

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



EUROPSKI REVIZORSKI SUD
CORTE DEI CONTI EUROPEA
EIROPAS REVĪZIJAS PALĀTA
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK
IL-QORTI EWROPEA TAL-AWDITURI
EUROPESE REKENKAMER
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY
TRIBUNAL DE CONTAS EUROPEU
CURTEA DE CONTURI EUROPEANĂ
EURÓPSKY DVOR AUDÍTOROV
EVROPSKO RAČUNSKO SODIŠČE
EUROOPAN TILINTARKASTUSTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

The European Court of Auditors' View on the Commission's Report on Anti-Corruption Measures

THE EUROPEAN COURT OF AUDITORS' VIEW ON THE COMMISSION'S REPORT ON ANTI-CORRUPTION MEASURES

Main message

1. The ECA welcomes the publication of this report¹ on combating corruption, the first such document issued by the Commission. This report on anti-corruption measures, particularly within the area of public procurement, is a substantive contribution to the dialogue surrounding fraud and corruption. This dialogue is an important contribution to accountability of (national) public institutions in the eyes of European citizens.
2. The Commission's report describes trends and developments in corruption, and identifies a number of successful anti-corruption measures which are being used in Member States. In doing so, the report covers a wide range of issues and specific areas where corruption is a particular risk. However, the report is mainly of a descriptive nature. It is based on the outcomes of round tables, Euro barometer information and a review of anti-corruption measures. It lacks information on concrete findings.
3. At first glance, the outcome of the report seems alarming. But the findings of the report are primarily based on the perceptions of citizens and companies, and on anti-corruption measures which are actually being used. Reality may be different. The report offers little in the way of analysis on how these perceptions relate to the Commission's own practical experiences or those of Member States.
4. The report also fails to make any connection with the findings of OLAF, the EU's own anti-fraud office. The report therefore lacks the information that the European Parliament, Council and national parliaments of Member States require in order to substantiate policy decisions on anti-fraud and anti-

¹ COM2014/38 final.

corruption measures. It is also disappointing that the EU institutions are not covered in the Commission's first report concerning anti-corruption measures.

5. The ECA considers that thorough (timely and accurate) data and independent evaluations, at EU and Member State level, needs to be further developed in order to identify: (1) the actual risk areas; (2) reasons why corruption occurs and; (3) which measures need to be taken, and which have proved to be effective. Basing anti-corruption measures on perceptions instead of the actual occurrence of corruption brings with it the risk that these measures might be unnecessarily burdensome and fail to address the real causes for corruption. It might even make corruption more pervasive.

Background

6. The EU anti-corruption mechanism of 2011, which is based upon Article 83 of the TFEU, obliges the Commission to produce a report on combating corruption every second year, starting in 2013². The Commission report contains barely any reference to the legal framework for anti-corruption measures in the EU.

7. EU action is based upon the principle of transparency (Article 15 TFEU). EU citizens have an enforceable right to good administration; this includes the right to have their affairs handled impartially and fairly (Article 41 of the Charter³). Article 310 TFEU stipulates that the Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union. Article 325 TFEU focuses on combating fraud; this Article is the legal basis for the work of inter alia OLAF. The Article stipulates inter alia that the Union and Member States should take measures which have a deterrent

² C(2011) 3673 final (6 June 2011) Article 4 'Publication of the EU Anti-corruption Report.

³ Charter of Fundamental Rights of the European Union.

effect, and which provide effective protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

8. It should be noted that Article 83 TFEU, which serves as the legal basis for the anti-corruption report, is of a more general nature. It deals with different kinds of cross-border criminality and introduces law-making competences for the European Parliament and the Council which aim to promote EU co-operation in the field of justice. Article 325 TFEU is more specifically focused on the fight against fraud in connection with the financial interests of the EU. It is unclear how the Commission sees the relationship between Article 83 and 325 TFEU with regard to the anti-corruption report and the Commission's annual report on the fight against fraud.⁴ In this context the ECA refers to the conclusions and recommendations in its Opinion 8/2005⁵ concerning simplification and consolidation of Community anti-fraud legislation with a view to avoiding duplications and overlapping or contradictory provisions.

First anti-corruption report

9. Corruption and fraud erode trust in public institutions and democracy; they also undermine the functioning of EU's internal market. The publication of the report is a promising start, and the dialogue triggered by it can only be helpful. A dialogue of this kind is important because it is an important contribution to accountability of (national) public institutions towards EU citizens. Enhancing good governance by improving transparency and accountability – in particular in the field of anti-corruption measures – is essential for gaining public trust in public institutions. A policy of transparency and accountability supports that these institutions carry out their duties properly, and ensures the integrity of their staff. Transparency and integrity are key conditions for fighting fraud and corruption.

⁴ COM(2013) 548 final.

