Monitoring the EU Accession Process: Corruption and Anti-corruption Policy

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Corruption and Anti-corruption Policy in the EU Accession Process

1. INTRODUCTION

This Overview and the accompanying country reports assess the extent of corruption in the candidate States of Central and Eastern Europe and the legal and institutional structures and policies with which Governments are seeking to combat it in light of the EU accession process and evolving EU norms and standards.

All EU candidate States have made impressive progress towards establishing (or re-establishing) democracy, the rule of law and a market economy. However, the post-communist transition has been troubled by corruption that has – or is at least perceived to have – persisted or flourished. The European Commission has repeatedly expressed concern at levels of corruption in candidate States, and has made it clear that making progress in the fight against corruption is a task all candidate States have to carry out in order to fulfil the conditions for EU membership.

The focus of the Commission on corruption in the candidate States is justified: there is a clear consensus that corruption undermines both democracy and markets, and post-communist States are especially vulnerable to corruption due to their historical legacy and the nature of transition. However, assessing levels of corruption in candidate States has proven difficult for the Commission, not only because the corruption problems of Central and East European (CEE) States are often different to the corruption problems faced by EU member States, but also because the European Union itself lacks a clear anti-corruption framework. As a result, the European Commission has not established clear benchmarks[1] for candidate States in the area of corruption or anti-corruption policy.

This situation gives rise to several problems. First, in the absence of a comprehensive framework for analysis of the extent, causes and nature of corruption in CEE States, the Commission has assessed corruption on a basis that tends towards a criminal law or "bribocentric" perspective. This perspective misses some of the most important aspects of corruption-related problems in these States, ranging from societal tolerance of corruption to more-or-less deep-rooted traditions of allocating resources on the basis of patronage networks. Second, in a number of cases the effectiveness of the anti-corruption policies the

[1] In the sense of a minimum or acceptable standard against which the performance of States can be measured or judged.

Commission has pressed candidates to adopt – in particular the focus on criminal proceedings and control-oriented solutions – has not been demonstrated in other Western liberal democracies.

Third, the Copenhagen mandate allows the Commission to demand anti-corruption policies from candidate States that it is unable to enforce on member States. A clear example of the difference in the Commission's leverage *vis-à-vis* member States and candidates States is provided by the Council of Europe Criminal Law Convention on Corruption. The Commission has consistently pushed candidate States to sign and ratify the Convention. As a result, as of June 2002 eight of the ten candidate States had ratified the Convention, compared to only three out of fifteen member States, giving rise to a justified perception that candidate countries are being held to different standards from those that currently obtain within the EU. In this context, the sluggishness of EU member States in ratifying the 1995 Convention on the Protection of the European Communities' Financial Interests of the Union (see Section 3.2.1) illustrates the limits to the Commission's capacity to implement any EU-wide anti-corruption policy.

These factors have combined to make the integration of anti-corruption goals into the accession framework difficult. Moreover, the primary focus of accession negotiations on harmonisation and implementation of the *acquis communautaire* limits the scope for inclusion of anti-corruption policy: explicit anti-corruption *acquis* is limited, and effective anti-corruption policy covers a broad range of measures and institutional practices, beyond the scope of accession negotiations.

Thus, the scenario that appears to be increasingly likely is that a number of countries with persistent and serious problems of corruption will be admitted to a European Union which lacks an adequate framework for dealing with these problems even in current member States. This scenario is a source of concern for two main reasons. First, while the EU has probably paid less attention to corruption in member States because it has not been perceived as undermining the implementation of the *acquis*, there are increasing signs that corruption in a number of member States represents a significant threat to the quality and functioning of democratic institutions. Second, the extent of corruption in a number of candidate countries may undermine both implementation of the *acquis* and the quality of democratic institutions. Corruption undermines some of the core values to which the Union subscribes, and an unavoidable challenge of the future is to develop mechanisms for promoting effective anti-corruption policy in all the States of an expanded Union.

On the other hand, these observations are mirrored by positive opportunities. While the European Commission itself has had only limited success in this area to date, corruption is being tackled actively by other international organisations, and in particular by the Council of Europe, an organisation that enjoys very close ties to the

EU. The Council has developed a set of broad anti-corruption "Guiding Principles," an active and functioning framework for monitoring adherence to the Principles – the Group of States Against Corruption (GRECO) – and two anti-corruption conventions. The EU has played an important role in pushing candidate States to ratify the conventions, and an important anti-corruption component of the EU accession process has been the joint Council of Europe-EU "OCTOPUS" programme, which has provided advice to candidate States on measures to fight organised crime and corruption.

Moreover, given the much broader scope of the Guiding Principles, the Council would appear to be the obvious candidate to take over the "corruption component" of the EU's Copenhagen criteria, both through the formal adoption of its guidelines by the EU, and by entrusting of the Commission's monitoring role to GRECO. There are clear ways in which the EU could move in this direction (see Section 4). Though GRECO has operated on an essentially voluntary and peer-review basis, the combination of its functioning monitoring mechanism with the more institutionalised leverage of the EU may well be the best way of promoting effective anti-corruption policy.

1.1 Corruption and EU Accession

1.1.1 Corruption and democracy: a key issue for accession

Corruption has consistently been one of the European Union's major concerns in candidate States since its initial 1997 assessment in the "Agenda 2000" report on CEE countries' applications for membership. According to the European Commission's 1998 overall report on progress towards accession by candidate countries,

> The fight against corruption needs to be strengthened further. The efforts undertaken by the candidate countries are not always commensurate with the gravity of the problem. Although a number of countries are putting in place new programs on control and prevention, it is too early to assess the effectiveness of such measures. There is a certain lack of determination to confront the issue and to root out corruption in most of the candidate countries.[2]

The 1999 overall report is more specific about the reasons for corruption:

[2] Commission of the European Union, *Composite Paper: Reports on Progress towards Accession by Each of the Candidate Countries*, November 1998, p. 6, available at <http://europa.eu.int/comm/enlargement/report_10_99/>, (last accessed 6 August 2002).

> Corruption is widespread… exacerbated by low salaries in the public sector and extensive use of bureaucratic controls in the economy… The authorities lack conviction in the fight against corruption with the result that the anti-corruption programs which have been launched in most countries are having limited results.[3]

According to the November 2000 assessment,

> This assessment [from October 1999] remains valid. Corruption, fraud and economic crime are widespread in most candidate countries, leading to a lack of confidence by the citizens and discrediting the reforms. Anti-corruption programs have been undertaken and some progress made, including accession to international instruments in this area, but corruption remains a matter of serious concern.[4]

In 2001 the Commission essentially repeated this assessment, although it acknowledged progress:

> This assessment [of corruption as a serious problem] remains largely valid, although several positive developments have taken place. In most countries anti-corruption bodies have been strengthened, and progress has been made in legislation, in such areas as public procurement and public access to information. Encouraging developments in several countries as regards the reform of public administration also contribute to the fight against corruption. Notwithstanding these efforts, corruption, fraud and economic crime remain widespread in many candidate countries, where they contribute to a lack of confidence by the citizens and discredit reforms. Continued, vigorous measures are required to tackle this problem.[5]

These statements are reflected in the Commission's individual Regular Reports on each candidate country's progress towards accession: in November 2001 the Commission in its summary conclusions of the individual country assessments judged that corruption was a "serious" problem or "source of serious concern" in five of the ten Central

[3] Commission, *Composite Paper: Reports on Progress towards Accession by Each of the Candidate Countries*, October 1999, p. 12, available at <http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/composite_en.pdf>, (last accessed 6 August 2002).

[4] Commission of the European Union, *Enlargement Strategy Paper: Report on Progress towards Accession by Each of the Candidate Countries,* November 2000, p. 16, <http://europa.eu.int/comm/enlargement/report_11_00/pdf/strat_en.pdf>, (last accessed 6 August 2002).

[5] Commission of the European Union, *Making a Success of Enlargement: Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries,* November 2001, p. 7, <http://europa.eu.int/comm/enlargement/report2001/strategy_en.pdf>, (last accessed 6 August 2002).

Eastern European candidate States (Bulgaria, Czech Republic, Poland, Romania and Slovakia), a continuing problem or source of concern in three countries (Hungary, Latvia and Lithuania) and refrained from criticism in only two countries (Estonia and Slovenia). This and the assessment from 2001 cited above suggest that, at least in the eyes of the Commission, corruption remains a serious problem – if not a potential barrier – in relation to EU accession.

1.1.2 EU criteria: the Copenhagen criteria

A clear implication of both the Regular Reports and the Accession Partnerships (see below) is that the political conditions that must be satisfied for countries to enter the EU include demonstrable success in the fight against corruption. The political conditions that candidate countries must fulfil to be eligible for accession were laid down at the Copenhagen European Council in 1993. According to the "Copenhagen criteria," membership requires:

> 1. that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;
> 2. the existence of a functioning market economy and the capacity to cope with competitive pressures and market forces within the Union; and
> 3. that the candidate [has] the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

In each of these areas corruption is clearly of relevance. Regarding the "political criteria," according to the Commission's own explanation,

> Countries wishing to become members of the EU are expected not just to subscribe to the principles of democracy and the rule of law, but actually to put them into practice in daily life. They also need to ensure the stability of the various institutions that enable public authorities, such as the judiciary, the police, and local government, to function effectively and democracy to be consolidated.[6]

The EU's concern with corruption in candidate States is not surprising. First, corruption has been widely identified as a major problem in post-communist countries,

[6] Commission of the European Union, *The Copenhagen European Council and the 'Copenhagen Criteria'*, <http://europa.eu.int/comm/enlargement>, (last accessed 10 April 2001).

including many of the EU candidate States.[7] Second, there is also a consensus among political scientists that widespread corruption undermines democracy. As one authority on corruption has put it,

> When it is pervasive and uncontrolled, corruption thwarts economic development and undermines political legitimacy. Less pervasive variants result in wasted resources, increased inequity in resource distribution, less political competition, and greater distrust of government. Creating and exploiting opportunities for bribery at high levels of government also increases the cost of government, distorts the allocation of government spending, and may dangerously lower the quality of infrastructure. Even relatively petty or routine corruption can rob government of revenues, distort economic decision-making, and impose negative externalities on society, such as dirtier air and water or unsafe buildings.[8]

Third, there is a widely held assumption in political science and economics that extensive corruption undermines development and the proper functioning of markets.[9] Given the distorting effects on markets that corruption can produce, and given the primary ambition of the EU to create a "single market," tackling corruption seems a central element of the accession process. With respect to the "economic criteria," the EU identifies six conditions as necessary for the existence of a functioning market economy. Three of these conditions are likely to be undermined by corruption, namely that:

- barriers to market entry and exit are absent;
- the legal system, including the regulation of property rights, is in place, and that laws and contracts are enforceable;
- the financial sector is sufficiently developed to channel savings towards investment.[10]

Experience in candidate countries demonstrates how corruption can create barriers to market entry and distort court decisions and the activities of regulators. As the earlier

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[7] See, e.g., *Anti-corruption in Transition: A Contribution to the Policy Debate,* World Bank, Washington, D.C. 2000, p. 6.

[8] K. A. Elliott, "Corruption as an International Policy Problem," in: A. J. Heidenheimer, M. Johnston (eds.), *Political Corruption: Concepts & Contexts*, Third Edition, Transaction Publishers, New Brunswick, 2002, p. 925.

[9] See for example C. W. Gray and D. Kaufmann, "Corruption and Development," in: *Finance and Development*, March 1998. A number of studies have prevented powerful evidence on the economic and social costs of corruption, mainly focused on less-developed countries; see World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate*, p. 18.

[10] See <http://europa.eu.int/comm/enlargement/intro/criteria.htm>, (last accessed July 31 2002).

citation shows, the EU has referred to the role of bureaucratic controls as one of the main factors facilitating corruption.

The Union's legal system works under the assumption that Community law will be implemented, observed and enforced by the courts and public administration of member States. Extensive corruption jeopardises the observance, implementation and enforcement of rules (and therefore of the *acquis*) or makes that adoption merely formal – further undermining the status and ultimately the efficacy of laws and rules in general.[11]

1.1.3 The lack of benchmarks

However, despite the suggestive nature of the Copenhagen criteria regarding corruption, neither the reasons for including corruption as an accession issue nor the exact criteria candidate States must fulfil in terms of anti-corruption policy or levels of corruption have been spelled out by the Commission in detail.[12]

Indeed, since 1999 the Commission has expressed the opinion that all candidate States fulfil the political criteria, despite finding at least two countries to be suffering from a very serious – and, in the case of Romania "systemic" – problem of corruption (see Section 3.2.1). The 2001 overall report refers to corruption as a widespread problem in many candidate States and calls for continued, vigorous anti-corruption measures.[13]

There is, however, no indication of either the benchmarks employed to assess corruption levels or the level of progress that would be considered sufficient by the Commission, either in terms of formal anti-corruption policy or in terms of reducing levels of corruption. There is no indication of whether such objectives are feasible in the timescale currently being discussed for accession. Moreover, it seems clear that assessments have not been based on a stable set of coherent criteria (see Section 3.2.).

