2.3
Spain	Political parties	3.4	3.2	2.6	2.2	1.7
Switzerland	Political parties	3.2	2.7	2.7	2.9	1.5
"The former Yugoslav Republic of Macedonia"	Legal system	4.1	4.0	3.4	3.2	2.6
Turkey	Tax revenue	4.1	3.9	3.3	3.3	3.1
Ukraine	Police, legal system, customs	3.9	3.8	3.3	3.1	3.1
United Kingdom	Political parties	3.5	3.2	3.0	2.8	1.6
Global	Political parties	4.0	3.7	3.2	3.0	2.2

According to these data, political parties, followed by parliaments, the police and the legal system are seen to be the most corrupt institutions, not only in Europe but globally. This is supported by a second set of data, which shows that people believe that corruption affects political life more than the business environment or their own personal life. Studies carried out in different countries confirm the perception that there is a high level of corruption among politicians.⁵⁸

Legal and illegal corruption and the role of the corporate sector

The strong perception that political parties are the most corrupt institutions, and the discrepancies between perceived corruption and experienced bribery may be less surprising if corruption is not only looked at as an issue of bribery (mostly committed by individual citizens) but also one of undue

⁵⁷ Source: www.transparency.org

⁵⁸ In France, for example, see (Lascoumes, Pierre 2006: *Politiques et Citoyens: une relation corrompible. Problématique et premiers résultats.* (Project Majeur du CEVIPOF 2003-2006 "Corruption et Démocratie"). Paris). For the United Kingdom see Committee on Standards in Public Life 2006 survey of public attitudes. Only few people think that "all" or "most" government ministers (7%) or Members of Parliament (6%) take bribes, but only 63% express confidence that such abuse is rare. This represents a shift in opinion compared to 2003/4 when 80% expressed such confidence.

influence on public policies, institutions and processes in the broader sense (where corporate interests play a more important role).

Daniel Kaufmann proposes to capture such legal and illegal forms of corruption through a set of corporate and public sector indices⁵⁹:

- The Corporate Illegal Corruption Component (CICC) measures bribery with a key role of a private agent and a firm's own corporate ethics self-rating
- The Corporate Legal Corruption Component (CLCC) measures legal dimensions of undue influence (such as legal political finance, influence on politicians and policy-making)
- The Corporate Ethics Index (CEI) is the average of the CICC and the CLCC
- The Public Sector Ethics Index (PSEI) measures public integrity, bribery and favouritism in the public sector
- The Judicial/Legal Effectiveness Integrity Index (JLEI) reflects the effectiveness and integrity of the legal and judicial system.

The table shows the percentage of firms that give satisfactory ratings under each of these indicators.

Table 3: Corporate and public sector indices on corruption

	Corporate Illegal Corruption Component (CICC)	Corporate Legal Corruption Component (CLCC)	Corporate Ethics Index (CEI)	Public Sector Ethics Index (PSEI)	Judicial/ Legal Effectiveness Integrity Index (JLEI)
Country					
Austria	82.3	57.2	71.1	78.6	89.0
Belgium	75.9	54.1	65.0	64.1	68.9
Bosnia and Herzegovina	24.3	14.9	19.6	21.5	12.4
Bulgaria	38.6	18.4	28.5	25.2	22.4
Croatia	29.9	18.5	24.2	27.7	18.2
Cyprus	55.1	36.7	45.9	54.8	63.4
Czech Republic	32.1	30.9	31.5	35.4	37.4
Denmark	97.1	74.7	85.9	93.6	95.3
Estonia	72.7	40.9	56.8	57.9	75.2
Finland	96.9	72.6	84.8	93.8	92.1
France	79.6	39.9	59.7	61.4	76.4
Georgia	19.0	14.0	16.5	10.9	12.6
Germany	85.0	62.4	73.7	85.5	90.8
Greece	47.0	26.1	36.5	39.8	55.6
Hungary	42.8	22.5	32.6	40.7	47.1
Iceland	95.3	69.6	82.4	92.6	91.1
Ireland	77.9	42.6	60.3	64.1	77.7
Italy	47.3	34.4	40.9	33.9	40.7
Latvia	36.9	20.7	28.8	32.3	33.6
Lithuania	46.0	16.3	31.2	35.1	32.6
Luxembourg	81.2	57.2	69.2	83.6	89.5
Malta	63.4	38.4	50.9	46.3	66.8
Netherlands	91.1	79.2	85.2	84.3	87.4
Norway	91.2	78.6	84.9	90.1	86.9
Poland	25.3	14.4	19.8	18.3	26.4
Portugal	68.2	42.0	55.1	60.4	65.0
Romania	21.0	19.5	20.2	28.4	29.7
Russian Federation	19.9	21.2	20.5	20.4	15.8
Serbia	27.0	21.5	24.2	21.3	15.8
Slovakia	38.2	17.9	28.0	38.0	34.9
Slovenia	55.0	27.3	31.2	49.2	51.1
Spain	62.2	39.7	51.0	59.4	53.0
Sweden	93.9	60.0	77.0	84.0	93.2
Switzerland	89.3	59.1	74.2	81.7	90.5
"The former Yugoslav Republic of Macedonia"	25.2	20.5	22.8	26.0	19.4

⁵⁹ Based on data of the Executive Opinion Survey 2004 of the World Economic Forum (Kaufmann 2004). Daniel Kaufmann is Director of Global Governance at the World Bank Institute.

	Corporate Illegal Corruption Component (CICC)	Corporate Legal Corruption Component (CLCC)	Corporate Ethics Index (CEI)	Public Sector Ethics Index (PSEI)	Judicial/ Legal Effectiveness Integrity Index (JLEI)
Country					
Turkey	31.5	19.5	25.5	27.5	37.2
Ukraine	18.0	22.5	20.3	18.8	9.6
United Kingdom	93.2	67.2	80.3	79.7	92.1

Source: Kaufman 2004⁶⁰

Overall, these indices confirm the rankings of the CPI. They also show that corporate, public sector and judicial integrity go hand in hand, although in most countries, the political/public sector is somewhat more ethical than the corporate sector.

With regard to illegal corruption, according to these data, in 15 out of the 38 European countries included in the survey, the majority of firms (more than 70%) are not believed to be engaged in the illegal financing of political parties or other forms of illegal influence on politics or the public administration.

However, in 18 countries, more than 50% of firms are engaged in such illegal practices. The data are particularly worrying for those countries where the CICC index is 25% or less; this means that at least three out of four firms exercise illegal influence.

Legal forms of influence on politics – that is legal forms of corruption according to Kaufmann – are obviously more widespread in all countries. Only in four countries does the vast majority of firms (more than 70%) refrain from legal influence on politics and the public administration, namely in Denmark, Finland, the Netherlands and Norway. In 26 of the 38 European countries, more than half of the companies commit “legal corruption”. This includes some of the more wealthy countries of Europe, such as Italy, France and Spain where less than 40% of firms seem to abstain from such practices.⁶¹ In some countries of eastern Europe (with a CLCC index of 20% or less), where more than four out of five companies influence politics and the public administration, the data suggest that “legal corruption” by firms appears to be the norm.

State capture

Another concept, used in particular by the World Bank to seize illegal and intransparent influence on law making and public policy, is that of “state capture”:

⁶⁰ Legend:

- CICC (Corporate Illegal Corruption Component): percentage of firms in the country that give satisfactory ratings to the question on corporate ethics, illegal political funding, state capture cost, average or frequency of bribery in procurement and active capture (average of formal money laundering and bribery for loans) and percentage firms reporting 0 percent procurement and administrative bribes shares.
- CLCC (Corporate Legal Corruption Component): Percentage of firms in the country that give satisfactory ratings to the questions on influencing legal political funding and undue political influence.
- PSEI (Public Sector Ethics Index): Percentage of firms in the country that give satisfactory ratings to the question on honesty of politicians, government favouritism in procurement, diversion of public funds, trust in postal office and the average of bribe frequencies for permits, utilities and taxes.
- JLEI (Judicial/Legal Effectiveness Index): Percentage of firms in the country that give satisfactory ratings to the questions on judicial independence, judicial bribery, quality of legal framework, property protection, parliament effectiveness and police effectiveness.
- CEI (Corporate Ethics Index): Average of the CICC and CLCC.