⁵ Opinion No 8/2005 (section VI, Conclusions and Recommendations).

10. The Commission needs to consider the content and recommendations of the anti-corruption report. These aspects are discussed in more detail in the following paragraphs.

Content

11. In its first anti-corruption report the Commission does not provide a link to the overall issue of fraud and corruption in the EU and its Member States. The Commission does, however, provide arguments for its thematic focus on public procurement. Public procurement is an area with a high impact on the error rate estimated by the ECA and therefore considered as a high risk area. The Court's estimate of the error rate is not a measure of fraud or corruption. Public procurement errors can mean that the objectives of public procurement rules – promoting fair competition and ensuring that contracts are awarded to the best qualified bidder – have not always been achieved. The ECA reports any suspected cases of fraud and corruption among these failures to OLAF which has investigative powers.

12. The ECA recognises the importance of public procurement, the issue the Commission has selected for its thematic chapter. In 2013 the ECA identified public procurement as specific topic for future performance audits, and is currently carrying out a performance audit on this issue in the area of the Structural Funds. It also has plans to carry out a performance audit in the area of Internal Policies

13. The anti-corruption report presented by the Commission evaluates the achievements of national initiatives. No convincing explanation is provided for why the EU institutions and bodies are excluded from the analysis. However, it is apparent from the report itself and from the feedback it received from inter alia the European Ombudsman⁶ and debate in the European Parliament⁷ that

⁶ “...to include the EU institutions in the next anti-corruption report.” European Ombudsman. Press release no. 4/2014 (4 February 2014).

the omission of EU institutions and bodies from the Report was unfortunate. The ECA wishes to stress that its annual and special reports do not, on their own, make up for this omission.

14. The European Union does not currently participate in the Council of Europe Group of States against Corruption (GRECO)⁸. All 28 EU Member States are already members of GRECO. It is hard to explain to EU citizens that the national institutions of all 28 EU member states are evaluated against the Council of Europe's anti-corruption standards, whereas the EU administration is not. Repeatedly the Council has requested the Commission to undertake action to realise such membership.⁹

15. The power of data: citizens are important stakeholders in public institutions and therefore as much information as possible should be made available to them. Open data means that the data produced by public institutions can be used, reused and redistributed by anyone. The Commission's report already refers to examples where good use is made of information already available (see **Box 1**).

⁷ Civil Liberties Committee, 12 February 2014.

⁸ http://www.coe.int/t/dghl/monitoring/greco/default_EN.asp?

⁹ See par. 4.4.5 of the Stockholm Programme : *An open and secure Europe serving and protecting the citizen*, Council document 17024/09, adopted by the European Council on 10/11 December 2009. The Council reiterated its request to the Commission for GRECO membership in February 2013.

Box 1. Power of data: Slovakia¹⁰

Open Local Government Initiative – Slovakia

In the framework of the external monitoring of public spending, the Open Local Government initiative of Slovakia ranks 100 Slovak towns according to a set of criteria based on transparency in public procurement, access to information, availability of data of public interest, public participation, professional ethics and conflicts of interests. The project is run by Transparency International.

16. The information provided in the report relates very much to outcomes of polls among citizens and companies and a description of anti-corruption measures planned or implemented. This approach brings up the question of corruption perception versus reality. The widespread use of corruption perception polls requires closer examination. Although the outcome of some polls is alarming at first sight, when it comes to the concrete facts about the frequency of corruption in the different Member States, the reality might be somewhat different. However, corruption is to be taken seriously. Unfortunately, the report does not elaborate on any studies done in this area, such as for example the PWC/ECORYS study undertaken on behalf of the European Commission in 2013¹¹. Such studies, like the Eurobarometer survey on corruption, show that the frequency of corruption is often much lower than the perception of citizens and policy makers would predict. Focusing on perceptions instead of actual data may unnecessarily fuel negative sentiments of citizens about public administration, be it in Member States or at EU level.

17. There are limitations to what corruption polls can say, as explained in the example below (see example **Box 2**). However, it is alarming that 25 % of

¹⁰ COM(2014) 38 final, p. 28.

¹¹ http://www.pwc.be/en_BE/be/publications/2013/pwc-olaf-study.pdf

European citizens consider it normal to provide a bribe in exchange for a public service.

Box 2. Example: corruption polls in the Netherlands¹²

61 per cent of the Dutch agree that corruption is widespread in their home country. To the contrary, two percent of the Dutch say that they have been asked or expected to pay a bribe in the past year. The reasons for this discrepancy are not discussed.

18. As indicated before the Commission refers to information available from existing monitoring systems, data from national public authorities, and research carried out by academic institutions and independent experts¹³ as sources of information for the anti-corruption report. Despite this, the report is rather descriptive and lacks substantive (operational) information about the effectiveness and impact of different anti-corruption measures. The report is not based on rigorous evidence (see example **Box 3**).