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[11] For example, the World Bank classifies corruption in transition countries into two main types: State capture, or illicit provision of gains to public officials to influence the *formation* of laws, regulations, decrees and other Government policies; and administrative corruption, the illicit provision of gains to distort the *implementation* of existing rules, laws and regulations. See World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate*, pp. xv–xvii (emphasis added).

[12] The inconsistency of the benchmarks used by the Commission in evaluating corruption was highlighted in a paper presented by Andras Sajo in February 2001 at a preparatory meeting for EUMAP reporters. The paper is on file with EUMAP.

[13] Commission, *Making a success of enlargement: Strategy Paper and Report of the European Commission on the progress towards accession by each of the candidate Countries,* p. 7.

The lack of clarity in this area may be partly related to the absence of clearly binding *acquis* in the area of corruption: the only explicit EU conventions relating to corruption, for example, are not yet binding for member States and are not mentioned in connection with corruption in reports on candidate States. For example, as of March 2002 only eight of the 15 member States had completed ratification of the 1995 Convention on the Protection of the European Communities' Financial Interests. There remain serious gaps in member States' ability to control the dispersion of EU funds, as witnessed by the repeated inability of the European Court of Auditors to approve the Community budget without reservations.[14]

Moreover, the EU lacks benchmarks for assessing corruption in member States, and there is little available research or information available for making judgements about the extent to which corruption is more widespread in candidate States than member States, although the limited available evidence does indicate that this is generally the case. However, there are also strong indications that corruption, and especially high-level corruption, is a serious problem in a number of member States, including some of its largest countries – including Germany, France, and Italy – while surveys report that the best candidate countries are less corrupt than the worst EU member States (see Section 2.1).[15]

[14] A recent report by the UK National Audit Office noted a 75 percent rise in detected fraud involving EU funds from 1999 to 2000. Most of the rise was due to improved audit mechanisms in the UK; several countries failed to detect any fraud whatsoever. The European Court of Auditors was unable for the seventh year in succession to approve the EU's accounts without qualification; *inter alia* it found that the Commission does not possess complete and reliable information allowing it to distinguish between payments of EU funds made to intermediaries and payments to final recipients. See UK National Audit Office, *Financial Management of the European Union: Annual Report of the European Court of Auditors for the Year 2000*, Report by the Comptroller and Auditor General, HC 859 Session 2001-2, 30 May 2002; P. Waugh, "British watchdog criticises 75 percent rise in European fraud," *The Independent*, 30 May 2002.

[15] See for example S. Theil and C. Dickey, "Europe's dirty secret," *Newsweek*, 29 April 2002.

1.2 Corruption and anti-corruption: the debate

The lack of clear benchmarks against which to measure a country's progress on corruption or anti-corruption policy is not only the result of the lack of an EU anti-corruption framework; it is also related to a more fundamental and ongoing debate on the definition of corruption.[16] This Overview does not attempt to define corruption. However, it attempts to show that corruption cannot be defined or understood simply as violation of formal rules and laws, which is the conception towards which most political scientists move. While we do not propose a definition of corruption that is applicable across all candidate States, and do not attempt to rank countries according to the prevalence of corruption, we attempt to offer a broad understanding of which types of behaviour or phenomena fall under the heading of corruption and are therefore a valid target for anti-corruption policy.

1.2.1 Problems of definition and measurement

The limits of formal rules

Political scientists and corruption researchers have tended to adopt a "public office"-centred conception of corruption, in which corruption is defined or identified as behaviour which

> "deviates from the formal duties of a public role because of private-regarding pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behaviour as bribery... nepotism… and misappropriation."[17]

Public office-centred approaches tend to focus on violation of formal rules and laws. However, there are a number of problems with such an approach: for example, elites may devise laws to facilitate corruption, and even in States that attempt to regulate corruption entirely, formal rules and regulations can never entirely cover all actions,

[16] The debate centers not only on what constitutes corruption but also on whether definition is possible at all. For example, Frank Anechiarico and James B. Jacobs claim that corruption is a fundamentally subjective concept, and one that changes over time, and therefore cannot be defined in a universally acceptable way. See F. Anechiarico and J. B. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*, University of Chicago Press, Chicago, 1996, pp. 3–5.

[17] A. J. Heidenheimer, M. Johnston and V. LeVine (eds.), *Political Corruption: A Handbook*, Transaction Publishers, New Brunswick, 1989, p. 966.

including many actions that would be widely considered as corrupt.[18] For example, the allocation of private TV licenses by a Government-dominated broadcasting authority in return for systematic political support from the TV station concerned is very difficult to criminalise. In her speech on the occasion of the signing of a Memorandum of Understanding on anti-corruption policy between Hungary and the United Nations in 1999, then Hungarian Minister of Justice Ibolya Dávid acknowledged a need to adopt a broad definition of corruption that went beyond mere compliance with the criminal code:

> [I]t is not enough…to focus…the strategy only on the criminal offences related to corruption; there could be such 'corrupt practices,' which do not constitute a crime according to the letter of the Penal Code...[19]

For these and other reasons, while statistics on criminal convictions may seem to be the only hard-and-fast "true" indicators of corruption, no serious analysis would rely on them to measure the prevalence of corruption in a given State, and certainly would not deduce from a larger number of bribery convictions that corruption is more widespread. The situation in candidate States tends to confirm this argument, as the number of convictions in individual States does not appear to bear much relation to other evidence on the prevalence of corruption. The record in EU member States provides little additional clarity. The number of court proceedings for corruption crimes in Germany, for example, was 1,034 in 1999, which – relative to the size of the country – is broadly similar to figures for a number of candidate countries.[20] However, in the United Kingdom there were almost no convictions in 1999 under the Prevention of Corruption Act or the Public Bodies Corrupt Practices Act, and literally no convictions in Northern Ireland or Scotland.[21]

Survey evidence

The other main source of evidence on levels of corruption is provided by surveys of perception and experience. Surveys are covered in detail in Section 3.1. Public opinion

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[18] For a discussion of approaches to defining and understanding corruption see M. Philp, "Conceptualizing Political Corruption," in A.J. Heidenheimer and M. Johnston (eds.), *Political Corruption: Concepts and Contexts*, Transaction Publishers, New Brunswick and London, 2002, pp. 41–57.

[19] Speech by Minister of Justice Ibolya Dávid on the occasion of the signing of the Memorandum of Understanding between the UN and the Government of Hungary.

[20] GRECO, *Evaluation Report on Germany*, adopted by GRECO at its 8th Plenary Meeting, Strasbourg, 4-8 March 2002, p. 6. In addition, the number of proceedings has increased dramatically, from 258 in 1994.

[21] GRECO, *Evaluation Report on the United Kingdom*, adopted by GRECO at its 6th Plenary Meeting, Strasbourg, 10-14 September 2001, p. 3.

surveys continue to dominate the field. The principal problem with such indicators is that they are surveys of *perceptions* of corruption rather than corruption itself, and it is questionable whether they can be used as reliable indicators of actual levels of corruption.[22] In particular, perceptions tend to be general, while experience of corruption is particular and specific. Detailed surveys of citizen perceptions and experiences in Ukraine, Bulgaria, Slovakia and the Czech Republic indicate that general perceptions are not a reliable indicator of citizens' real experiences:

> Perceptions of high-level corruption [in post-communist countries] were widespread and irritated citizens everywhere. But although we found that the need to offer presents and bribes to street-level officials was widely discussed by citizens in general terms, it was much less frequent in their reports of personal experience… In their own dealings with officials, corruption was not the only problem… [nor] even the most frequent nor the most annoying feature of their day-to-day interactions with officials in any of our four countries.[23]

Surveys of experience of corruption represent an advance on surveys of perception, although they also face a number of problems such as acquiescence (respondents may give an answer designed to 'please' the interviewer), variations in results depending on the way in which the survey is conducted, and faulty memory.[24]

Institutionalised corruption and patronage

Another problem with narrow conceptions of corruption in all countries is that they do not easily embrace institutionalised corruption such as the acceptance of contributions by political parties in return for public contracts for the donor, where the benefits do not accrue directly to individuals. Moreover, in the CEE region, corruption is often embedded in a historical context of clientelism. Patron-client networks play an important role in all post-communist countries in structuring the relationship between

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[22] TI itself emphasises the limitations of perception indexes. See J.G. Lambsdorff, *Background Paper to the 2001 Corruption Perceptions Index*, Transparency International and Göttingen University, June 2001, p. 4. <http://www.transparency.org/cpi/2001/dnld/methodology.pdf>, (last accessed 31 July 2001).

[23] W. L. Miller, A. B. Grodeland and T. Y. Koshechkina, *A Culture of Corruption?: Coping with Government in Post-communist Europe*, Central European University Press, Budapest, 2001, p. 279.

[24] For example, problems related to memory could have affected the results of the World Bank/EBRD Business Environment and Enterprise Performance Survey (see Section 3.1), which asked companies what percentage of annual revenues companies like theirs pay annually in unofficial payments to public officials.

the State, private sector and citizen.[25] Such networks are typically based on a system of inter-temporal exchange of benefits that may be very difficult to measure,[26] and efforts to define or identify corruption become increasingly complex where such systems of exchange operate. Although no effort to deal effectively with corruption in post-communist States can ignore such networks, their complexity raises questions about the feasibility of measuring corruption by any of the methods outlined above.

EU evaluations of candidate States imply that corruption is mostly understood in a narrow sense of bribery according to the criminal law or international conventions. However, the concerns and recommendations expressed by the Commission in its Regular Reports have often been broader in scope, including calls for improvements in frameworks for regulating conflicts of interest,[27] party finance[28] or access to information.[29] Under these circumstances, and given the comments above on the usefulness of criminal statistics, it would appear that the Commission lacks a clear sense of what it means by corruption, and therefore what would constitute successful anti-corruption policy.

1.2.2 Anti-corruption policy: competing approaches

Definitional considerations are further compounded by disagreements over what constitutes good anti-corruption policy. To simplify greatly, approaches to anti-corruption policy may be divided into five main groups:

[25] "Clientelism and corruption are different notions. Clientelism is a form of social organization, while corruption is an individual social behavior… that may or may not grow into a mass phenomenon… In the postcommunist context, the two phenomena seem fused at the hip." A. Sajo, "Clientelism and Extortion: Corruption in Transition" (amended version of A. Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe," *East European Constitutional Review* 1998, Vol. 7, no. 2), p. 2.

[26] For example where a senior public official acts to blunt regulation in a sector where he is later employed by the dominant firm; or where companies agree to fix a public tender in order that a "competitor" wins, in return for that firm helping to collude later to benefit a different company in the same network.

[27] For example Slovenia (2001).

[28] For example Romania (2001).

[29] For example Slovakia (2001), Romania (2001). The introduction of an Act on Public Information in Poland is mentioned as an "important development" in the fight against corruption (2001).

(i) The "criminal and administrative control" approach

In this perspective, corruption is understood in relatively simple terms of bribery; public officials and politicians are viewed as seekers of corrupt opportunities, and anti-corruption policy consists of establishing and enforcing effective criminal law provisions combined with effective formal control mechanisms in the public administration. This appears to be the primary perspective adopted by the European Commission, reflecting the existing European anti-corruption instruments (see Section 2.1.1).

(ii) The "small government" approach

The small government approach shares the basic assumption of the criminal and administrative control approach that officials are essentially corrupt and will make use of any opportunity to enrich themselves. Whereas the "criminal and administrative control" approach seeks to reduce their opportunity to do so by legal-administrative means, the second approach assumes that Government *per se* is the problem. For proponents of this view, anti-corruption policy consists of policies to reduce the role of the State and minimise regulation. The approach of Robert Klitgaard, for whom corruption equals "monopoly plus discretion minus accountability," clearly illustrates the tendency to see the problem of corruption in terms of principal-agent problems,[30] which easily leads to the assumption that minimising the role of Government is the solution.

(iii) The "political economy" perspective

This approach shares with the small government perspective the assumption that corruption arises in conditions where principals are unable to monitor effectively the activities of agents, and appears to share the assumption that officials are primarily self-interest maximisers. However, advocates of such an approach concentrate not on the size of the State but on reform of public programs to increase transparency and accountability and to limit the extent of principal-agent problems.[31] A 1999 statement to the *New York Times* by Daniel Kaufmann is based primarily on this perspective:

> One doesn't fight corruption by fighting corruption, but rather by pursuing macroeconomic stability, marketization, democratisation and other initiatives that alter the environment in which corruption exists.[32]

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[30] See R. Klitgaard, *Controlling Corruption*, University of California Press, 1991.