⁶¹ With regard to the legal corruption component, wealthy countries in other parts of the world also rate rather low (for example the USA 30.8%, Canada 42.9%, Japan 46.2%).

12. “State capture is defined as the actions of individuals, groups or firms both in the public and private sectors to influence the formation of laws, regulations, decrees, and other government policies to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials” .⁶²

A recent study on corruption in transition countries⁶³, notes that the level state capture in 2005 was perceived to be highest in countries of South-eastern Europe, that is, Bosnia and Herzegovina, Albania, “the former Yugoslav Republic of Macedonia” and Serbia and Montenegro. In Bulgaria, Latvia, Slovakia, Ukraine, Georgia and Slovenia the perception improved between 2002 and 2005, while the 2005 results “were significantly worse in Albania, Armenia, Russia and Azerbaijan”.

Beyond bribery: political corruption

Available data on corruption in Europe – and elsewhere for that matter – appear to be marked by contradictions and inconsistencies. However, these data are not without a certain logic:

- People experience bribery typically in their interaction with the police, customs, health and education services or when seeking licenses or permits
- At the same time, the level of bribery actually experienced by citizens or investigated and prosecuted is considerably lower and often unrelated to the perceived level of corruption in a country
- In two thirds of European countries people perceive political parties to be the most corrupt institutions.
- Data on the attitude of the corporate sector towards exercising influence on policy making, either legally (such as through financial contributions to political parties, consultant contracts, post office employment) or illegally (bribery, kick backs, illegal political finances), suggest that governments, parliaments, political parties and individual politicians in most European countries are indeed exposed to frequent attempts of legal and illegal corruption from the corporate sector.

Such data confirm the need to look beyond the question of bribery as experienced by citizens and as codified in criminal law, and to put a stronger focus on political corruption in representatives democracies.

Corruption and democracy

There are different opinions about definitions and concepts of democracy on the one hand, and of corruption on the other, and even more so about the relationship between the two.

In general terms, countries which are more democratic and have a higher level of human development seem to be faced with a lower level of corruption. But the lack of reliable data – after all, corruption is very much a hidden phenomenon – makes it difficult to come to statistically sound conclusions on

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http://www.worldbank.org/wbi/governance/pdf/isc_summary.pdf#search='state%20capture%20definition'.

The World Bank tries to measure the extent of state capture through their Business Environment and Enterprise Performance Surveys (BEEPS). Asking respondents “to what extent the provision of unofficial payments, gifts, or other benefits to parliamentarians to affect their votes or to government officials to affect the content of government decrees had a *direct* impact on the respondent’s business” (Anderson/Grey 2006: 17).

⁶³ Anderson/Gray 2006. The study covers 26 transition countries (including 21 Council of Europe member States) and six non-transition countries for comparison which are also members of the Council of Europe (Ireland, Germany, Spain, Portugal and Turkey).

specific aspects or differences between countries.⁶⁴ The relationship between democratic systems of governance and the ability for citizens to hold elected rulers accountable is also not that immediate. In practice, citizens are hardly able to control the corruption of those in power through elections or other forms of democratic participation; oversight and control mechanisms within state bodies seem much more effective.⁶⁵ And even when corruption scandals become known, they do not necessarily scandalise the public to the point of having a direct political impact.⁶⁶ One could even argue that corruption has a positive function in that scandals reconfirm democracy.

However, considering the many instances of political corruption that have become public throughout Europe in recent years and that have sometimes affected election results or even regime change, it appears that political corruption does have an adverse impact on principles and processes of democracy in Europe, that is, on human rights and freedoms, political equality, free and fair elections, the separation of powers, government for the public interest, the rule of law, accountability, transparency, competition of political parties and pluralism of interests. In democracies, political corruption may also be considered a form of exclusion of citizens from decisions that affect them.⁶⁷

The critical nexus linking democracy and corruption in Europe seem to be:

1. Political finances
2. Conflicts of interest
3. Lobbying
4. Political influence on justice.

Political finances, conflicts of interest and lobbying are very much about relations between democratic institutions and business interests. In a broad sense, the term “political finances” may also encompass conflicts of interest and lobbying. Conflicts of interest and lobbying are two sides of the same coin: conflicts of interest point at the public official or elected representative pursuing private interests, while lobbying is about private interests influencing public officials or elected representatives. The political influence on justice is of a different nature and serves to undermine judicial control or to abuse the justice system for political purposes.

A focus on these four areas may help cover a major portion of the phenomena of political corruption that are of concern to citizens in Europe. It may also help design feasible and specific measures to prevent and control political corruption and thus to strengthen democracy.

⁶⁴ There are exceptions. See for example Kunicova/Rose-Ackerman 2001. They provide empirical data showing that closed list proportional systems are associated with higher levels of corruption. Drury/Kriekhaus/Lusztig (2006) suggest that in democracies the adverse impact of corruption on economic growth is more limited, since “electoral mechanisms inhibits politicians from engaging in corrupt acts that damage overall economic performance and thereby jeopardize their political survival”.

⁶⁵ Warren, Mark 2005: Democracy against Corruption. Draft paper presented at the Conference on the Quality of Government, University of Göteborg, November 2005.

⁶⁶ Researchers continue to be surprised about the seemingly high level of tolerance of citizens with regard to political corruption. Among the main reasons seems to be that unlike bribery, political corruption is a grey or even white form of corruption and thus very difficult for citizens to judge. See Lascoumes 2006 for a recent study on France.

⁶⁷ See Warren (2006) who defines political corruption in democracies as “duplicitous exclusion”.

Money and politics: Risks for democracy

The competition between political candidates and parties for the votes of the electorate is at the core of the democratic process. Political parties play an essential role in aggregating the political will of the people, and in pre-selecting and preparing candidates for political office to the point that – at least in Europe – it is considered that democracy is not possible without political parties.⁶⁸

Democracy is costly. Although the situation in Europe is not comparable with that of the USA, candidates for elected office and political parties need substantial resources. For example, annual expenditures of the main political parties in Germany in the 2004 – not a year of federal elections – amounted to Euro 171 million for the Social Democratic Party (SPD) and 157 million for the Christian Democratic Party (CDU).⁶⁹ The Parti Socialiste in France in 2003 spent Euro 43 million, and United Russia in 2005 spent almost Roubles 1 billion. Parties and politicians are thus in constant search for resources.

In Europe, political parties and election campaigns may be financed in different ways. Membership fees account for an important part in many countries. For example, they make up some 30% of the income of the SPD and CDU in Germany, 38% of the Labour Party in the UK (in 2004), 22% of the Parti Socialiste in France (2003) or almost 50% of the official budget of the Communist Party of Russia. On the other hand, there are many parties where membership fees are of less importance, as in the case of Conservative Party of the UK (4%) and of United Russia (4%). State subsidies are another important – if not the most important – source. For example, these make up more than 32% of the main political parties in Germany, or more than 42% of the Parti Socialiste in France. In the United Kingdom, public subsidies to the budget of political parties are insignificant and also in Russia they account only for 1% (United Russia) to 9% (Communist Party). In many countries, parties and candidates are also reimbursed from the State budget for cost incurred during election campaigns or benefit from free air time for campaign advertisement.

Apart from membership fees and public subsidies, private donations may play a crucial – and controversial – role. In the United Kingdom, donations and fund raising account for some 34% of the income of Labour and 69% of the Conservative Party (in 2004).⁷⁰ In Russia, almost 95% of United Russia and of the Liberal Democrats (LDPR) were funded in that manner in 2005.⁷¹ But also in countries where membership fees and public subsidies are the main sources, private contributions are not insignificant. In Germany they made up from 6% to 13% of the main political parties in 2003. Private contributions and donations will gain in importance as the membership base of political parties keeps eroding in many European countries.