¹² http://europa.eu/rapid/press-release_MEMO-14-67_en.htm Summaries of the national chapters from the European Anti-Corruption Report.

¹³ COM(2014) 38 final, p. 37.

Box 3. Example: assessing the importance of the regional context: what matters?¹⁴

The anti-corruption report claims to “... focus [...] on what works and what does not work in terms of dealing with corruption in a particular country.”

The ECA considers the national and regional context to be important, because it shapes the impact of different measures. This crucial local context makes it difficult to generalise about the effectiveness of different measures. However, there is a lack of comparative (cross-country) analysis that could identify which contextual factors matter, and why. In addition, there is no information on the interactions and interdependencies between different anti-corruption measures. How are different interventions supported (or constrained) by other measures and wider governance reforms such as public financial management reforms (e.g. tax administration and budget management, government statistics, procurement authorities, supreme audit institutions)?

19. The report does not address the reasons why corruption, particularly in the area of public procurement, occurs. By focusing on control mechanisms, prevention, and risks, the report overlooks this question. However, it is one which must be addressed if effective measures are to be found which will tackle the problem. For many years, the ECA has stressed the need to simplify rules, including in the area of public procurement: the more complex that rules are, the higher the number of errors there tends to be. Amongst other causes, the implementation of complex rules can also create an environment where corruption and fraud can be concealed. The complexity of procurement rules is likely to be a factor which contributes to many errors and increases the risk of corruption.

¹⁴ COM(2014) 38 final, p. 39 (assessment methodology and use of indicators).

20. Concerning some of the control mechanisms mentioned, such as rules on conflicts of interest, or the effectiveness of anti-corruption agencies, the ECA has issued audit reports which provide recommendations that can be useful in a wider field¹⁵.

21. Thorough data on the actual occurrence of corruption are needed, together with a subsequent analysis of why corruption occurs, for the Commission to effectively justify its proposals for anti-fraud and anti-corruption measures that are not only provided for in Article 83 TFEU but also in Article 325(4) TFEU (“[...] affording **effective** and equivalent protection in the Member States and in all of the Union’s institutions [...]”).

Commission recommendations

22. The recommendations in the report represent a starting point which merit considerable further development: they are rather general, and for that reason superficial (see examples in **Box 4** below). In the general recommendations more details should be included on which actions need to be taken, how they can be realised, and by whom. Information about monitoring provisions would also be useful. However, for measures to be taken at country level the country annex to the anti-corruption report provide more specific recommendations.

¹⁵ Reference is made to SR 15/2012 ‘Management of conflict of interest in selected EU agencies’ and SR 2/2011 regarding the EU’s Office de Lutte anti-fraude (OLAF).

Box 4. Recommendations: examples¹⁶

1. Implement targeted anti-corruption policies for regional and local administrations. Risk assessments can also helpfully look into the particular vulnerabilities of this level of administration.
2. Ensure common minimum standards of transparency at the level of regional and local administrations in relation to public procurement procedures and the implementation phase of public contracts.
3. Ensure sufficient capacity of public procurement review bodies, consultative organs and oversight bodies, as well as courts of audit, as the case may be, to carry out their verification tasks.
4. Ensure effective coordination between authorities tasked with public procurement oversight.
5. Ensure effective follow-up mechanisms for repealing decisions and/or annulling public contracts in due time when corrupt practices have affected the process.

Conclusions

23. The biennial anti-corruption report is an opportunity for the Commission to start an EU-wide dialogue and establish substantive links between transparency, integrity, corruption, fraud and accountability. The ECA welcomes this first anti-corruption report, which contains information on trends concerning corruption and provides details of good practices being applied in the field of anti-corruption measures.

24. However, the report is overly descriptive, offers little analysis and does not present substantive findings, relying instead on the results of corruption perception polls, which are an instrument whose usefulness is limited. The ECA

¹⁶ COM(2014) 38, final, pp. 35 and 36.

identifies a need for more operationally relevant research and rigorous evaluations, including an analysis of actual risk areas. This would establish an evidential basis, currently missing, for the objectives and results of different anti-corruption measures, and shine a light onto the interactions between different anti-corruption interventions in Member States and by EU institutions like OLAF on behalf of the Commission.

25. EU institutions should have been included in the Commission's first anti-corruption report. Any information from the Commission would still be most welcome, even at this late stage. No convincing reasons are provided why the European Union does not yet participate in the Council of Europe of Group of States against corruption (GRECO). The European Union should engage with GRECO with the aim of gaining full membership, the objective being to bring the EU administration onto the same level as the governments of its 28 Member States, whose compliance with Council of Europe anti-corruption standards is already subject to evaluation.