[31] The difference between this approach and the small government approach is illustrated by Susan Rose-Ackerman's argument that cutting government spending may in fact increase corruption by increasing scarcity. See S. Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, Cambridge, 1999, p. 41.

[32] S. Schmemann, "What makes nations turn corrupt?: Reformers worry that payoffs and theft may be accepted as normal," *New York Times*, 28 August 1999.

The Commission has sometimes incorporated elements of this perspective into its approach to corruption in candidate States, and in a few countries has commented on the role of State control of licensing and permit procedures in encouraging corruption.[33] However, this approach has not been pursued consistently. Corruption is rarely mentioned under evaluations of compliance with the Copenhagen economic criteria, and it is not clear why concerns over licensing and permits are raised in a few countries and not others.[34]

(iv) The Multi-pronged Strategy/National Integrity System perspective

Recognition that narrowly focused anti-corruption strategies have met with limited success has led several international organisations to widen their anti-corruption policy recommendations. The "National Integrity System" advocated by Transparency International since 1996[35] is an early example of such an approach. The World Bank summarises its own efforts to develop a "multi-pronged strategy for combating corruption" as follows:

> To date, anti-corruption programs have largely focused on measures to address administrative corruption by reforming public administration and public finance management. But with the recognition that the roots of corruption extend far beyond weaknesses in the capacity of government, the repertoire has been gradually expanding to target broader structural relationships… [T]he goals are the same: enhancing State capacity and public sector management, strengthening political accountability, enabling civil society, and increasing economic competition.[36]

Two elements of broader strategies that appear to be of special importance to candidate States are efforts to bring lobbying practices within acceptable bounds and the effort to involve civil society in the anti-corruption project. Lobbying in particular is either potentially or actually a serious corruption problem in most candidate States, as shown by EUMAP's individual country reports. In a few countries, such as Poland and Bulgaria, civic organisations have played a vital role in making corruption and anti-corruption initiatives a domestic as well as an international issue. In other countries, such as Slovenia or the Czech Republic, the role of civil society has been very weak.

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[33] See e.g Commission of European Union, *2001 Regular Report from the Commission on Bulgaria's Progress towards Accession.*

[34] For example, a new Trade Licensing Act that came into effect in the Czech Republic in April 2000 increased the role of the State in licensing procedures, ostensibly in reaction to EU requirements.

[35] See <http://www.transparency.org/activities/nat_integ_systems/country_studies.html>, (last accessed 5 August 2002).

[36] The World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate,* p. 39.

The European Commission does not mention lobbying in any of the Regular Reports, and the role of civil society in only two Regular Reports in 2001 (Bulgaria and Lithuania). This may be linked to the fact that both of these areas are the subject of efforts by the Commission to reform governance practices within the Union itself (see Section 2). While this Overview does not aim to condemn all lobbying, it and the accompanying individual country reports show clearly that setting limits on what is to be regarded as acceptable lobbying and implementing measures to prevent lobbying that goes beyond those limits are essential components of tackling corruption in all candidate countries. As the World Bank notes,

> What separates State capture as a form of corruption from conventional forms of political influence, such as lobbying, are the mechanisms by which the private interests interact with the State. State capture occurs through the illicit provision of private gains to public officials via informal, nontransparent, and highly preferential channels of access.[37]

On this perspective, lobbying that takes place through collective organisations (for example industry associations), and in a transparent and public fashion (for example through official consultation processes), is acceptable and even encouraged, whereas covert lobbying by specific interests through *quid pro quo* type relationships with politicians or parties is corrupt and damaging.

(v) Public integrity-based approaches

The approaches to anti-corruption policy outlined above tend to share the assumption that public officials are inherently self-interested, and corruption control is therefore based on making the costs of corruption higher than the benefits to be gained. These anti-corruption strategies tend to emphasise greater democracy and access by citizens to decision-making processes, reduced autonomy and discretion for public officials, improved systems of scrutiny, accountability and repressive sanctions. The focus is on maximising indirect incentives for officials to behave incorruptly, that is, maximising the negative consequences for officials of behaving corruptly.

Another approach to anti-corruption is focused on building public integrity. Such an approach is based on direct incentives – that is, on the assumption that officials can have a positive incentive to behave with integrity rather than only a negative incentive to avoid being caught behaving corruptly – and on the axiom that corruption is best controlled by creating public officials who exercise varying degrees of autonomy for the public good and are more-or-less immune to corrupt opportunities because they define their role in a certain way. Elements of such an approach can be found in the approach adopted by the Polish Civil Service, which is based primarily on education and building civil servant ethics.

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[37] The World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate,* p. 3.

A likely advantage of such strategies in post-communist countries is that they appear to address more directly the problem that these countries inherited from the communist regimes: the lack of a clear sense of public responsibilities and a public culture within which officials with integrity would be distinctly recognised. On this perspective, the challenge for candidate countries is to build a civil service and public political culture to change people's expectations – both of themselves and of their public officials.

Public integrity-based strategies also recognise that anti-corruption strategies based on minimising discretion themselves may carry costs. Anti-corruption policies that go too far in limiting discretion may end up denying officials the very discretion they need to make decisions that are in the public interest. In the context of countries in transition, the advisability of trying to maximally limit discretion in States carrying out wide-ranging transitional tasks may be questionable.

Lessons for the EU

The anti-corruption policy measures that the European Commission has tended to recommend to candidate States have been generally oriented towards a control paradigm, with a strong emphasis on ensuring that criminal anti-corruption law is optimal and fully enforced. Such policies may also include the establishment or strengthening of strict conflict of interest provisions, comprehensive asset-monitoring provisions (the violation of which may itself be made a criminal offence),[38] or various agencies engaged in monitoring, supervision and auditing of public administration. Likewise, at least until recently the recommendations of international institutions have tended to focus on reforming civil and criminal law[39] and public administration reforms designed to increase the effectiveness of control mechanisms and accountability of public officials. Although the Commission has attached importance to the adoption of codes of ethics for public officials, it appears to endorse a "top-down" approach to such codes, in which they are imposed from above. Likewise, the approach taken by candidate countries in adopting such codes does not take on board some of the more important lessons learnt in Western countries that have adopted ethical codes: for example, that effective codes are detailed, and need to be developed through a process of consultation with the officials to whom they apply.

Moreover, since the mid-1990's there has been a growing revisionist literature on why conventional approaches to anti-corruption policy may be misplaced. According to some analysts, the pursuit of corruption control at any price may reduce administrative efficiency,

[38] This is the case under many US provisions.

[39] Most obviously in the adoption of international anti-corruption conventions such as the 1997 OECD Convention against the Bribing of Foreign Officials in International Business Transactions or the two Council of Europe Civil and Criminal Law Conventions on Corruption.

and moreover may not actually curb levels of corruption.[40] Specifically, a growing plethora of rules, regulations and sanctions backed by proliferating agencies of surveillance and enforcement can produce a situation in which agencies spend as much time dealing with anti-corruption issues as they do performing their basic functions. It may also lead to pathological responses by public servants such as a tendency to "work-to-rule." These analysts conclude that for officials to exercise authority they must have a degree of discretion, at least at higher levels of Government; that "the less we trust [public officials] the less they can do for us and the more diminished is their capacity to rule."[41]

These considerations are of major relevance to the problem of corruption in candidate States. The approach, recommendations and requirements of the European Commission in the arena of anti-corruption policy in candidate States have been focused on elites, top-down anti-corruption strategies pursued with adequate "political will," enforcement of criminal law and establishment of functioning control mechanisms mainly to control the use of EU funds. Indeed, the focus on elites and financial control mechanisms has even increased since 2001 after SIGMA – the joint OECD-EU program of Support for Improvement in Governance and Management in Central and Eastern European Countries – was ordered to reduce its activities in order to focus primarily on financial control and external audit.[42]

The reservations of the anti-corruption "revisionists" about prevailing anti-corruption policy trends may carry considerable weight in the case of post-communist States. In particular, there are good grounds for reservations about relying on repressive solutions and formal control mechanisms in the public administration. Repressive solutions may be undermined by corruption of the institutions that implement them, while administrations that are struggling to perform their own tasks satisfactorily may be particularly ill-equipped to devote resources and staff to expanding internal control mechanisms. In addition:

> Given the sprawling nature of bureaucracy in Eastern Europe, the establishment of more rules and guidelines would threaten to introduce greater inefficiency and more incentives for officials and members of the public to seek to act outside the system. If part of the problem is a lack of

[40] The most radical example is provided by Frank Anecharico and James B. Jacobs, who argue persuasively that the "pursuit of absolute integrity" has led to increased bureaucratic inefficiency without reducing levels of corruption in New York City. See F. Anechiarico and J.B. Jacobs, *The Pursuit of Absolute Integrity: How Corruption Control Makes Government Ineffective*, University of Chicago Press, Chicago 1996.

[41] M. Philp, "Corruption Control and the Transfer of Regulatory Frameworks," unpublished paper to World Bank seminar, Warsaw, May 2000, p. 5.

[42] A. M. Cirtautas, "Corruption and the New Ethical Infrastructure of Capitalism," *East European Constitutional Review*, Spring/Summer 2001, p. 83.

> respect for State institutions and legal frameworks then more legal barriers cannot be expected to bring benefits.[43]

Finally, the fundamental dilemma for all solutions based on control and ultimately repression is the question of "Who will guard the guards?" In particular, the assumption that establishing formal accountability mechanisms in post-communist countries will further the fight against corruption cannot be taken for granted. The effectiveness of such institutions depends on a wide range of factors, a number of which are dealt with by the Commission (such as the establishment of harmonised financial management systems in public administration as a prerequisite for effective control and audit). In particular, the integrity of senior staff and the readiness of Governments to grant them independence and respect their findings are key issues.

The dangers of generalisation

While these problems do not necessarily undermine the policies encouraged or required by the Commission in candidate States, they suggest that merely transposing a subset of solutions developed in advanced market democracies may not be very effective in States in transition – particularly where the solutions themselves are the subject of controversy even in the West. The approach taken by the Commission also contrasts with wide variation in member State practice. Dealing with corruption is a comprehensive and long-term process, often with country-specific requirements, and the application of reforms with expectations of immediate results may have adverse implications for effective implementation of appropriate reforms.

These considerations lead to further questions concerning whether standards for measuring and combating corruption *should* be entirely universal in transition States, or whether under certain situations it is necessary or even productive to tolerate practices that would be found unacceptable or illegal in consolidated democracies. For example, there are reasons for being cautious about the application of strict conflict of interest regulations forbidding the occupation of "incompatible" functions or restrictions on post-public service employment in transitional States. Although it is clearly desirable that officials are not motivated in their public capacities by their ancillary activities, the immediate introduction of incompatibility provisions may have counterproductive effects in a context where the problem of conflict of interest is poorly understood and where the pool of political and official talent is small. In the worst scenario, by encouraging talented officials to leave the public service it might even reduce efficiency while doing little to limit corruption. At a minimum, it might be more constructive to develop understanding of the concept of conflict of interest through mechanisms based on codes of ethics and case-by-case disclosure requirements.

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[43] *Oxford Analytica Daily Brief,* 6 November 2001.

2. SOURCES OF EUROPEAN ANTI-CORRUPTION STANDARDS

2.1 The EU anti-corruption framework

The inclusion of corruption as an issue of key importance for EU accession implies that there exists an anti-corruption framework that is already binding on EU member States and to which candidate States must conform. However, in fact no such framework exists, or at least not in a formal sense. The Commission has been in the process of developing a broad "good governance" framework, notably since the publication of the White Paper on Governance in July 2001.[44] The White Paper lays down or reaffirms principles of subsidiarity and in particular the objective of making the policy process more open and transparent. Measures that have emerged since the White Paper include a Code of Conduct for members of the European Parliament and efforts to formulate a code for Commission officials. In light of the dismissal of the Santer Commission in 1999 due to corruption allegations, rumours circulating in early 2002 of another report by the same whistleblower alleging continuing malfeasance at the level of the Commission,[45] his resignation in August 2002 and the suspension of the Commission's former chief accountant,[46] the extent to which the good governance regime is further formalised and institutionalised will be a key indicator of the EU's ability to translate concerns about corruption into concrete anti-corruption measures.

In addition to the above measures, since the early 1990's the EU has adopted several anti-corruption instruments, and in particular conventions on protection of the financial interests of the Community and on the fight against corruption (see below). However, as of mid-2002 neither of these conventions had secured enough ratifications by member States to come into force.

Consequently, the EU anti-corruption framework remains diffuse and largely non-binding. There are probably two main reasons for this. First, the extent and nature of corruption appears to differ widely across member States, reflecting different national

[44] Commission of the European Union, *EU Governance: A White Paper*, COM(2001) 428 final, Brussels, 25 July 2001.

[45] D. Cronin, "Whistleblower probe casts doubt over budget sign-off," *European Voice*, 7-13 March 2002.