Private contributions to political parties and electoral campaigns are legitimate. They represent an important form of political participation and a means to express a political opinion in democracies where citizens have the right to pursue their self-interests. According to Johnstone “contributing money is an important form of political participation that effectively signals the intensity of one’s views.”⁷²

⁶⁸ Council of Europe 2004: 35.

⁶⁹ See the financial reports of political parties (Rechenschaftsberichte) published by the German Federal Parliament (Deutscher Bundestag).

⁷⁰ Report of the Independent Auditors for the year 2004.

⁷¹ Central Election Commission www.cikrf.ru

⁷² Johnstone 2005: 6. Already 70 years ago, three motives for political funding were identified in the USA:

1. Idealistic or ideological, 2. Social, aiming at social honours or access, 3. Financial, striving for material benefits (According to Pareto, Vivredo (1935) quoted in Walecki 2003).

At the same time, unregulated political finances carry considerable risks:⁷³

- They exacerbate political inequality. The principle of “one person, one vote” is compromised by unequal influence bought through contributions. Financial contributions create an uneven playing field where big money (often coming from the corporate sector) has an undue advantage. Interested money may override equal voting rights and equal access to decision-makers and elected office.
- Political money may buy access to offices and access to decision-makers. Those in a position to contribute have a greater chance to be heard by political decision makers.⁷⁴ And those able to finance political parties and electoral campaigns have a bigger chance to secure places on election lists established by political parties.⁷⁵
- Elections may less represent a competition of political positions and ideas but of the capability of political parties and candidates to raise funds, leading to an arms or propaganda race disconnected from political debate.
- Political parties and politicians risk to be coopted to represent and pursue particular interests rather than the common public interest. They are more accountable to those who pay than to their constituency. This risk is particularly great if parties rely on a small number of donors only. Parties relying on private funding may have a weaker connection to their voters and are less connected to party members. Party leaders may transform contributions into political capital to secure control over their party.
- Unregulated political finances are not transparent. It is thus impossible for voters to determine whose interests politicians are representing, and to hold them accountable.

These risks have been summarised by Russel Feingold (USA), a senator for the Democratic Party and co-author of the McCain-Feingold bill that was adopted in 2002 and aimed at banning soft money in politics.⁷⁶ According to him, the threat of increasing, unregulated campaign financing is the

13. “transformation of our representative democracy into what I call ‘corporate democracy’ in which the ‘one person, one vote’ principle is supplanted by a system that allocates influence over the political process in proportion to the amount of money an individual or group puts into that process.... In a representative democracy, elected officials are accountable to all people equally, but in a corporate democracy, they become the servants of those who give the most money. Those who have greater wealth can purchase a greater voice in the outcome of the public policy debates, for large campaign contributions easily translate into special access to lawmakers”.⁷⁷

Apart from political finances in the narrow sense, incumbent politicians have other resources at their disposal which help them maintain or consolidate political power and ensure loyalty. The so-called use of “administrative resources” is perceived as a major form of corruption in particular in central and eastern Europe but is also controversial in the established democracies of western Europe. It means the use for party politics of logistical, financial, administrative, media and other resources that are available to the executive for government functions. This includes the power of patronage with its

⁷³ See USAID 2003 or Nassmacher 2003:8.

⁷⁴ In a survey among senior executive of corporations in the USA in the mid-1990s, half the responded claimed that “securing access to law makers to gain fair consideration on issues affecting their business” was the main reason for their contribution to campaign financing, and a further 27 stated that this was least part of their reasoning (Feingold 1999).

⁷⁵ In USA, “almost 43% of the incoming freshmen (to Congress in 2003) were millionaires, compared with 1 percent of the American public” (Washington Times, 26 December 2002 quoted in USAID 2003: 12).

⁷⁶ [Postscript: In June 2007 certain provisions of the McCain-Feingold Act – that were forbidding unions and corporations from buying advertisements mentioning the name of a political candidate within 60 days of a federal election, the so-called “electioneering communication” – were challenged by the Supreme Court as limiting free speech.]

⁷⁷ Feingold 1999.

many facets, ranging from the appointment of fellow party members to political positions – which is usually considered legitimate – to more questionable practices such as the recruitment of political followers to civil service positions on the basis of political loyalty rather than merit, the appointment of political supporters to management positions in public enterprises, or the granting of public procurement contracts to reward political support.

Some forms of political finances may distort principles of democracy and be perceived as an improper form of influence, but are not illegal, if they do not violate any regulations. They may be considered forms of “legal corruption”.

Other types of political finances are clearly illegal and corrupt.⁷⁸ These include:

- Political party contributions that contravene existing laws on political financing (even if the donor did not obtain any improper benefit in return for their contributions)
- The use for campaign or party objectives of money that a political officeholder has received from a corrupt transaction (in such a case, all that differentiates corrupt political funding from regular corruption is the use to which the bribe is put by the bribe-taker)
- Unauthorised use of state resources for partisan political purposes
- Selling appointments, honours or access to information
- Extorting money from the private sector in exchange for access to public procurement contracts
- Acceptance of money in return for an unauthorised favour or the promise of a favour in the event of election to an office
- Accepting or demanding contributions in exchange for favours, contracts or policy change
- Contributions from criminal sources
- Spending of money on banned purposes such as vote buying.

Corrupt political finances thus “involve behaviour on the part of a candidate or a party, in which they improperly or unlawfully conduct financial operations for the gain of a political party, interest group, or of an individual candidate.”⁷⁹

It is arguable whether corrupt political finances are caused by the actual escalation of cost for political parties and campaigns, by the trend towards competing in elections through costly media campaigns, or by greed, ethical failure or a culture of corruption among politicians. The latter often seems the case, considering instances where

- politicians put at stake their personal reputation and political career by accepting illegal contributions which only represent a fraction of the annual budget of their party
- the same politicians or parties that are responsible for enacting political finance regulations take steps to circumvent the same regulations
- politicians refuse to see an ethical problem with illegal contributions that are collected for the benefit of the party and not for themselves.

In any event, corrupt political finances further exacerbate the risks of political money on democracy in terms of political inequality, uneven playing fields, the distortion of elections, unequal access to office and law- and decision-makers, coopted politicians and tainted politics, the evasion of transparency and accountability, and the perception of democracy as “corporate democracy”. In some countries, corrupt political finances may lead to the outright criminalisation of politics.

Unregulated political finances and in particular corrupt political finances undermine trust and participation of citizens in democratic institutions and processes.

⁷⁸ Pinto-Duschinsky 2002, Walecki 2003.

⁷⁹ Walecki 2003.

It is difficult to overstate the impact of political money on democracy, and thus the importance of enacting and enforcing regulations on political finances. Tellingly, Robert Dahl – concluding from his analysis of undemocratic elements and political inequalities built into the American Constitution and somewhat pessimistic about the prospects for greater democratisation – suggests political finance reform as a feasible strategy “designed to achieve greater *political* equality within the limits of the present American Constitution ... to reduce the vast inequalities in the existing distribution of *political resources*”⁸⁰:

14. “... democratic principles also require a fair distribution of opportunities to act on those rights and the *political resources* necessary if citizens are able to take advantage of the *opportunities*. Yet we have barely begun to explore ways to reduce the huge disparities in the political resources that citizens require if they are to participate more effectively in campaigns, elections, and influencing policy. For example, despite recent and very hard-fought changes, the way that electoral campaigns are financed still remains an egregious failure to meet elementary democratic standards”.⁸¹

Regulating political finances in Europe

In Europe, regulations on political finances are relatively recent. While the United Kingdom already adopted some rules in 1889, other countries followed much later, such as Germany 1967, Sweden 1968, Portugal 1974, Austria 1975, Greece 1984 or France 1988. Today, three quarters of European countries have regulations, which in most cases require political parties to disclose some or all of their contributions.⁸² Most countries also provide for a mixed system of private and direct or indirect public funding to political parties in order to reduce their reliance on private contributions and enhance political equality. In western Europe, regulations on political finances were mostly introduced or amended in the wake of scandals, while new democracies of central and eastern Europe often followed the example of western European countries or the advice provided by organisations such as the Council of Europe.