[46] Paul Van Buitenen, the Commission official whose allegations brought down the Santer Commission in 1999, resigned in August 2002, saying he was "bitterly disappointed" at the failure to improve financial probity since then. Marta Andreasen, the Commission's former chief accountant, was suspended in August 2002 after she voiced repeated criticisms of alleged lax accounting practices in the Commission, comparing the EU's accounting standards to those of Enron. See K. Butler, "Official who exposed lax EU finances is suspended," *The Independent*, 30 August 2002.

traditions and historical legacies. For example, there is a stark contrast between the deeply embedded bureaucratic traditions of rectitude and probity characteristic of the northernmost member States on the one hand, and the more relaxed style of public service characteristic of France or, perhaps to a lesser extent, Germany. This contrast is made clear by a number of topical examples, most notably the departure of Eva Joly, the judge in charge of the investigation into the Elf Aquitaine affair in France.[47] The scandals that have surrounded French President Jacques Chirac[48] or Italian Prime Minister Silvio Berlusconi,[49] along with party financing scandals in Germany,[50] have highlighted the fact that corruption is not a problem for candidate States alone.

Second, to date the Commission has not seen or framed corruption as a concern for the ability of member States to implement EU directives. For this reason it has perceived no immediate need to pressure or criticise existing member States on grounds of corruption. Moreover, the Commission's internal problems of corruption would make it difficult to do so before completing its own internal reform. Finally, even if the Commission did criticise the member States for corruption, they remain powerful enough to oppose any proposed EU directives on how to clean up their polities.

For these reasons, a contradictory situation has emerged. On the one hand, the EU is taking or has taken a number of consequential steps to implement a good governance regime at the level of the EU administration. On the other hand, efforts to extend these steps and promote the "harmonization" of anti-corruption standards and policies across existing member States has been a difficult and fragmentary process. At the same time, the existence of the Copenhagen mandate has enabled the Commission to exert much greater leverage over candidate States to adopt various anti-corruption measures. However, the Commission's authority and bargaining power to demand such harmonisation of candidate States will be lost once they become members.

2.1.1 Direct anti-corruption acquis

Strictly speaking, EU anti-corruption policy falls under the chapter on Justice and Home Affairs. As of September 2002, Community legislation in this area consisted of the following:

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[47] Norwegian-born Joly left France for her home country in early 2001 amid allegations of political pressure.

[48] See "Bad news for the president," *The Economist*, 9 February 2002; C. Dickey, "Jam Jar Politics," *Newsweek,* 9 April 2002.

[49] See "Is there less than before?" *The Economist*, 16 February 2002.

[50] See "Too much of it," *The Economist*, 6 April 2002.

- The 1995 Convention on the Protection of the European Communities' Financial Interests, which sets forth minimum standards that member States should incorporate into domestic criminal law to deal with fraud against the Community Budget;
- The First and Second Protocols to the above Convention, which stipulate that member States should take effective action to punish bribery that involves EU officials and damage to the Communities' financial interests as understood in the above Convention;
- The 1997 Convention on the Fight against Corruption involving Officials of the European Communities or Officials of the member States of the European Union. The Convention broadens the category of official to which bribery legislation applies to cover the widest possible spectrum of EU employees; establishes standards for defining an official in international anti-corruption prosecutions; and defines both active and passive corruption in the widest possible terms, imposing on member States the duty to ensure that their legislation covers all aspects of this definition;
- The Joint Action on Corruption in the Private Sector. Approved by the EU Council of Ministers in December 1998, this is intended to align national legislation on passive and active corruption in the private sector, the responsibilities of natural persons in this area and penalties and sanctions.[51]

These instruments are focused upon harmonising bribery legislation, extending bribery legislation to cover foreign officials and officials of international organisations, and underlining judicial cooperation in the area of corruption prosecutions. They have not come into force yet for member States: as of March 2002 eight of the 15 member States had fully ratified the 1995 Convention, and the Commission considers it unlikely that all of the ratifications will be completed for some years.[52]

[51] Council Joint Action 98/742/JHA, adopted 22 December 1998.

[52] UK National Audit Office, *Annual Report of the Court of Auditors for the Year 2000*, Report by the Comptroller and Auditor General, HC 859 Session 2001–2002, 8 May 2002, p. 27.

2.1.2 "Soft" anti-corruption acquis

In addition to the above anti-corruption instruments, the approach of the EU to corruption in candidate countries includes a number of other international agreements which, once ratified by all member States, will automatically become part of the *acquis.* These are:

- The Council of Europe Criminal Law Convention on Corruption.
- The Council of Europe Civil Law Convention on Corruption.
- The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
- The OECD Convention on Combating Bribery of Foreign Public Officials.

The Commission explicitly evaluates candidate States on the basis of their signature and ratification of these documents, *inter alia.* These agreements are of a similar nature to the EU instruments mentioned above, although they go further in certain areas. For example, the Criminal Law Convention requires the establishment of liability of legal entities for corruption.

As of June 2002, the record of candidate States in acceding to the Council of Europe conventions was clearly better than the record of EU member States (see Tables 1 and 2), which, as discussed in Section 1, is largely the result of pressure from the European Commission. On the other hand, member States had progressed further in ratifying the OECD Convention (see Table 3).

Table 1: Council of Europe Criminal Law Convention: state of play, June 2002

States	*Date of signature*	*Date of ratification*	*Date of entry into force*	*Reservations*
CANDIDATE STATES				
Bulgaria	27/01/99	07/11/01	01/07/02	X
Czech Republic	15/10/99	08/09/00	01/07/02	X
Estonia	08/06/00	06/12/01	01/07/02	X
Hungary	26/04/99	22/11/00	01/07/02	X
Latvia	27/01/99	09/02/01	01/07/02	X
Lithuania	27/01/99	08/03/02	01/07/02	
Poland	27/01/99			
Romania	27/01/99			
Slovakia	27/01/99	09/06/00	01/07/02	
Slovenia	07/05/99	12/05/00	01/07/02	X
MEMBER STATES				
Austria	13/10/00			
Belgium	20/04/99			
Denmark	27/01/99	02/08/00	01/07/02	X
Finland	27/01/99			
France	09/09/99			
Germany	27/01/99			
Greece	27/01/99			
Ireland	07/05/99			
Italy	27/01/99			
Luxembourg	27/01/99			
Netherlands	29/06/00	11/04/02	01/08/02	X
Norway	27/01/99			
Portugal	30/04/99	07/05/02	01/09/02	X
Spain				
Sweden	27/01/99			
United Kingdom	27/01/99			

Source: Treaty Office on <http://conventions.coe.int>, (last accessed 5 August 2002).

Table 2: Council of Europe Civil Law Convention: state of play, June 2002

States	*Date of signature*	*Date of ratification*	*Date of entry into force**
CANDIDATE STATES			
Bulgaria	04/11/99	08/06/00	
Czech Republic	09/11/00		
Estonia	24/01/00	08/12/00	
Hungary			
Latvia			
Lithuania	18/04/02		
Poland	03/04/01		
Romania	04/11/99	23/04/02	
Slovakia	08/06/00		
Slovenia	29/11/01		
MEMBER STATES			
Austria	13/10/00		
Belgium	08/06/00		
Denmark	04/11/99		
Finland	08/06/00	23/10/01	
France	26/11/99		
Germany	04/11/99		
Greece	08/06/00	21/02/02	
Ireland	04/11/99		
Italy	04/11/99		
Luxembourg	04/11/99		
Netherlands			
Norway	04/11/99		
Portugal			
Spain			
Sweden	08/06/00		
United Kingdom	08/06/00		

Note: * The Convention requires 14 ratifications to enter into force

Source: Treaty Office on <http://conventions.coe.int>, (last accessed 5 August 2002).

Table 3: OECD Convention on Bribery of Foreign Public Officials: state of play, June 2002

States	*Deposit of instrument of ratification/ acceptance*	*Date of entry into force*	*Date of entry into force of implementing legislation***
CANDIDATE STATES			
Bulgaria	22 December 1998	20 February 1999	29 January 1999
Czech Republic	21 January 2000	21 March 2000	9 June 1999
Estonia*			
Hungary	4 December 1998	15 February 1999	1 March 1999
Latvia*			
Lithuania*			
Poland	8 September 2000	7 November 2000	4 February 2001
Romania*			
Slovakia	24 September 1999	23 November 1999	1 November 1999
Slovenia	6 September 2001	5 November 2001	
MEMBER STATES			
Austria	20 May 1999	19 July 1999	1 October 1998
Belgium	27 July 1999	25 September 1999	3 April 1999
Denmark	5 September 2000	4 November 2000	1 May 2000
Finland	10 December 1998	15 February 1999	1 January 1999
France	31 July 2000	29 September 2000	29 September 2000
Germany	10 November 1998	15 February 1999	15 February 2000
Greece	5 February 1999	6 April 1999	1 December 1998
Ireland			
Italy	15 December 2000	13 February 2001	26 October 2000
Luxembourg	21 March 2001	20 May 2001	11 February 2001
Netherlands	12 January 2001	13 March 2001	1 February 2001
Norway	18 December 1998	16 February 1999	1 January 1999
Portugal	23 November 2000	22 January 2001	
Spain	4 January 2000	4 March 2001	2 February 2000
Sweden	8 June 1999	7 August 1999	1 July 1999
United Kingdom	14 December 1998	15 February 1999	

Notes: *Not yet members of the OECD Working Group on Bribery

**This does not mean that countries have fulfilled all the requirements of the Convention. For example, as of June 2002, the Czech Republic still had not introduced liability of legal entities.

Source: <http://www1.oecd.org/daf/nocorruption/annex2.htm>, (last accessed 6 June 2002).

2.1.3 Other provisions indirectly related to corruption

In addition, the accession negotiation process involves the objective of harmonisation of laws in a number of other areas that do not fall under the label of anti-corruption policy *per se*, yet are clearly regarded as of major importance in the fight against corruption. The most important of these are listed below:

- **Public procurement.** The Commission has played a very important role in urging the reform of public procurement procedures in candidate States to comply with Commission directives on procurement. The directives establish threshold values of procurement contracts above which competitive tender proceedings must be used, define situations where restricted tenders or negotiated procedures may be used, and establish general requirements for appeal procedures.[53]
- **Civil service reform.** The Commission has consistently urged candidate States to reform their State administrations under the general objective of "capacity building." There are three main aspects to expected reform: increased staff levels, an increase in professional standards and increased remuneration.
- **State financial control and audit.** The Commission requires candidate States to put in place systems of financial control that will, primarily, provide some assurance that the increasing inflow of EU funds does not go wasted. This includes adopting international State audit standards;[54] establishing effective, independent and *ex ante* internal control systems; and, again, increasing capacity in terms of both staffing and information systems.
- **Judicial reform.** The Commission attaches similar importance to judicial reform in its own right as it does to corruption. The Commission has consistently pushed for reforms that will establish and ensure (i) judicial independence and (ii) efficiency of the court system in processing cases.[55] Both of these objectives are clearly necessary conditions for effectively fighting corruption.

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[53] European Commission Directives nos. 66/1989, 13/1992, 50/1992, 36/1993, 37/1993, 38/1993, 52/1997, 4/1998.

[54] Lima Declaration of Guidelines on Auditing Precepts, <http://www.intosai.org/2_LIMADe.html>, (last accessed 31 July 2002); INTOSAI (International Organisation of Supreme Audit Institutions) code of Ethics and Auditing Standards, <http://www.intosai.org/2_CodEth_AudStand2001_E.pdf>, (last accessed 31 July 2002).

[55] See *Monitoring the EU Accession Process: Judicial Independence*, Open Society Institute, Budapest 2001; and *Monitoring the EU Accession Process: Judicial Capacity*, Open Society Institute (forthcoming); available at <http://www.eumap.org>.

2.2 The Council of Europe: the Twenty Guiding Principles, GRECO

In addition to the two conventions on corruption, the Council of Europe's Committee of Ministers approved a broad framework of "Twenty Guiding Principles for the Fight Against Corruption" in 1997.[56] Although the principles are not binding for any State, they serve as a potential framework for developing anti-corruption strategies in the broadest sense. The principles encompass not only anti-corruption legislation but also measures to prevent and fight corruption, including promotion of public awareness, independence of the prosecution and judiciary, limitation of immunity for public functionaries, public administration reform (including transparency), codes of conduct for elected representatives, regulation of political party financing, and freedom of the media to seek and publish information.

In 1998 the Council authorised the creation of a Group of States Against Corruption (GRECO) to facilitate international cooperation.[57] GRECO, which had 34 members as of June 2002, organises peer monitoring of fulfilment of the Guiding Principles by member States. The first round of evaluation of GRECO member States' compliance with three of the Guiding Principles is to be completed by the end of 2002.[58]

Despite the fact that GRECO has become the first organisation to systematically evaluate both candidate and member EU States, the European Commission has not mentioned the Twenty Guiding Principles at any point in accession documents or Regular Reports, although it has commented on candidate countries joining GRECO in the Regular Reports.