In April 2003, after lengthy negotiations, the Council of Europe adopted – in the form of a Recommendation – “common rules against corruption in the funding of political parties and electoral campaigns”⁸³ to provide guidance to its 46 member States. This soft law instrument contains provisions related to external sources of funding of political parties, the sources of funding for elections, on electoral campaign expenditure, transparency and reporting, supervision and sanctions. The key principles of this Recommendation are transparency through disclosure, accountability, independent monitoring and enforcement.

Political finances nevertheless remain a major problem in many European countries. The main reasons appear to be:

- Lack of political will to enforce the laws
- Laws leave loopholes and can be evaded since they hardly ever cover all political payments
- Laws may be too complex and not enforceable, that is: too much law, too little supervision and enforcement.

⁸⁰ Dahl, Robert 2003: How Democratic is the American Constitution? Page 154 ff.

⁸¹ Dahl 2003: 176.

⁸² Interestingly, the least corrupt countries of Europe have no or only few rules on political finances, such as Denmark, Norway, Iceland, Sweden or Switzerland.

⁸³ Recommendation Rec(2003)4.

Table 4: Political finance systems in Europe⁸⁴

Country/territory	System to regulate party financing?	Direct public funding to parties?	Do parties have to disclose contributions?	Do parties have to disclose expenditure?	Ban on corporate donations ?	Ban on contrib. from government contractors to political parties?
Albania	Yes	Y	Y	N	N	N
Andorra	Yes	Y	Y	Y	N	Y
Armenia	Yes	Y	Y	Y	Y	N
Austria	Yes	Y	N	N	N	N
Azerbaijan	Yes	Y	N	N	N	N
Belgium	Yes	Y	Y	Y	Y	Y
Bosnia & Herzeg.	Yes	Y	Y	Y	N	Y
Bulgaria	Yes	Y	Y	Y	N	Y
Croatia	Yes	Y	N	N	N	N
Cyprus	No	N	N	N	N	N
Czech Republic	Yes	Y	Y	Y	Y	Y
Denmark	No	Y	Y	Y	N	N
Estonia	Yes	Y	Y	Y	Y	Y
Finland	Yes	Y	N	Y	N	N
France	Yes	Y	Y	Y	Y	Y
Georgia	Yes	Y	Y	Y	N	Y
Germany	Yes	Y	Y	Y	N	N
Greece	Yes	Y	Y	Y	Y	Y
Hungary	Yes	Y	Y	Y	N	N
Iceland	No	Y	N	N	N	N
Ireland	Yes	Y	Y	Y	N	N
Italy	Yes	Y	Y	Y	N	Y
Kosovo	Yes	Y	Y	Y	Y	Y
Latvia	No	N	Y	Y	N	N
Lithuania	Yes	Y	Y	Y	N	N
Luxembourg	No	N	N	N	N	N
Malta	No	N	N	N	N	N
Moldova	Yes	Y	Y	Y	N	N
Montenegro	Yes	Y	Y	Y	N	Y
Netherlands	Yes	Y	Y	N	N	N
Norway	No	Y	Y	N	N	N
Poland	Yes	Y	Y	Y	Y	Y
Portugal	Yes	Y	Y	Y	Y	Y
Romania	Yes	Y	Y	N	Y	N
Russian Federation	Yes	Y	Y	Y	N	-
San Marino	Yes	Y	N	N	N	N
Serbia	Yes	Y	Y	Y	N	Y
Slovakia	Yes	Y	Y	Y	N	N
Spain	Yes	Y	Y	Y	N	Y
Sweden	No	Y	N	N	N	N
Switzerland	No	Y	N	N	N	N
TFYR Macedonia	Yes	Y	Y	Y	N	N
Turkey	Yes	Y	N	N	N	N
Ukraine	Yes	N	Y	Y	N	N
United Kingdom	Yes	Y	Y	Y	N	N
Total	Yes: 36 No: 9	Yes: 40 No: 5	Yes: 33 No: 12	Yes: 30 No: 15	Yes: 10 No: 35	Yes: 15 No: 29

⁸⁴ Source: Based on IDEA 2003 and updated from open sources found on the internet.

And finally, regulating political finances also carries risks. For example:

- Limits on contributions may favour those already in power
- Regulations may be used as a means to control opposition parties
- Disclosure of contributions exposes the political views of donors and may lead to reprisals
- Regulations may limit participation and engagement in democracy
- New groups or weaker parties may be driven out of the political arena.

It is thus important to keep in mind that the goal is promoting democracy and not the control of political life:

15. “Political finance policies serve democratic development not by making corruption control the primary goal, but rather by sustaining and enhancing open political contention and strong, responsible political parties. Providing essential funding .. and engaging the self-interest of citizens and groups in financing politics, and in political processes generally, are vital aspects of democracy building.”⁸⁵

This means that a proper balance needs to be found between⁸⁶:

- Providing resources for political contention versus controlling corruption
- Encouraging private funding and political engagement versus checking the influence of private contributions
- Keeping confidentiality to protect contributors versus public accountability and transparency
- Distributive policies versus regulatory policies.

Conflicts of interest

Risks for democracy

Democracy is very much based on the trust by citizens that appointed or elected officials discharge their duties in the public interest and with fairness and impartiality. It is expected that they are able to separate their public functions from their private interests.

However, throughout Europe there are countless reports on corruption and abuse of power which are related to elected representatives and members of government exploiting their position to pursue personal interests or of confusing the interests of their political party with the public interest. Controversies often focus on:

- Elected representatives pursuing private economic interests
- The compatibility of elected office with outside professional activities
- The compatibility of one elected office with other offices and functions (cumul des mandats)
- Post-office employment of elected representatives or public officials (revolving doors)
- Members of government abusing public resources for party purposes.

According to the OECD, “in the public sector a conflict of interest arises when a public official has private-capacity interests which could improperly influence the performance of his official duties and responsibilities”.⁸⁷ It is important to note that this may involve not only *actual* conflicts of interest leading to the improper performance of a public duty, but also *apparent* conflict of interest situation

⁸⁵ Johnstone 2005:3.

⁸⁶ Johnstone 2005: 7.

⁸⁷ See OECD Guidelines and OECD 2005: Managing Conflicts of Interest in the Public Sector. A toolkit. Paris.

where it appears that private interests could improperly influence the performance of public functions, or *potential* situations in that existing private interests could lead to a conflict in the future.

Since public officials and elected representatives are also private citizens or hold positions in political parties, actual, apparent or potential conflicts of interest cannot be avoided. However, they can be made transparent, declared, managed or resolved. In fact, public officials and elected representatives should even avoid the appearance of conflicts of interest. As stated by Lord Nolan in his first report following the “cash for questions” scandal in the British Parliament:

16. It is vital for the democratic process, that Members of Parliament should maintain the highest standards of propriety in discharging their obligations to the public which elects them. It is also essential for public confidence that they should be seen to do so.⁸⁸

Post-office employment or functions – so-called “revolving doors” – may cause actual, apparent or potential conflicts of interest in that such an employment may be the reward for services rendered when the person was still in office or in that the former official still disposes of valuable insider information.

A conflict of interest situation that does improperly influence the performance of the official duties and responsibilities of a public official or elected representative is not necessarily related to bribery but nevertheless is a form of corruption. And any actual, apparent or potential conflict of interest situation carries the risk of corruption with adverse effects on principles and processes of democracy. Such situations:

- contribute to declining public confidence and participation in democracy
- exacerbate political inequality in that public officials and elected representatives manage public resources and influence decisions in their own interest; this contributes to the abuse of public office for private interests, government for particularistic interests and corporate democracy
- can lead to clientelistic politics in that officials and elected representatives use their public office to maintain a network of dependent “clients” or to serve their “patrons”
- contribute to the evasion of transparency and accountability. Undeclared interests make it impossible for citizens and voters to determine which interests elected representatives are pursuing and to hold them accountable
- undermine the separation of powers if officials accumulate several public functions.