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[56] Council of Europe Committee of Ministers Resolution 24 (1997), *On the Twenty Guiding Principles for the Fight Against Corruption*, <http://cm.coe.int/ta/res/1997/97x24.htm>, (last accessed 31 July 2002).

[57] Committee of Ministers, Resolution 7 (1998), 5 May 1998.

[58] The first Evaluation Round has been based on Guiding Principle 3 (the legal status, powers, means of securing evidence, independence and autonomy of those in charge of prevention, investigation, prosecution and adjudication of corruption offences); Guiding Principle 7 (specialisation of persons or bodies in charge of fighting corruption, and means at their disposal); and Guiding Principle 6 (immunity from investigation, prosecution or adjudication of corruption offences). The second Evaluation Round will examine compliance with selected articles of the Criminal Law Convention and six more of the Guiding Principles. For details, see <http://www.greco.coe.int/>, (last accessed 5 August 2002).

3. THE PROBLEM OF CORRUPTION IN CANDIDATE STATES

3.1 Reasons for corruption in candidate States

There appears to be a widespread consensus that corruption in Central and Eastern European countries is a more serious problem than in other countries of the OECD, including existing EU member States (see Section 3.3 below). Although the dividing line between candidate and member States in terms of levels of corruption is not as clear as is often implied, and although corruption in EU member States and within EU institutions is an ongoing problem, both the legacy of communism and the nature of post-communist transition provide powerful reasons why corruption may be expected to be a bigger problem in candidate States than in most member States.

3.1.1 The legacy of communism

Communist systems employed corruption as a means for consolidating power, built economic systems that relied on corruption for their very survival, and – at least in the later stages of their history – ended up as kleptocracies where high-level corruption and embezzlement were the norm. This has left behind a legacy of patterns of behaviour that are not conducive to the establishment of well-functioning democracies or cultures that condemn corruption. In particular, the following patterns may be noted:

(i) traditions of both high-level grand corruption and low-level petty corruption;

(ii) entrenched mistrust of the State;

(iii) a feeling of legitimacy among the population in circumventing the State ("beating the system");

(iv) widespread clientelism and forms of exchange that run against both formal political and bureaucratic norms;

(v) corruption in the private sector as a substitute for fair competition.

An important part of the systems that operated under State socialism, even in its milder forms (as in Hungary), was the deeply embedded clientelistic system of exchange that emerged in the absence of effective market, State or other systems of allocation. As noted above, understanding the legacy of these systems is essential in coming to grips with corruption in post-communist States.

Corruption in transition

Post-communist States face a number of factors that combine unfavourably to encourage corruption, while simultaneously rendering corruption control especially difficult. A common denominator of the situation of transition, and a factor that international organisations such as the EU do not always appear willing to recognise, is that while the collapse of the old systems in CEE States removed many types of corruption that were part and parcel of those systems, democratisation and marketisation may create as much corruption, albeit of different types.

Post-communist States inherited bureaucracies that lacked many of the regulatory institutions necessary for a modern State and economy to function, as well as many of the conditions necessary for mechanisms of accountability to function. Their bureaucracies were confronted with an overload of transition tasks – ranging from the privatisation of whole economies to, in some cases, the redrawing of State boundaries – distracting attention from anti-corruption efforts, and making it difficult to ensure the accountability of individual or administrative actions.

Political and economic liberalisation has subjected politicians to a wide range of pressures, many of which are corruptive. Notably, power holders have been placed in a unique position to design fundamental "rules of the game" to facilitate corruption.[59] Civil society, which to varying extents was destroyed or excluded from public life under communist regimes, tends to be weak in transition States and less likely to play a part in fighting corruption.

At the same time, due to economic concentration, the weakness of civil society and the competitive pressures of transition, the private sector is less likely to actively support

[59] The recent attempts by the largest Czech political parties to change the electoral system to their own advantage may be an example of the consequences of what Claus Offe labels the problem of "strategy dependence." This hinders what Jon Elster, Claus Offe and Ulrich Preuss term the "vertical" and "horizontal" conditions that are necessary to consolidate democracy. A democracy is *vertically* consolidated if "[T]he... rules according to which political and distributional conflicts are carried out are relatively immune from becoming themselves the object of such conflict." Moreover, *horizontal* differentiation is necessary in terms of "the degree of insulation of institutional spheres from each other and the limited convertibility of status attributes from one sphere to another." J. Elster, C. Offe and U. K. Preuss, *Institutional Design in Post-communist Societies: Rebuilding the Ship at Sea*, Cambridge University Press, 1998, pp. 28–31. The corruption-ridden process of privatising Russia's most lucrative State enterprises in 1994-95, in which a few oligarchs took control of the country's fast energy reserves for nothing in a "loans-for-shares" scheme financed by the State is a prime example.

reforms to limit corruption, even when businesses are highly frustrated by corruption.[60] Finally, in the case of most transition countries a decline in economic welfare – at least in the initial phase of transition – increased both the value of client networks and mistrust in the State. In this environment, corruption has become in many cases a highly politicised and useful weapon in the political struggle, which may in certain circumstances lower the legitimacy of the system more than it harms the legitimacy of individual corrupt politicians.[61]

3.1.2 The dangers of generalisation

While the existence of common factors underlying corruption in post-communist countries is undeniable, it is important to avoid the assumption that corruption in all post-communist countries is the same and therefore requires the same solutions. The major cultural variation among EU member States is not unique. Cultural, historical and other differences among Central and East European countries are also large, and are reflected in differences in the extent and nature of corruption. Corruption in the Czech Republic, for example, is likely to be conditioned not only by the communist legacy but also by the historical legacy of the Habsburg Empire and the bureaucratic tradition it bequeathed, whereas corruption in Poland is thought – at least by many domestic observers – to be underpinned, *inter alia,* by a centuries-old distrust in the State borne of a history of occupation by various external powers. These differences suggest that beyond the establishment of certain basic minimums, there is a need for solutions specific to individual countries; however, to date very little, if any, research has been conducted in this area.

3.2 The EU assessment of corruption in candidate States

Difficulties in measuring corruption deriving from the lack of an agreed-upon definition are exacerbated by the fact that since acts of corruption are usually illicit, the parties involved have an interest in concealing them. The European Commission has acknowledged this difficulty by focusing on anti-corruption policy rather than corruption itself. However, requiring policies without an adequate analysis of the

[60] To the extent that this is true then the liberal hope – that private sector actors who acquire wealth through corruption or more-or-less illegal means will later promote a legal State in order to secure their property rights – may be undermined.

[61] The growing support for populist (and even anti-system) parties in Poland is the classic example of such an unfavourable dynamic.

phenomenon at which they are targeted (corruption) invites the criticism that these policies may not address the specific needs of different countries.

In practice the Commission has relied predominantly on evidence gathered by its local EC delegations for its assessment of corruption. The Commission's assessment of anti-corruption policy, on the other hand, is based on a more systematic, although still very general, checklist or set of criteria (see Section 3.2.2).

3.2.1 The assessment of corruption in candidate States

One of the Commission's stated aims in assessing candidate countries' progress towards accession is objectivity. The Commission's 1999 Composite Report notes that,

> [The] process of regular evaluation based on unchanging criteria is the only way to make a fair and balanced assessment of the real capability of each candidate country to meet the Copenhagen criteria.[62]

Clearly, corruption is an area in which objective assessment is comparatively difficult. Indeed, Commission officials state that the Commission does not attempt to measure corruption in candidate States, preferring to concentrate on anti-corruption policy. However, in order to structure its analysis the Commission does make judgements about corruption in candidate countries based on secondary sources, varying from local public opinion surveys to international comparative studies. However, it does not explicitly cite any of the available cross-country evidence, and does not appear to employ a consistent approach across candidate countries when citing survey data. For example, the 2001 Regular Report on Slovakia noted a number of areas where corruption is perceived to be a big problem, which appears to be based on the World Bank's *Diagnostic Surveys* carried out in Slovakia in 1999.[63] However, the same surveys carried out in Romania were not cited in the Commission's assessment of Romania.

The Commission's assessments of the prevalence of corruption (see Tables 4-5), in which the seriousness of corruption in candidate countries is classified according to statements ranging from "relatively limited problem" through "area of concern" to "widespread and systemic" are clearly intuitive. Analysis of the Regular Reports indicates that three main criteria are used to assess corruption. These criteria are discussed below.

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[62] European Commission, *Composite Paper: Reports on Progress towards Accession by Each of the Candidate Countries,* October 1999, p.10.

[63] European Commission, *2001 Regular Report from the Commission on Slovakia's progress towards Accession,* p. 19.

Table 4: Criteria used to indicate levels of corruption in candidate countries in the *2000 Regular Reports*

Country	*Assessment of level of corruption?*	*Criminal statistics*	*Public opinion surveys*	*Reports*	*Media*	*Control framework/ regulatory deficiciency*	*Rumours/ unspecified*
Bulgaria	Yes (very serious problem)		X		X	X	X
Czech Republic	Yes (continues to be a problem)	X	X			X	
Estonia	Yes (relatively limited problem)					X	
Hungary	Yes (remains a problem)					X	
Latvia	Yes (serious obstacle to functioning of public administration)					X	
Lithuania	Yes (source of concern)	X				X	
Poland	Yes (environment in which corruption can flourish)	X		X		X	
Romania	Yes (widespread and systemic problem)	X				X	X
Slovakia	Yes (perception that corruption is widespread)		X			X	X
Slovenia	Yes (relatively limited)					X	X

Source: European Commission, *2000 Regular Reports,* available at: <http://europa.eu.int/comm/enlargement/report2000/>, (last accessed 5 August 2002).

Table 5: Criteria used to indicate levels of corruption in candidate countries in the *2001 Regular Reports*

Country	*Assessment of level of corruption?*	*Criminal statistics*	*Public Opinion Surveys*	*Reports*	*Media*	*Control framework /regulatory deficiciency*	*Rumours/ unspecified*
Bulgaria	Yes (very serious problem)		X			X	X
Czech Republic	Yes (serious cause for concern)	X	X	X		X	
Estonia	Yes (relatively limited problem)						
Hungary	Yes (continues to be a problem)						X
Latvia	Yes (perceived levels of corruption high)	X				X	X
Lithuania	Yes (area of concern)	X				X	
Poland	Yes (general perception that corruption is widespread)	X				X	X
Romania	Yes (widespread and systemic problem)					X	X
Slovakia	No	X				X	X
Slovenia	Yes (appears to remain relatively limited)					X	X

Source: European Commission, *2001 Regular Reports,* available at: <http://europa.eu.int/comm/enlargement/report2001/>, (last accessed 22 August 2002)

Criminal statistics

A number of Regular Reports cite statistics on criminal prosecutions and convictions for corruption, for example Estonia (1998), Czech Republic (1999, 2000), Poland (1999, 2000) and Latvia (1999, 2000). However, there is some ambiguity in the Commission's interpretation of such statistics. The 2000 Regular Report on Slovenia states that "According to the available statistics and reports, problems of corruption are relatively limited,"[64] indicating that criminal statistics are regarded as indicating actual levels of corruption. However, in most other cases where criminal statistics are mentioned the Commission appears to interpret such statistics as evidence of the strength of the fight against corruption, rather than indicators of the level of corruption itself. For example, the 2000 Regular Report on the Czech Republic cites the limited prosecutions resulting from the country's "Clean Hands" anti-corruption campaign as evidence of the inadequacy of the fight against corruption.

Clearly, there are serious problems in relying on criminal statistics to measure levels of corruption,[65] and the Commission's tendency to interpret the statistics as indicators of the effectiveness of the fight against corruption – where more prosecutions means a more effective fight – has its logic. However, the application of this approach is inconsistent. For example, neither Poland nor Latvia received credit in the 2000 Regular Reports for large increases in the number of convictions for corruption. Similar conviction rates in the Czech Republic and Hungary in 2000 do not prevent corruption being regarded as a more serious problem in the former than in the latter. Although comparison of conviction rates across borders may itself be problematic, this does not appear to be the motivation behind the Commission's differing assessment. In general, no rationale is presented to indicate what might constitute a satisfactory conviction rate, nor is any baseline stated in terms of conviction rates in EU member States that might provide such an indication. Moreover, there are reasons for doubting whether statistics on convictions in member States say anything meaningful about levels of corruption (see Section 2.1).

Public opinion surveys

Three of the November 2000 Regular Reports draw explicitly on the results of public opinion surveys on corruption, while such surveys could also have been used in other country reports (for example, under the heading of "available evidence" in the 2000 Regular Report on Slovenia). The 2000 Bulgaria Report states that according to several

[64] Commission, *2000 Regular Report from the Commission on Slovenia's Progress towards Accession,* November 2000, p. 16.