Regulating conflicts of interest and incompatibilities

Many European countries have adopted explicit conflict of interest rules, the oldest probably dating back to the British Prevention of Corruption Act of 1889. In 1996 a Code of Conduct was adopted for members of the House of Commons. The British approach is based on the idea that conflicts of interest are one aspect of ethical standards in the public sector.⁸⁹ Conflict of interest regulations have also been adopted in recent years by countries of central and eastern Europe such as Albania, Serbia or Montenegro.

Even in countries that do not have specific conflict of interest rules, incompatibilities of public functions are regulated in one way or another. These involve:

- the incompatibility of a parliamentary mandate with public, judicial, ministerial and other appointed offices. In most countries, the simultaneous exercise of a parliamentary mandate and a civil service position is restricted. In some countries, holding a judicial office and a parliamentary mandate is not allowed, while in others it is not considered a problem. In some

⁸⁸ First Nolan Report 1995: 20. For the “cash for questions” scandal see Leigh/Vulliamy 1997.

⁸⁹ See Villoria-Mendieta 2005 with an analysis of conflict of interest regulations in nine EU countries.

countries a parliamentary mandate is not considered to be compatible with a position in the government since this may infringe the separation of powers between the legislature and the executive. It may also infringe the independence of elected representatives who may be bribed with governmental appointments⁹⁰

- the incompatibility of parliamentary with other mandates. This has been of particular concern in France where politicians tend to cumulate functions in the national Parliament or Government with local mandates or positions in public or semi-public enterprises. This is considered a major cause of conflicts of interest, clientelistic politics and corruption: "...la structure du cumul et plus généralement la tolérance à l'égard du conflit d'intérêts sont au coeur du problème"⁹¹
- the incompatibility of parliamentary mandate or elected office with professional private sector activities. In many European countries it is not considered incompatible that elected representatives pursue private professional activities at the same time. In fact, it may even be considered beneficial for democracy in that it favours the representation of pluralist interests and the independence of elected representatives and prevents the establishment of a class of professional politicians disconnected from society. However, combining an elected mandate with private professional activities inevitably causes apparent, potential or actual conflicts of interest. There appears to be a growing consensus that such private interests should at least be declared and made public.⁹²

Overall, there is a wide variety of rules and regulations on conflicts of interests and incompatibilities throughout Europe. What is considered acceptable in one country may be prohibited in another, and what may be effective in one country may fail in another. However – and as the work of the OECD has demonstrated⁹³ – it should be possible to reach agreement on a basic set of guidelines that are applicable to all European countries.⁹⁴

⁹⁰ As reported in Poland in September 2006 (Süddeutsche Zeitung 1 October 2006).

⁹¹ Mény 1999: 128. Following reforms in 1985 and 2000 in France the number of mandates that can be cumulated is now restricted to two.

⁹² For example, in Germany in June 2005, the Federal Parliament adopted a modified code of conduct for members of the Deutsche Bundestag. It required MPs to submit to the President of the Parliament by 30 March 2006 information on outside employment, professional activities and interests, as well as gifts and contributions. This information was to be published in a summarised form. According to these rules, an MP must also declare his interests should a committee of which he is a member deal with a particular question related to his interests. However, in March 2006, several MPs brought action against this rule before the Constitutional Court in Germany. Some MPs not only complained against the need to declare interests, but also against §44a of the Law on Parliamentarians (Abgeordnetengesetz) which states that the "exercise of the mandate is in the centre of the activities of a member of the German Federal Parliament".

[*Postscript*: On 4 July 2007, the Constitutional Court ruled to reject the claims. It underlined the importance of the independence of parliamentarians from interests, and the right of the people to know from whom and to what extent its representative receive money or similar benefits. It also stated that in a complex economic and industrial society the functions of a parliamentary mandate can only be fulfilled if it is the main occupation of a member of parliament. The fact that the claim was rejected by the Supreme Court in a 4:4 vote nevertheless points at the complexity of the question. See:

http://www.bundesverfassungsgericht.de/entscheidungen/es20070704_2bve000106.html

⁹³ OECD Guidelines for Managing Conflict of Interest in the Public Sector.

⁹⁴ Possible risks of regulations should not be ignored. Regulations on conflicts of interest may discourage private sector businessmen or professional to enter politics and contribute to the creation of a class of professional politicians dissociated from society. The disclosure and publication of private interests and assets also raises questions with regard to the privacy rights of politicians.

Lobbying

Risks for democracy

In democratic societies people are free to organise and pursue their interests in the policy-making process.

Lobbying – defined as the practice of private advocacy in order to influence public policy – is a form of pursuing private interests in the policy-making process which gains in importance in Europe. It goes back to the 17th century when citizens in the United Kingdom gathered in a lobby near the House of Commons to express their views. Since around 1830 the term “lobbying” refers to interest groups influencing both chambers of the British Parliament. Lobbyists, that is, persons paid to influence legislation and policy making or public opinion, operate where policies are defined, that is, at local, national or supranational levels.

In the United States lobbying has been a major element of political life for many years and was regulated by law already in 1946. Expenditures for federal lobbying in 2004 are believed to have exceeded US\$ 2 billion and some 35,000 lobbyists are registered at the Congress. Lobbyists in the USA also make financial contributions to political parties or individual politicians.⁹⁵

Many politicians continue their career in the lobbying business once their mandate expires. A survey in 2000 showed that 43% of outgoing congressmen had joined lobby firms. Lobbying has often been linked to corruption, that is illegal payments and kickbacks to public officials, members of government or lawmakers.⁹⁶

Lobbying has also become an important means of influencing policies in Europe. For example, in Germany, almost 2,000 interest groups (Verbände) had been accredited to the Federal Parliament in September 2006.⁹⁷ At the level of the European Union institutions it is estimated that some 3,000 lobby groups with 10,000 employees spend Euro 90 million annually in order to influence policies.⁹⁸

While in countries like the United States and Canada lobbying is regulated and lobbyists must provide detailed accounts of their income, their clients and their contacts with public or elected officials thus permitting public scrutiny, this is not the case in Europe. Lobbying in Europe is thus shrouded in secrecy and inevitably associated with illegal influence.

This is compounded by numerous reports of elected representatives who are on the payroll of companies without an identifiable service in return, of elected representatives being employed by or managing lobby firms, or of post-office employment by lobby groups.

In the absence of regulations, there is little transparency but many opportunities and risks for corruption. Similar to conflicts of interest, the impact of “improper” lobbying on principles and processes of democracy includes that:

⁹⁵ See Public Citizen 2006: *The Bankrollers: Lobbyists' Payments to the Lawmakers They Court, 1998 – 2006*.

“Lobbyists have given more than \$ 100 million to members of Congress since 1998.” The report provides detailed accounts as to which lobbyist has given how much and to whom. It is based on information that lobbyists have to disclose.

⁹⁶ A recent example is the case of Jack Abramoff who in March 2006 was sentenced to five years and ten months in prison for fraud, tax evasion and conspiracy to bribe public officials. In connection with that scandal, leading Republican politicians Tom DeLay and Robert Ney had to give up their posts.

⁹⁷ Deutscher Bundestag: *Öffentliche Liste über die Registrierung von Verbänden und deren Vertretern*. Stand: 01.09.2006.

⁹⁸ According to Siim Kallas, Vice-President of the European Commission (*The Wall Street Journal Europe*, 6 February 2006).

- it contributes to political inequality and uneven playing fields with unequal access to law and decision makers
- politicians are coopted by particularistic interests
- the principle of transparency is evaded. Citizens are unable to identify how decisions come about and to hold politicians accountable
- policy-making is captured by well-organised and wealthy corporate interests.