[65] The unreliability of criminal statistics is demonstrated by the 50 percent increase in prosecutions for corruption in Poland in 1999, and the approximate doubling of prosecutions in Latvia in the same period.

surveys, customs, the police and the judiciary are considered to be the most corrupt professions in Bulgaria, though other professions cited as corrupt in the same surveys include university teaching personnel and public sector officials.[66] The 2000 Czech Republic Report cites opinion polls that "show that one in five Czechs assume that corruption pervades many areas of everyday life,"[67] and that the public regards corruption as most widespread in the State administration, followed by the police and intelligence services, healthcare, banking and the political sphere. The 2000 Slovak Report cites a Government survey that found that one-fifth of parties involved in court proceedings experienced corruption.[68]

However, the Commission's approach in this area also lacks clarity. It is not clear to what extent the Commission regards survey results as indicating actual levels of corruption. Moreover, the available detailed cross-country survey evidence, in particular the data from the 1999 *Business Environment and Enterprise Performance Survey* commissioned by the World Bank and European Bank for Reconstruction and Development,[69] does not appear to have been used systematically.

Unspecified evidence

In a number of Regular Reports, the Commission makes statements concerning levels of corruption that are based on evidence that is either specified unclearly – as in the case of Slovenia where "available statistics and reports"[70] are mentioned – or not at all. Unfortunately, this is particularly the case in countries that receive the worst assessments for corruption, such as the 2000 Bulgaria Report, which states that,

> Corruption continues to be a very serious problem in Bulgaria. Whilst it is hard to know its extent, the persistent rumours about corrupt practices at various levels of the administration and the public sector in themselves contribute to tainting the political, economic and social environment.[71]

Likewise, the Romanian and Latvian reports – which appear to rank these two countries along with Bulgaria as the worst candidate countries in terms of corruption,

[66] Commission, *2000 Regular Report from the Commission on Bulgaria's Progress towards Accession,* November 2000, p. 17.

[67] Commission, *2000 Regular Report from the Commission on the Czech Republic's Progress towards Accession,* November 2000, p. 21.

[68] Commission, *2000 Regular Report from the Commission on Slovakia's Progress towards Accession,* November 2000, p. 17.

[69] See World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate.*

[70] Commission, *2000 Regular Report from the Commission on Slovenia's Progress towards Accession,* p. 16.

[71] Commission, *2000 Regular Report from the Commission on Bulgaria's Progress towards Accession,* p. 17.

do not present any specific evidence of corruption. In the 2001 Report on Poland, which the Commission viewed as one of the more corrupt candidate countries, the Commission referred to a "spate of recent prominent allegations" and commented that,

> Irrespective of whether the specific allegations turn out to be true or not, there is a general perception that corruption is widespread. This is damaging both domestically and internationally.[72]

The use of allegations – that may well turn out to be unfounded and a normal part of the political struggle in an election – as evidence to cite a corruption problem that is "damaging internationally" carries the danger of developing into a self-fulfilling prophecy.

Indirect evidence: regulatory deficiencies

In its claims concerning levels of corruption in candidate countries the Commission relies to a significant extent on naming structural regulatory deficiencies in a given sphere. For example, the 2000 Estonia Regular Report emphasised the need to raise police salaries substantially, while stressing under "political criteria" the need to fight corruption in the police. This indicates that corruption is identified as a problem not on the basis of direct evidence of corruption, but of a regulatory shortcoming that might result in corruption: the explanation of an alleged phenomenon is used to identify conditions that suggest but can not prove that the phenomenon exists.[73] Examples of this tendency can be found in almost every Report with the exception of Slovenia, where the apparent adequacy of regulatory institutions (or at least their ongoing reform) appears to be taken as evidence that corruption is a limited problem. Although regulatory deficiencies – as identified by the Commission – may be taken as constituting an aspect of a given institution or system that increases its vulnerability to corruption, this may not always be the case. Likewise, the assumption that the apparent adequacy or reform of regulatory institutions constitutes evidence that corruption is not a serious problem is even more flawed, and would only hold under certain specific conditions. Indeed, EUMAP's report on Slovenia identifies the weakness of enforcement and regulatory bodies as giving rise to possible problems of corruption – the opposite of the Commission's assessment.

The assessment of anti-corruption policy in candidate countries

In terms of both its evaluation of existing anti-corruption policies and actions expected of candidate States in the area of anti-corruption policy, the criteria employed by the

[72] Commission, *2000 Regular Report from the Commission on Poland's Progress towards Accession,* p. 21.

[73] Estonia is chosen here as an example since, according to both the *Regular Report* itself and other surveys such as the Transparency CPI, corruption is not a serious problem.

Commission *vis-à-vis* candidate States can be divided into three parts. Officials state that in the preparation of the Regular Reports the Commission follows a "checklist" of six criteria for monitoring corruption:

1. The existence and implementation of anti-corruption policy;
2. Institutional arrangements for implementation and division of tasks among institutions;
3. Codes of conduct for public servants;
4. Training programs for public servants;
5. Cases of corruption in government and public administration, and how the authorities reacted to these cases;
6. Ratification and implementation of the relevant conventions (Council of Europe, OECD).[74]

Analysis of the Regular Reports yields a pattern of comment that is to some extent consistent with this checklist. However, the Commission evaluates or advocates individual policies or the consideration of certain policies in some countries without mentioning them in others.

The criteria implied by the Regular Reports are outlined below.

(i) Criteria that are applied more-or-less consistently across all candidate States.

This category consists of two main elements:

International instruments

The Commission consistently takes into account the extent to which countries have adhered to international anti-corruption instruments: specifically, whether they have signed and ratified the Council of Europe Criminal and Civil Law Conventions on Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials; and whether they have aligned legislation with the requirements of the 1995 Convention on the Protection of the European Communities' Financial Interests and its two anti-corruption protocols, and the 1998 Convention on the fight against corruption involving officials of the European Communities or officials of the member States of the European Union. These requirements appear to provide the basis for the only administrative structures the Commission requires candidate countries to create explicitly under the heading of corruption: efficient anti-fraud services to contribute to the fight

[74] Information provided by DG Enlargement Unit, European Commission.

against fraud and corruption, and full cooperation between national authorities and the European Commission, specifically OLAF, the EU's own anti-fraud unit.[75]

Law enforcement

Second, the Commission pursues a consistent policy of urging and assisting the improvement of the institutions of law enforcement. Much of this activity is linked to the existence of the Council of Europe OCTOPUS program, which has consisted of joint seminars of the law enforcement agencies of EU and candidate States. The emphasis of OCTOPUS recommendations has been on increased specialisation of the various organs of enforcement (creation of special anti-corruption departments in the police, investigation organs and judiciary) and improved coordination among them and with other specialised anti-corruption bodies.

The latter direction of policy is linked to a consistent Commission policy of encouraging the development of national anti-corruption strategies. In addition, the Commission consistently urges increased efforts in the fight against corruption in the customs administration.[76]

The application of the above criteria to individual candidate States is summarised in Tables 6 and 7, which draw on the 1999 and 2001 Accession Partnerships.

[75] Information provided by DG Enlargement Unit, March 2002.

[76] In this area, however, it appears that the concern with corruption is indirectly motivated by the primary EU concern with smuggling, as little evidence of corruption is presented.

Table 6: Corruption as a commitment under the 1999 Accession Partnerships

Country	*Corruption mentioned?*	*Short-term priorities*	*Medium-term priorities*
Bulgaria	Yes	**JHA**: Upgrade law enforcement bodies and judiciary; National anti-corruption strategy; Ratify European conventions	**IM**: Reinforce fight against corruption in customs administration; JHA; Implement anti-corruption strategy
Czech Republic	Yes	**JHA**: Implement anti-corruption policy (legislation, implementing structures, sufficient qualified staff, institutional cooperation)	**IM**: Continue fight against corruption in customs administration; JHA; Further upgrade law enforcement bodies, continue fight against corruption
Estonia	Yes	**JHA**: Continue fight against corruption: create advanced criminal investigation data system, improve research capacity, improve law enforcement cooperation; Ratify OECD convention	
Hungary	Yes	**JHA**: Ratify European Criminal Law Convention	**JHA**: Further upgrade law enforcement bodies: Continue fight against corruption; Better coordination
Latvia	Yes	**IM**: Continue fight against corruption in customs; **JHA**: Upgrade law enforcement and judicial bodies to continue fight against corruption; Concrete measures to fight corruption, improve coordination; Ratify European and OECD conventions	**JHA**: Implement legislation on corruption and the anti-corruption strategy
Lithuania	Yes	**IM**: Customs: reinforce fight against corruption **JHA**: Upgrade law enforcement bodies and judiciary and improve coordination to continue fight against corruption; Ratify European Criminal Law and OECD conventions; Adopt and start implementing national anti-corruption strategy	**JHA**: Implement streamlined inter-agency structure for fighting corruption
Poland	Yes	**JHA**: Implement anti-corruption and anti-fraud program (particularly customs, police and judiciary); Ratify European Criminal Law and OECD conventions	**JHA**: Further upgrade law enforcement bodies and judiciary and improve coordination
Romania	Yes	**IM**: Customs: apply measures to combat fraud and corruption **JHA**: Upgrade law enforcement bodies and judiciary and improve coordination to continue fight against corruption; Adopt law on prevention and fight against corruption, establish independent anti-corruption department; Ratify European Criminal Law and OECD conventions	
Slovakia	Yes	**JHA**: Ratify European Criminal Law and OECD conventions	**JHA**: Upgrade law enforcement bodies and judiciary; Continue fight against corruption
Slovenia	Yes	**JHA**: Ratify European Criminal Law and OECD conventions	**IM**: Continue fight against corruption in customs **JHA**: Further upgrade law enforcement bodies and improve coordination; Continue fight against corruption

Notes: JHA = Justice and Home Affairs, IM = Internal Market.

Source: 1999 Accession Partnerships, available at: <http://europa.eu.int/comm/enlargement/report_10_99/acc_partn.htm>, (last accessed 22 August 2002).

Table 7: Corruption as a commitment under the 2001 Accession Partnerships

Country	*Corruption mentioned?*	*Policies*
Bulgaria	Yes	PC: URGENT: start implementing national anti-corruption strategy, especially focusing on awareness, prevention and prosecution.
Czech Republic	Yes	PC: Pursue efforts to more effectively fight corruption and economic crime. JHA: Establish framework for better cooperation between law enforcement agencies, especially for fight against economic crime and corruption, further training on organised crime, introduce modern equipment; continue efforts to strengthen customs ethics, combat fraud and corruption.
Estonia	Yes	CU: Continue fight against fraud and corruption in customs, continue to implement ethics policy in customs.
Hungary	Yes	PC: Ensure implementation of anti-corruption strategy.
Latvia	Yes	PC: Complete legal framework for fight against all types of corruption, ensure implementation of legislation and anti-corruption strategy; improve inter-agency and international cooperation.
Lithuania	Yes	PC: Adopt and start implementing anti-corruption strategy, Law on Corruption Prevention and Code of Ethics for Civil Servants; ratify relevant international anti-corruption conventions
Poland	Yes	PC: Implement a comprehensive anti-corruption strategy.
Romania	Yes	PC: Intensify fight against corruption by clarifying competencies of bodies involved in anti-corruption activities, ensuring improved coordination and strengthening implementation capacities; ratifying relevant international conventions; introducing criminal liability of legal persons into criminal law.
Slovakia	Yes	PC: Step up fight against corruption, in particular ensure timely and effective implementation of anti-corruption Action Plans. JHA: Continue efforts to strengthen customs ethics, combat fraud, corruption and economic crime FC: URGENT: Complete legislation for internal financial control, strengthen fight against fraud, step up efforts to ensure correct use, control, monitoring and evaluation of EC pre-accession funding
Slovenia	No	

Notes: PC = Political Criteria, JHA = Justice and Home Affairs, IM = Internal Market, CU = Customs Union, FC = Financial Control.

Source: 2001 Accession Partnerships, available at: <http://europa.eu.int/comm/enlargement/report2001/acc_partn.htm>, (last accessed 5 August 2002).

(ii) Criteria applied inconsistently across candidate States

The second set of criteria consists of legislative provisions that are more-or-less explicitly designed to address corruption, yet are applied by the Commission unevenly across the candidate States. In some cases the Commission urges certain reforms, or mentions or criticises them in the context of a country's existing anti-corruption strategy, yet fails to do so in another State. These include for example:

- Conflict of interest and/or asset monitoring. For example, in 2001 the Commission stated that Slovenia needs to pay more attention to preventing conflict of interest situations in public procurement,[77] yet did not mention the problem in other countries where the problem is also serious (such as the Czech Republic or Poland).
- Political party financing. The Commission noted improvements in the regulations on financing of political parties in Poland (2001) and Lithuania (2000), and called explicitly for a more transparent system of party financing in Romania (2001). The Commission did not mention the passage of similar improvements in Slovak legislation in 2001, and has not stated any criteria for what constitutes a good system.[78]
- A Law on Lobbying is mentioned as an important anti-corruption measure taken in Lithuania in the 2000 Report.[79] However, lobbying is hardly mentioned in any other Report, despite widespread evidence that uncontrolled lobbying is a major source of corruption in candidate States.
- In the 2001 Lithuania report, the Commission explicitly states that "[G]reater involvement of civil society in the fight against corruption should be encouraged." The role of civil society in fighting corruption is not mentioned in other Reports with the exception of Bulgaria. The fact that civil society in Slovakia has played a major role in the emergence of anti-corruption policies, while civil society in Slovenia appears to be so weak in the area of corruption as to play no role at all, has drawn no comment from the Commission.