With regard to the relationship between lobbying and bribery, one may argue that lobbying is a substitute for bribery:

17. Lobbying can make bribing irrelevant if it succeeds in influencing policy, and be an activity that makes bribing easier if it succeeds in undermining law enforcement. In other words, lobbying can be a substitute for, or complement to, corruption.⁹⁹

Research suggests that lobbying is often more successful in influencing policy makers than outright bribery. And data indicate a direct negative relationship between corruption and lobbying: the more a company is involved in lobbying, the less it is involved in bribery.¹⁰⁰

Lobbying appears to be the preferred means to influence policies in well-developed parliamentary democracies where a large number of veto players can be influenced. However, it seems to be also more effective than bribery in poorer or transition countries.

While bribery is used to pursue very particularistic interests, lobbying is more often used to promote the interests of certain business sectors.

On the other hand, lobbying may be more of a complement than a substitute for bribery since both operate at different levels: while lobbying is mainly aimed at policy-making institutions, bribery focuses on the execution of policies, that is the administration.

In any case, lobbying turns into corruption the moment “undue advantages” are offered to policy makers or as soon as policy-makers are at the same time lobbyists and draw personal benefit from a conflict of interest situation.

Regulating lobbying

In countries like Canada¹⁰¹ and the United States¹⁰² lobbying is closely regulated. These regulations may not fully prevent corruption, but they define legitimate lobbying and stipulate transparency and accountability.

In Europe, lobbying is very much unregulated. Some countries or parliaments require interest groups to be registered if they want to be heard¹⁰³ or if they want to have access to parliamentary premises. In others, the onus of disclosure of interests and possible conflicts of interests remains with the public official or elected representatives.¹⁰⁴ Generally, however, lobbyist and interest groups are not required to disclose their activities and the use of their finances.

⁹⁹ Campos/Giovannoni 2006: 1.

¹⁰⁰ Campos/Giovannoni 2006: 16-17

¹⁰¹ Through regulations on lobbying at federal and provincial level, the Federal Lobbyists Registration Act of 1996, an Internet Lobbyists Registration System, and a Lobbyists Code of Conduct.

¹⁰² The Lobbying Disclosure Act of 1995 requiring registration and reporting, and the Lobbying Disclosure Technical Amendments Act of 1998.

¹⁰³ As in Germany through the rules on “Verbände”.

¹⁰⁴ In some European countries a discussion of laws on lobbying are underway. Poland in 2006 adopted the Act of July 7, 2006 "On Lobbying Activity in the Lawmaking Process".

At the level of the European Union, the approach has so far been built on self-regulation by lobby-groups.¹⁰⁵ Currently, the European Commission is aiming at a "a more structured framework for the activities of interest representatives (lobbyists)" within the context of the European Transparency Initiative.¹⁰⁶ The proposal foresees:

- A voluntary registration system managed by the Commission with clear incentives for lobbyists to register (e.g. automatic alerts of consultations)
- A common code of conduct for all lobbyists which is to be developed by lobbyists themselves
- A system of monitoring and sanctions in case of breach of the code or incorrect registration.

The question of binding regulations for lobbying remains controversial. Arguments against such regulations include:

- They may reduce opportunities for civil society to participate and influence policy making, and thus reduce direct democracy
- They may be used as means to control or exclude civil society organisations. The procedure of registration can become a bureaucratic obstacle and a means of exclusion in some eastern European countries
- They favours professional lobbyists
- They may provide a legal cover for corrupt activities
- Not private sector interests should be held accountable but elected representatives and officials
- In many European countries, in particular in central and eastern Europe, the need to regulate is perceived to be limited as there are few professional lobbyists at present.

Arguments in favour are:

- They lead to more transparency and thus accountability if lobbyists need to register and make their financial reports public
- They make the relationship between lobbyists, parliamentarians and other officials transparent and permit public scrutiny
- They define legitimate lobbying and reduce suspicions of corruption
- They help lobbyists to be heard and recognised by politicians.

Abuse of the justice system

Independent, impartial, and efficient justice systems are a fundamental pillar of democracy, human rights and the rule of law in Europe. With respect to efficiency this requires among others that appropriate resources are available to ensure the functioning of the justice system.¹⁰⁷

¹⁰⁵ See in particular the code of conduct of the Society of European Affairs Professionals (SEAP):

Article 1 - General Principles (honesty, integrity, fairness, "shall not exert improper influence on staff, officials...")

Article 2 - Transparency and openness (declare who you lobby for, ensure truth and accuracy, do not disseminate false information ...)

Article 3 - Confidentiality (honour confidentiality of EU documentation)

Article 4 - Conflicts of interest (avoid conflicts of interest)

Article 5 - Employment of former EU personnel (comply with rules of EU)

Article 6 - Financial integrity (do not offer any financial inducements)

SEAP may also apply sanctions in case of non-compliance. However, this code only covers professional consultant lobbyist not employees of interest groups, think tanks or occasional lobbyists.

¹⁰⁶ See: http://ec.europa.eu/commission_barroso/kallas/transparency_en.htm

¹⁰⁷ For a survey of Europe in this respect see the European Commission for the Efficiency of Justice 2006: European Judicial Systems - Edition 2006 (2004) data. Stasbourg (Council of Europe).

The judiciary must be independent and “free to decide matters before it in accordance with its assessment of the facts and its understanding of the law, without any improper influences, inducements or pressures, direct or indirect, from any quarter or for whatever reason”.¹⁰⁸ This implies an appropriate institutional independence of the judiciary, among other things, in terms of appointments, remuneration, conditions of service, guarantees of tenure, promotions, the assignment of cases and professional secrecy as well as in terms of supervision, disciplinary measures or removal.¹⁰⁹ The bribery of judges, prosecutors and other holders of judicial office is to be made a criminal offence.¹¹⁰

In Europe, prosecutors play a key role in the criminal justice system. In all European systems they decide in cases carrying criminal sanctions whether to initiate or continue prosecutions, conduct prosecutions before the court and appeal or conduct appeals concerning court decisions.¹¹¹ States need to put safeguards in place to ensure that prosecutors can exercise their role with the necessary impartiality, independence and efficiency. This refers in particular to the assignment, re-assignment and conduct of prosecutions:

18. “All public prosecutors enjoy the right to request that instructions addressed to him or her be put in writing. Where he or she believes that an instruction is either illegal or runs counter to his or her conscience, an adequate internal procedure should be available which may lead to his or her eventual replacement”.¹¹²

In countries where the public prosecution is part of or subordinate to the government, states should take effective measures to guarantee that the powers of the government with respect to the prosecutions are clearly defined by law, that this power is exercised in a transparent manner, that instructions related to specific prosecutions are put in writing, are formally transmitted and become part of the file that is accessible to the other parties of the case.¹¹³

Independent and efficient criminal justice systems free from undue influence are particularly required with regard to the investigation, prosecution and adjudication of corruption offences. This is reflected, among others, in the Criminal Law Convention on Corruption¹¹⁴. The United Nations Convention against Corruption through article 25 requires parties to that treaty to make the obstruction of justice in relation to criminal proceedings in corruption cases a criminal offence.

¹⁰⁸ Jayawickrama, Nihal 2005: Combating judicial corruption and strengthening judicial integrity – an international perspective. Paper prepared for the Council of Europe/European Commission’s RUCOLA project against corruption in the Russian Federation. Strasbourg.

¹⁰⁹ See the work of the Council of Europe in this field, including the European Charter on the Statute for Judges, Recommendations of the Council of Europe and the work of the Consultative Council of European Judges (CCJE). At the level of the United Nations see the Basic Principles on the Independence of the Judiciary (1985) and the Bangalore Principles of Judicial Conduct (2003).

¹¹⁰ Under the Criminal Law Convention on Corruption of the Council of Europe (ETS 173). Bribery goes beyond the actual payment of a briber but already includes the offering or promising of any undue advantage.

¹¹¹ See Council of Europe Recommendation R(2000)19 on the Role of the Public Prosecution in the Criminal Justice System.

¹¹² Principle 10 of the Council of Europe Recommendation R(2000)19 on the Role of the Public Prosecution in the Criminal Justice System.

¹¹³ Principles 12 and 13 (on the relationship between public prosecutors and the executive and legislative powers) of Recommendation R(2000) 19.