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[77] Commission, *2001 Regular Report from the Commission on Slovenia's Progress towards Accession,* p. 18.

[78] This probably reflects the lack of any European standards on political party financing, not to speak of various scandals in party financing in EU countries, notably Germany (see Section 2.1).

[79] Commission, *2000 Regular Report from the Commission on Lithuania's Progress towards Accession,* p. 18.

(iii) "Capacity building"

In addition to its concern with direct anti-corruption policy, a separate major accession criterion applied by the Commission to candidate States is the extent to which they have built sufficient capacity to implement the *acquis*. Indeed, the 2001 overall report indicates that the third set of Copenhagen criteria concerning ability to assume the obligations of membership has now been allocated higher priority:

> The conditions for membership, set out by the Copenhagen European Council in 1993 and further detailed by subsequent European Councils, provide the benchmarks for assessing each candidate's progress. These conditions remain valid today and there is no question of modifying them. In the present phase of the accession process, however, it is necessary to focus as much on the candidates' capacity to implement and enforce the *acquis* as on its transposition into law. For this reason, particular attention is now being given to the candidates' administrative and judicial capacity.[80]

Given the link between corruption and the ability of candidate States to implement the *acquis*, it is not surprising that the EU frequently mentions capacity building in the context of or adjacent to discussions of anti-corruption policy. For example, the citation from the 1999 Composite Report provided earlier identifies low salaries for public employees as one of the two main factors underlying corruption in candidate countries. The two main aspects of capacity building pursued by the Commission are:

- A Civil Service Law that entails proper remuneration, staffing and an adequate control system. The Commission's concern with control systems is primarily related to the need to control the increasing inflow of EU funds into candidate States and the transition to allocation of structural funds. This includes adopting international State audit standards (Lima Declaration and INTOSAI standards); establishing effective, independent and *ex ante* internal control systems; and, again, increasing capacity in terms of both staffing and information systems.
- Enhanced judicial capacity, entailing consolidation of judicial independence, adequate staffing of courts, infrastructure and training.

Although the need to build capacity in the public administration of candidate States is indisputable, the link between the public administration reforms advocated by the Commission and corruption is more controversial. First, the wisdom of giving across-the-board security of tenure and pay raises is questionable to some extent, given that the recipients are to a significant extent the same personnel who appear to be tainted by

[80] Commission, *Making a Success of Enlargement: Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries,* p. 5.

corruption in the Regular Reports.[81] Second, to the extent that corruption is not simply a question of poorly paid civil servants boosting their salaries but is more deeply rooted in patronage networks, pay raises are unlikely to make a difference. Moreover, the political feasibility of such measures has been questioned by some observers,[82] while the economic feasibility of increasing expenditure on public administration may also be doubtful in many countries.

3.3 Corruption in candidate States: the evidence

3.3.1 The incidence of corruption in candidate States

There is still little comparative research available to provide clear evidence of the extent of corruption in candidate States, and no detailed comprehensive study of corruption in EU member and CEE States that would yield sufficient data to make serious comparisons. Nevertheless, survey evidence suggests that corruption is at a minimum perceived to be a major problem in candidate States. One important survey carried out across candidate countries in November 2001 reported that 73 percent of citizens think that most or almost all public officials are corrupt. The survey found that in Latvia and Lithuania more than nine-tenths of citizens think their government is corrupt, while Slovenia is the only country in which a majority (58 percent) of citizens do not think there is much corruption in Government.[83] Aggregate indicators of 12 international indices of corruption (and other governance variables) calculated by Daniel Kaufmann *et al* suggest that corruption in CEE and the Baltic States is considerably more prevalent than in countries of the OECD.[84] However, the applicability of this comparison to candidate States is less clear as several of them are already OECD members. Also, as the authors themselves admit, the precision with

[81] The OECD, for example, explicitly recommended in 2001 that provisions providing for security of tenure be omitted from the Czech Civil Service Act. OECD Economic Surveys: Czech Republic July 2001, p. 164., OECD, Paris, July 2001.

[82] "Given the communist legacy, post-communism tends to be egalitarian, which means that envy is the supreme public virtue. The electorate will never agree to a highly paid civil service, which, in any event, is unaffordable given the sheer size of the State bureaucracy." A. Sajo, "Clientelism and Extortion: Corruption in Transition," (amended version of A. Sajo, "Corruption, Clientelism, and the Future of the Constitutional State in Eastern Europe," *East European Constitutional Review* 1998, Vol. 7, no. 2), p. 10.

[83] New Europe Barometer 2001, Centre for the Study of Public Policy, University of Strathclyde; for details see R. Rose, "Advancing into Europe: Contrasting Goals of Post-Communist Countries," forthcoming in *Nations in Transition 2002*, Freedom House, New York. <http://www.cspp.strath.ac.uk>, last accessed 24 August 2002, p. 11.

[84] See World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate,* p. xiv.

which the indices measure quality of governance is limited: even with regard to their aggregates of indices of individual components of governance, which the authors argue are more accurate than the individual indices themselves, the authors express the opinion that

> [A]lthough it is possible to robustly identify twenty or so countries with the best and worst governance in the world, it is much more difficult to identify statistically significant differences in governance among the majority of countries.[85]

There are two other main exceptions to the dearth of evidence. These are presented briefly below.

The Transparency International Corruption Perceptions Index

The CPI is constructed from an unweighted average of the available surveys of domestic public opinion on levels of corruption in each country. The index ranges from 0 (most corrupt) to ten (least corrupt). In 2001 the CPI averaged 7.6 for EU member States, ranging from 4.2 for Greece to 9.9 for Finland, but 4.3 for post-communist candidate States, ranging from 2.8 for Romania to 5.6 for Estonia.

Although both the Kaufmann *et al* calculations and the CPI appear to confirm the existence of a broad difference in levels of corruption between member and candidate States, the two regions are not in entirely separate categories with respect to corruption. Italy scores lower in the CPI than Estonia, while Greece scores lower than Estonia, Hungary, Slovenia and Lithuania. Regarding candidate countries themselves, the CPI does not paint an optimistic picture of trends over time, with only two of the ten countries showing improvement over the period 1998-2001. However, it should be taken into account that the CPI exhibits considerable inertia, as the index is based on both present and past surveys, and is therefore in effect a rolling average.

[85] D. Kaufmann, A. Kraay and P. Zoido-Lobaton, *Aggregating Governance Indicators*, World Bank Policy Research Paper no. 2195, p. 5.

Table 8: Corruption Perception Index scores and rankings for candidate countries, 1998–2001

	CPI score (ranking)				*Trend in ranking*
	1998	*1999*	*2000*	*2001*	
Bulgaria	2.9 (66)	3.3 (63)	3.5 (52)	3.9 (47)	Improvement
Czech Republic	4.8 (37)	4.6 (39)	4.3 (42)	3.9 (47)	Decline
Estonia	5.7 (26)	5.7 (27)	5.7 (27)	5.6 (28)	Stable
Hungary	5.0 (33)	5.2 (31)	5.2 (32)	5.3 (31)	Stable
Latvia	2.7 (71)	3.4 (58)	3.4 (57)	3.4 (59)	Stable
Lithuania	NI	3.8 (50)	4.1 (43)	4.8 (38)	Improvement
Poland	4.6 (39)	4.2 (44)	4.1 (43)	4.1 (44)	Stable
Romania	3.0 (61)	3.3 (63)	2.9 (68)	2.8 (69)	Gradual decline
Slovakia	3.9 (47)	3.7 (53)	3.5 (52)	3.7 (51)	Stable
Slovenia	NI	6.0 (25)	5.5 (28)	5.2 (34)	Decline
Number of countries included in index	85	99	90	91	

Notes: Absolute scores are *not comparable* across different years. Rankings are comparable across years to the extent that the sample of countries is unchanging, which is largely the case. "NI" means the country was not included in the index for the given year.

Source: Transparency International, <www.transparency.org>, (last accessed 22 August 2002)

The 1999 EBRD/World Bank Business Environment and Enterprise Performance Survey (BEEPS)

While the indicators outlined above are all constructed from surveys of perceptions of corruption, an important attempt to measure the prevalence of corruption through questions concerning actual experience of corruption has also been made by the EBRD and World Bank in a major survey carried out in 1999 of more than 3,000 enterprise managers in 17 transition countries. Among other things, the survey attempted to measure two main variables:

- **Administrative corruption:** the extent to which companies make informal payments to influence the implementation of formal rules;
- The extent to which companies engage in and are affected by **State capture,** defined as "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."[86]

Administrative corruption

According to the results of the BEEPS survey, enterprises in candidate States pay on average 2.1 percent of their annual revenues in unofficial payments to public officials (see Table 9). As a percentage of annual profits, the figure would clearly be much higher. Table 10 provides a more detailed view of the proportion of firms in each candidate country that pay various percentages of revenues in bribes.

Table 9: Average percentage of annual revenues paid in unofficial payments to public officials by enterprises in candidate countries

	Bulgaria	*Czech Republic*	*Estonia*	*Hungary*	*Lithuania*	*Poland*	*Romania*	*Slovakia*	*Slovenia*	*Latvia*
Average	2.1	2.5	1.6	1.7	2.8	1. 6	3.2	2.5	1.4	1.4
Number of observations	98	97	92	91	75	175	99	80	98	121

Source: BEEPS Interactive Dataset, World Bank, <www.worldbank.org>, (last accessed 22 August 2002).

Table 10: Replies to the question "On average, what percentage of revenues do firms like yours pay in unofficial payments per annum to public officials?" (answers in percent)

Country	*0*	*< 1*	*1 – 2*	*2 - 10*	*10 – 12*	*13 - 25*	*> 25*
Bulgaria	0	42	32	12	10	3	0
Czech Republic	0	44	18	20	15	2	2
Estonia	0	35	37	28	0	0	0
Hungary	0	61	14	16	8	2	0
Lithuania	0	49	14	24	8	6	0
Poland	0	59	21	14	7	0	0
Romania	3	28	35	23	8	3	1
Slovakia	0	40	21	32	6	2	0
Slovenia	0	54	15	24	5	0	2
Latvia	7	54	19	16	2	0	2

Source: BEEPS Interactive Dataset, World Bank, <www.worldbank.org>, (last accessed 22 August 2002).

[86] World Bank, *Anti-corruption in Transition: A Contribution to the Policy Debate,* p. xv.

The question to which the data in Table 10 applies was also asked in a number of EU countries, namely France, Germany, Italy, Portugal, Spain, Sweden and the UK. Although a figure for the average percentage of revenue paid by firms to public officials is not available, the survey nevertheless revealed striking differences. For example, in the EU countries surveyed, on average 84 percent of respondents stated that firms like theirs pay nothing in unofficial payments, a dramatically different result to that shown in Table 10. Likewise, on average 3.5 percent of firms in EU countries stated that companies like theirs pay 2-10 percent of annual revenues in unofficial payments, compared to 20.9 percent of firms in candidate countries. Further, on average 67 percent of companies in the EU countries in the survey said that there are no unofficial payments when firms in their industry do business with the Government, compared to an average of 8.5 percent in candidate countries.[87]

State capture

In order to generate data that might be interpreted as measuring State capture, the BEEPS survey asked enterprise managers whether and to what extent their company is affected by the purchase of various kinds of decision. The summary results for candidate countries are shown in Table 11. In terms of State capture strictly understood according to the World Bank definition, the most interesting overall result is that almost 20 percent of companies on average claim to be affected by corruption in the passage of legislation and in financing of political parties. The figures vary greatly by country however: the percentage of companies affected by the purchase of legislation varies from eight percent in Slovenia to 40 percent in Latvia (see Table 12), while the figure for party finance varies from four percent in Hungary to 42 percent in Bulgaria (see Table 13). The responses of countries concerning court decisions are not clearly indicators of State capture on the World Bank definition, but are nevertheless interesting as they indicate significant problems of corruption in judicial proceedings. The figures on corruption in the passage of presidential decrees and central bank decisions are probably of limited importance in candidate countries, as presidents have limited powers in all the countries and central bank independence is not seriously threatened in any of them.