¹¹⁴ Article 20 states: “Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.” A similar provision – in the form of Principle 3 – was already included in Resolution (97)24 on the 20 Guiding Principles for the fight against corruption, and subsequently a subject of the first round of evaluations by the Group of States against Corruption, GRECO.

The standards have thus been well established. In practice, however, in a number of European countries the criminal justice systems – or those responsible for investigating, prosecuting or adjudicating corruption offences – do not fully enjoy the appropriate level of independence:

- The political appointment of judges is not unusual but carries risks with regard to their independence. Their selection may not only be subject to party politics but they may also be forced to maintain close relationship with political parties once they have been appointed and are serving judges. An example are “party taxes”, that is, that judges must pay a certain percentage of their salary into the budget of political parties¹¹⁵
- Prosecutors may receive instructions from superior prosecutors or – in countries where they are under their authority – from a Minister of Justice in a transparent manner and in accordance with legal provisions. However, more often such instructions are not documented and only orally communicated. This is believed to be a most effective way to prevent corruption investigations. Prosecutors are also required to report to their superiors or ministry on suspicions and planned investigations against important public or political personalities. This opens the door for politically-motivated recommendations on action or non-action or to alert the personalities concerned. Prosecutors may be prohibited from revealing such instructions under regulations on professional secrecy. Finally, prosecutors may simply decide themselves to be “pre-emptively obedient” and abandon action knowing that this will not only prevent political interference but also damage to their career¹¹⁶
- Countries of eastern Europe have undertaken major judicial reform efforts during the past fifteen years, but in some countries the perception of judicial corruption and political interference in the judicial process is still widespread. The way in which high profile cases are sometimes conducted erodes not only public confidence but “the confidence of the judiciary itself to withstand pressure, particularly with politically sensitive cases”¹¹⁷
- The independence of judges and prosecutors may be threatened by political intimidation and personal attacks from members of the government¹¹⁸
- GRECO¹¹⁹, when evaluating how European countries implemented Principle 3 of the “Twenty Guiding Principles”,¹²⁰ identified needs for improvement in a number of countries with regard to:
 - the appointment of judges and prosecutors¹²¹
 - the independence of the judiciary from political powers and independent and impartial evaluation, supervision and accountability of the judiciary¹²²

¹¹⁵ As reported for Switzerland. See Balmelli, Tiziano 2006: Quelques remarques sur l'exigence de réformer les procédures de désignation des juges – La controverse des contributions financières réclamées par les partis. In: Die Schweizer Richterzeitung 2006/3.

¹¹⁶ See Winfried Maier 2003: How independent are prosecutors in Germany? (Maier, Winfried 2003: Wie unabhängig sind Staatsanwälte in Deutschland? In: Von Arnim, Hans Herbert, 121-131).

¹¹⁷ See International Bar Association 2005: Striving for Judicial Independence: A report into proposed changes to the judiciary in Russia. And the Resolution 1418 (2005)1 of the Parliamentary Assembly of the Council of Europe regarding “the circumstances surrounding the arrest and prosecution of leading Yukos executives”.

¹¹⁸ As alleged in Italy in recent years. See ICJ/Centre for the Independence of Judges and Lawyers – newsroom 4 July 2003.

¹¹⁹ See the respective GRECO reports on www.coe.int. For a comparative study of the results of the first round of GRECO evaluations see Eser, Albin/Kubiciel, Michael 2005: Institutions against Corruption. Baden-Baden.

¹²⁰ As well as in the USA which is not a European country but a member of GRECO.

¹²¹ In Bosnia and Herzegovina, Malta, Slovenia and “the former Yugoslav Republic of Macedonia”.

¹²² In Albania, Lithuania, Romania and Slovakia.

- the independence of the prosecution office and the risk of undue influences on the exercise of prosecutorial powers.¹²³

Justice systems in Europe thus appear to be vulnerable to political interference, undue influence, obstruction and corruption – some less and others more so.¹²⁴

Judicial action against corruption at the political level may furthermore be prevented by the fact that heads of state, members of government or parliament enjoy immunity and may not be investigated for corruption. Concern in this respect is reflected in Guiding Principle 6 “to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society”,¹²⁵ and has also been reviewed during the first round of GRECO evaluations. With the exception of very few countries – such as Norway, Slovakia and Slovenia – heads of state enjoy immunity, and in some even absolute, non-liability immunity.¹²⁶

With regard to members of parliament, immunity is generally granted in order to protect parliamentary speech and vote. However, in most countries parliamentarians enjoy also forms of immunity with regard to actions not directly related to parliamentary functions, which may include corruption and other criminal offences. Often such immunities can be lifted by the respective parliament following a specific procedure. However, in some cases preliminary investigations cannot be commenced prior to the approval of the parliament. It may therefore not be possible to substantiate suspicions of an offence before a request for lifting of immunity and de facto it is the parliament itself and not a judge or prosecutor that decides whether a criminal investigation is to be started. Furthermore, coercive, covert investigative measures such as wire tapping become meaningless.

Immunities for members of government are less common, although in many countries ministers are also member of parliament and thus benefit from parliamentary immunity. However, about half of European countries grant specific immunities to members of government which is more difficult to justify by principles of democracy and the rule of law .

In sum, the independence and integrity of the justice system and of those investigating, prosecuting and adjudicating corruption offences is weakened by:

- political pressure on judges, prosecutors and investigators
- the instruction of the prosecution by the executive
- patronage and political influence on the selection, appointment, promotion or removal of judges and prosecutors
- politically motivated criminal proceedings or evasion of proceedings
- immunities to prevent criminal proceedings and protect corrupted politicians.

This contributes to the corruption of democratic principles, including the rule of law, the separation of powers and human rights, in particular the right to a fair trial and the fair administration of justice.

¹²³ In Denmark, Estonia, France, Germany, Georgia, Hungary, Romania and Spain.

¹²⁴ Trust in the independence and integrity of the judicial system varies considerably between European countries and appears to be rather low in about one third of them See for example the judicial and legal effectiveness and integrity index in Kaufmann 2004: in Denmark, Finland, Germany, Iceland, Switzerland and the United Kingdom 90% or more of firms give satisfactory ratings with regard to judicial independence, judicial bribery, quality of legal framework, property protection and effectiveness of the parliament and the police, while in countries such as Bosnia and Herzegovina, Croatia, Georgia, Russian Federation, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine 20% or less of firms are satisfied with judicial and legal integrity and effectiveness.

¹²⁵ Council of Europe Resolution (97)24 on the 20 Guiding Principles for the fight against corruption

¹²⁶ In monarchies such as Belgium, Denmark, the Netherlands and others, but also in the Czech Republic.

Conclusion: corruption and the future of democracy in Europe

The past

Political power carries the risk of corruption. Ever since the invention of democracy in ancient Athens societies have therefore been concerned to prevent the abuse of power and to hold elected representative accountable. And throughout history societies have been struggling with the problem of political corruption.¹²⁷ There is no indication that societies in Europe – or elsewhere for that matter – have ever approved of corruption.

Over time, corruption scandals have often helped confirm democratic principles or propriety in public life. An ancient example is the case of Cicero prosecuting Gaius Verres (in 70 BC) whose methods of governing Sicily shared many characteristics with that of modern criminal organisations. With that Cicero not only intended to defend the public interest and the rights of the people of Sicily but also to rebuild public trust in the justice system.¹²⁸

In the United Kingdom, the House of Commons already on 2 May 1695 adopted a resolution against the offering of bribes to members and the lobbying for reward:

19. The Offer of any Money, or other Advantage, to any Member of Parliament, for the promoting of any Matter whatsoever, depending, or to be transacted, in Parliament, is a high Crime and Misdemeanour, and tends to the Subversion of the Constitution.¹²⁹

In the course of the centuries, the House of Commons confirmed the standards by which public and political offices should be governed on numerous occasions, in particular following the “cash for question” scandal revealed in 1994.¹³⁰ The Nolan Committee which had been tasked to inquire into the standards in British public life stated in 1995 the “seven principles of public life”, namely selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and recommended a code of conduct. Such a code of conduct was then adopted in 1996 and in a revised version again in 2005.¹³¹

In Europe, corruption scandals often not only helped reconfirm principles of democracy, but led to anti-corruption legislation and strategies in general, and thus had a positive impact.

The present

Democracy in Europe is based on a shared set of principles and processes which are found in European countries in various forms and combinations. They include human rights and freedoms, elections, political equality, government for the common public interest, the separation of powers, the rule of

¹²⁷ Apparently, from the very moment that democracy as a system of political organisation emerged in ancient Athens around 470 BC, accusations of corruption were used as a means of political advancement and of discrediting opponents. In 463, for instance, Pericles tried to overthrow Kimon, the then leader of Athens, for treason and having accepted bribes from the King of Macedonia. Kimon had used his wealth to feed the poor and win their affection. He was acquitted in this particular case. Pericles then went on to “bribing the masses wholesale” by providing for “allowances for public festivals, fees for jury service, and other grants and gratuities” (Alatas 1991: 14-15).

¹²⁸ Giebel, Marion 1977: 29-30. For the speeches of Cicero against Verres see Fuhmann, M (ed) 1995: Cicero: Die Reden gegen Verres – In Verrem. Düsseldorf/Zürich.

¹²⁹ Quoted in: House of Commons (United Kingdom) 2005: The Code of Conduct together with the Guide to the Rules relating to the conduct of Members. London. Page 39.

¹³⁰ See Leigh/Vulliamy 1997

¹³¹ House of Commons (United Kingdom) 2005: The Code of Conduct together with the Guide to the Rules relating to the conduct of Members. London

law, accountability, transparency, the competition of political parties and the pluralism of interests. In fact, most countries in Europe are considered to be democratic.

About one third of European countries also score very well in general surveys on the perception of corruption and only few are found in the bottom part of the table. Nevertheless, it appears that the main corruption problem in Europe is one of political corruption, and in most societies political parties are perceived to be the most corrupted institutions.

In European democracies today, political finances, conflicts of interest, lobbying and the political influence on justice seem to carry the greatest risk of corrupting principles and processes of democracy. They may exacerbate political inequality, distort elections and the political competition between parties, prevent transparency and thus accountability, undermine the separation of powers, strengthen the influence of corporate interests, diminish the voice of citizens and exclude them from decision-making, and further weaken their confidence in democracy.

What about the future?

It has been argued throughout this paper that political corruption in Europe carries the *risk* of undermining principles and processes of democracy. This does not mean that it poses an actual, imminent threat to the survival of democratic systems. A general statement that politics in Europe is corrupted would be an unfounded and unfair exaggeration. The intense debates on public policies in many European countries suggest that the voices and interests of citizens still count – often to the point that it is impossible to reach agreement on major reforms. Furthermore, considering anti-corruption measures taken by many countries in recent years – in particular at the level of the public administration – there is reason for optimism.

Nevertheless, reviewing again the challenges to the future of democracy referred to in an earlier section of this paper, one cannot but conclude that these challenges will be compounded by political corruption or increase corruption risks:

- Political corruption will contribute to a further decline in confidence and participation in democratic institutions and processes, and thus to the “major generic problem of contemporary European democracy”.¹³² The perception of high levels of corruption of political parties in most European countries, is a clear indicator of this risk. During the past ten years, important efforts have been undertaken in many countries to strengthen good governance. These helped increase transparency, accountability, efficiency and service delivery within the public administration. At the same time, elected representatives and political leaders have often not been *seen* to improve, to introduce and to enforce rules concerning themselves, or to represent themselves the highest standards of integrity. Parliaments may have been adopting stricter rules on political finances but political parties are believed to ignore these regulations – and in some cases have been seen to actively circumvent these rules. Parties are not always seen to distance themselves clearly from corrupted politicians but to the contrary sometimes even engineer their comeback. Post-office employment of senior political leaders in the private sector (revolving doors) – although often not illegal – seems to confirm the general reputation of elected representatives as self-serving. Political leaders and elected representatives are sometimes believed to show little respect of the independence of the justice system and to exercise undue influence on justice when it serves their purpose. Such behaviour nourishes the distrust of citizens in political life.
- In the context of globalisation and Europeanisation, political corruption is likely to increase as a result of the steady erosion of democratic decision-making and accountability of elected national governments. The influence and bargaining power of transnational corporations will

¹³² Council of Europe 2004: 131.

continue to grow and governments will increasingly negotiate and account for policies to them rather than their citizens. The capacities of elected governments will further shrink through the transfer or outsourcing of responsibilities to administrative, regulatory or expert bodies which are not democratically accountable and thus more at risk of being corrupted.

- The growing influence of corporate interests on policy-making is likely to be reflected in an expansion of lobbying activities and other legal and illegal forms of influence. An increasing number of elected representatives will pursue other professional activities and find themselves in conflict of interest situations.
- As political competition becomes more costly, political parties will become more dependent on private sector contributions to cover these costs and make up for declining membership fees. Political finance-related corruption can be expected to increase accordingly.

Political corruption – related to political finances, conflicts of interest and lobbying – will thus facilitate the corporate capture of democracy. The impact of political corruption on the principles of democracy is likely to become more important, and this will be primarily reflected in the further decline of public confidence and participation in democratic institutions and processes.

Suggestions for the future

The prevention and control of corruption – and in particular of political corruption – can make a positive contribution to the future of democracy in Europe. Meaningful anti-corruption measures can reinforce the rule of law, transparency and accountability, political equality, the pluralism of interest, political competition and government for the public good, and help re-gain public confidence and participation in democratic institutions and processes.

The overriding goal of anti-corruption strategies should be to enhance transparency and accountability in political life by:

- improving the rules on political finances and in particular to ensure the actual enforcement of such rules
- holding corrupted elected representatives liable by criminalising bribery and limiting immunities
- regulating conflicts of interest – including the declaration and publication of interests – and enforcing such regulations
- regulating lobbying, including the mandatory disclosure of lobbying activities
- ensuring the independence of those investigating, prosecuting and adjudicating corruption offences
- facilitating media scrutiny.¹³³

Anti-corruption measures should be handled with care, as they are themselves not without risk and can have unintended consequences for democracy. For example, corruption control can become highly politicised with accusations of corruption against political opponents becoming a feature of political struggles or being used for the settling of accounts after elections. Anti-corruption measures themselves may become an issue of political controversy or be used as a pretext for limiting civil rights and freedoms. Regulations on conflicts of interest, lobbying and political finances may reduce private sector involvement in public life and limit the vitality of politics.¹³⁴

¹³³ Transparency rules alone may not be sufficient considering the possibilities for covert transactions within the context of globalisation. As proposed by Warren (2006: 806) a “democratic conception of corruption suggests that it may be time to complement transparency with a different approach, namely empowering those harmed by corruption and expose and police the harms they suffer.”

¹³⁴ See Johnstone 2005.

Anti-corruption measures can be depoliticised by the preparation – in an inclusive consultation process – of long-term strategies, and the creation of independent anti-corruption services.

The challenges of globalisation warrant that anti-corruption efforts be further strengthened at the international level in order to develop common responses and to ensure that global players find similar rules and conditions in the countries in which they operate.

Globally, the United Nations Convention against Corruption is an important step in this direction. In Europe, the Criminal and Civil Law Conventions of the Council of Europe help harmonise the basic legal framework against corruption. Common rules are available on the financing of political parties and electoral campaigns. Other standards focus on the independence and the efficiency of the justice system. Monitoring mechanisms have been created to ensure compliance by European countries with these standards.¹³⁵ However, common solutions still need to be found for the critical issues of conflicts of interest and lobbying.

At the same time, the primary responsibility for making democracy work, for enhancing transparency and accountability and for countering corruption rests with national governments and parliaments, and with citizens who – in democratic societies – can choose to exercise the right to hold their representatives accountable.

¹³⁵ Such as in particular the Group of States against Corruption (GRECO) of the Council of Europe.

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