[87] For results of the surveys in EU countries see *The World Business Environment Survey* (WBES) 2000, <http://info.worldbank.org/governance/wbes>, (last accessed 23 July 2002); for results in candidate countries see *The Business Environment and Enterprise Performance Survey* (BEEPS), the transition country component of the WEBS, <http://info.worldbank.org/governance/beeps>, (last accessed 23 July 2002).

Table 11: Indicators of State capture: percentage of firms affected by purchase of/purchase of decisions in…

	Parliamentary legislation	*Presidential decrees**	*Central Bank*	*Criminal Courts*	*Commercial Courts*	*Party finance*	*Capture Economy Index*
Bulgaria	28	26	28	28	19	42	28
Czech Republic	18	11	12	9	9	6	11
Estonia	14	7	8	8	8	17	10
Hungary	12	7	8	5	5	4	7
Latvia	40	49	8	21	26	35	30
Lithuania	15	7	9	11	14	13	11
Poland	13	10	6	12	18	10	12
Romania	22	20	26	14	17	27	21
Slovakia	20	12	37	29	25	20	24
Slovenia	8	5	4	6	6	11	7
Candidate country average	19	14.4	14.6	14.3	14.7	18.5	15.1

Note: * In parliamentary systems, this refers to executive decrees where applicable.
Source: J. Hellmann, G. Jones and D. Kaufmann, "Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition," Policy Research Working Paper 2444, World Bank Institute and Office of the Chief Economist, EBRD, September 2000, p. 9.

Table 12: Responses by enterprises to the question "What impact have the following forms of corruption had on your business? Sale of Parliamentary votes to private interests." (percentage of samples)

	No impact	*Minor impact*	*Significant impact*	*Very significant impact*	*Number of observations*
Bulgaria	62	10	18	10	68
Czech Republic	71	12	14	4	95
Estonia	67	19	9	5	103
Hungary	73	15	7	5	101
Lithuania	77	8	10	6	73
Poland	66	21	8	5	171
Romania	62	16	12	11	76
Slovakia	69	11	17	3	71
Slovenia	80	12	2	6	111
Latvia	30	30	31	9	122

Table 13: Responses by enterprises to the question "What impact have the following forms of corruption had on your business?: Contributions to political parties by private interests." (percentage of samples)

	No impact	*Minor impact*	*Significant impact*	*Very significant impact*	*Number of observations*
Bulgaria	47	10	22	21	78
Czech Republic	87	8	2	3	89
Estonia	55	29	13	4	108
Hungary	90	7	2	2	108
Lithuania	69	18	7	6	83
Poland	74	16	6	4	172
Romania	59	14	17	10	71
Slovakia	56	24	14	6	84
Slovenia	67	22	6	5	109
Latvia	34	31	24	12	119

Note: numbers may not add up to 100 because of rounding.
Source: BEEPS Interactive Dataset, World Bank, <www.worldbank.org>, (last accessed 22 August 2002).

The problems of generalisation

Although the surveys outlined above provide little evidence that corruption has decreased in candidate countries in recent years, there are several reasons for expressing caution, both about the surveys themselves and about the wisdom of making judgements about whether corruption in general has decreased or increased in a given country. Several of these reasons have been outlined already in Section 1.2.1: in particular, the difference between perceptions and experience, and the limits of understanding corruption only as bribery and informal payments. In particular, the incidence of clientelism as a form of socio-political organisation in post-communist societies has gone almost entirely unassessed.

In addition, much of the survey evidence is based on perceptions of overall corruption in a given country, with little or no sensitivity to the possibility that corruption may, during the same period, have decreased in some areas while increasing in others. While the BEEPS survey is an important step towards greater complexity based on the distinction between administrative corruption and State capture (see above), the size of the samples of firms, which ranged from approximately 70 to 170, raises questions about the extent to which the results are representative of the situation across all firms.

Aside from statistical questions, another difficulty with making judgements about trends in corruption in candidate countries is raised by the situation of economic

transition. In particular, a rough distinction may be drawn between "transitional" and "ordinary" corruption. "Transitional corruption" means corruption in one-off processes such as privatisation in particular, and has been widespread in all candidate States. "Ordinary corruption" refers to corruption of activities that are ongoing in any State (such as licensing procedures, company registration or competition regulation). Clearly, statements about trends in corruption in candidate States must be sensitive to this distinction: falls in levels of corruption may reflect the completion of privatisation processes, while increases in corruption may, for example, reflect a rise in the everyday burden on judicial institutions.

GRECO

All of these factors go to underline two main points. First, assessments of corruption in individual countries are of limited use unless they are detailed and institution-specific. Secondly, as EUMAP's individual country reports show, there is a general lack of detailed research on corruption in candidate countries, both in terms of survey research[88] and qualitative analysis of the vulnerability of various institutions to corruption.

On the other hand, analyses of corruption and anti-corruption policy based on the Council of Europe's 20 Guiding Principles have begun to be conducted within the framework of the GRECO evaluation reports. These are still in an initial phase and have not yet begun evaluating countries according to some of the more sensitive Guiding Principles (for example political party finance). Nevertheless, the GRECO reports remain the nearest thing in existence to analysis based on consistent standards, producing evaluations that can be used on a comparative basis, at least in the area of anti-corruption policy.

3.3.2 Loci of corruption

EUMAP's individual country reports confirm many of the findings of the European Commission concerning corruption in candidate countries, notably concerning administrative corruption. However, the reports also contain significant evidence that candidate countries are able to tackle and reduce administrative corruption. In particular, corruption in customs authorities appears to have been cut back significantly in a number of countries, such as the Czech Republic, Latvia and Poland.[89]

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[88] With a few notable exceptions, such as a large survey carried out by the local branch of Transparency International in Lithuania, the World Bank diagnostic surveys conducted in Slovakia and Romania, and the surveys carried out by Miller *et al* in Slovakia and the Czech Republic and cited above.

[89] The Hungarian branch of Transparency International also regards customs reform as one of the main areas where tangible progress has been made against corruption.

EUMAP reports also echo the Commission in identifying problems in the judiciary and institutions of law enforcement, both in terms of corruption and the ineffectiveness of these institutions in fighting corruption. They highlight problems concerning the independence of the institutions of prosecution, particularly in Poland and Romania. In general, in no candidate country have courts and prosecution offices yet proved to be sufficiently independent or powerful to investigate or prosecute on the basis of suspicions concerning politicians or parties where this does not suit the political establishment.

However, EUMAP country reports differ significantly from the Commission is in the emphasis they place on corruption in a number of other areas, listed below.

State capture

One area to which the Commission has paid little attention has been corruption of the legislative process in candidate countries, an example of what the World Bank defines as "State capture" (see above). EUMAP country reports indicate that uncontrolled lobbying is a serious problem in many candidate countries. A number of countries have taken important steps such as publishing proposed laws on the Internet and soliciting input from civil society. Nonetheless, it appears that in no country is the legislative process designed sufficiently well to limit corrupt influence on the content of legislation by commercial interests, such as through formal consultation processes that include only transparent and inclusive interest associations. In the Czech Republic, for example, the parliamentary process is highly vulnerable to corruption of MPs, and problems of covert lobbying appear to have become systematic over the past decade. Successful lobbying by business interests that have contributed to political parties may have been a problem in Estonia and Lithuania, and is regarded as one of the key problems of corruption in Latvia. In Bulgaria, there exist serious doubts whether the Government's anti-corruption strategy can be successfully implemented against strong countervailing power from entities (such as the customs administration) with an interest in blocking reform.

Political party funding

Corruption through the financing of political parties has been a major problem in most candidate countries. No country has put in place an effective system for limiting corruption, although the transition to generous State funding in the Czech Republic, strict requirements for informing on donations in Estonia (and most recently Latvia), and the allocation of a supervisory role to the Election Commission in Poland are all important steps in the right direction. Otherwise, the extent of the problem varies considerably. At one extreme, in Romania corruption in party financing is systemic and appears to be tied in with a system of contributions by electoral candidates to parties in return for being placed on party candidate lists. Party funding in Bulgaria, Latvia, Poland and Slovakia has been (or is thought to have been) highly corrupt over the past decade. A party financing scandal

brought down the Czech Government in 1997, while in the remaining countries there remain serious doubts about the accuracy of party accounts and therefore the links between private interests and parties.

Public procurement

Despite the adoption of progressively more comprehensive public procurement legislation in all candidate countries, corruption in public procurement remains a serious and widespread problem in most if not all candidate countries. Although procurement legislation has done much to stamp out more blatant forms of corruption based on avoidance of tender requirements, both contracting authorities and tendering companies have adapted easily to the new conditions. Bribes of 10-20 percent of contract value were cited as typical in a number of countries, including the Czech Republic, Hungary, Latvia, Lithuania, Poland and Romania. In Bulgaria and Slovakia procurement appears to be a hotbed of corruption, while in Estonia and Slovenia inadequacies in the framework for supervising procurement give rise to doubts about the integrity of procurement processes.

Public administration

EUMAP country reports confirm widespread perceptions that corruption is a serious problem in public administration, underpinned, *inter alia,* by a failure to reform vulnerable areas such a licensing procedures, failure to root out patronage in appointments, the absence of effective procedures for appealing against or investigating administrative decisions, and failure to prevent widespread conflicts of interest.

Although the country reports have not focused specifically on local government, it became apparent during the course of EUMAP research that corruption at local government level is a particularly serious problem in a number of countries. Indeed, in Estonia corruption in local government emerged consistently as the most pressing problem, underpinned by close ties between local businesses and officials and the inability of a number of important regulatory institutions to operate effectively at the local government level. Given the apparently relatively low levels of corruption in general in Estonia, the problem of local government corruption appears likely to be an important problem area in other candidate countries.

Citizen awareness and redress

In candidate countries, citizen awareness of corruption is both overblown and under informed. Corruption has been a prominent political issue in most candidate countries, with the exception of Estonia and Slovenia. However, the character of citizen awareness has not been of a type that encourages consistent pressure on elites to behave non-corruptly or to pursue consistent and effective anti-corruption policy. Instead, a pattern has emerged in a number of countries – although to differing degrees – in which corruption and sleaze in

general become one of the most important weapons in the armoury of those vying for power. The consequence of this is elections where corruption is used to topple Governments and as a promise of a cleaner future, but post-election anti-corruption drives lack competence or real political will, or even worse are used mainly to attack or undermine political opponents. This phenomenon has been most apparent in Poland, where elections in 2001 were fought mainly on the issue of corruption, while the resulting government has done little to pursue any consistent anti-corruption policy or behave differently to its predecessors. Even where Governments have come to power with a sincere objective of putting in place lasting anti-corruption policy, the very prominence of corruption as a political issue tends to hinder the creation of the cross-party consensus that is necessary in order to put through some of the most important reforms (for example to limit corruption in the legislative process).

In a few countries civil society organisations have played a vital role in formulating anti-corruption policy and maintaining a degree of consistent pressure on Governments to implement it, notably in Bulgaria and Latvia. Nevertheless, there remains a general lack of effective procedures for citizens to appeal against administrative decisions, and of efforts to educate citizens as to their rights *vis-à-vis* the State. In contacts with the public administration, citizens who are aware of their rights and how and to whom they may turn for redress may play a major role in reducing everyday corruption, even in countries with corruption problems as severe as Bulgaria, for example.[90]

Media independence

Although the media has played an extremely important role in raising awareness of corruption in candidate States, a number of important barriers to effective investigative journalism remain. In Romania draconian provisions remain on the statute books that undermine freedom of speech, while less worrying but nevertheless problematic laws remain on the books in Bulgaria and Poland. A more serious problem across almost all candidate States remains a widespread failure to guarantee the independence of public broadcasting: in most countries political control or influence is exercised over public television through the broadcasting regulator or financial pressure.

[90] One local analyst in Sofia expressed the opinion that citizens who are aware of their formal rights can deal with the Bulgarian public officials without having to resort to corruption. Interview with Ruslan Stefanov, Project Director, Economic Policy Institute, Sofia, 8 February 2002.

Table 14: Corruption: main problem areas identified by EUMAP country reports and European Commission in 2001

Country	*Main problems identified in EUMAP report, 2001*	*Main problems identified in 2001 Regular Report*
Bulgaria	Customs Political party funding Local Government Judiciary	Judiciary Enforcement of existing anti-corruption law Burdensome licensing and permit procedures
Czech Republic	Formal implementation of anti-corruption strategy Uncontrolled lobbying Public procurement	No civil service law Public procurement
Estonia	Weak law enforcement Ineffectiveness of anti-corruption institutions Local Government Public procurement	Police (petty corruption) Customs
Hungary	Political party patronage Independence of prosecution Public procurement Media independence	Non-specific
Latvia	Poor coordination of anti-corruption institutions Uncontrolled lobbying Political party funding Public procurement	Public administration Lack of coordination
Lithuania	Lack of reliable information Political party funding	Public administration Need to approve National Anti-corruption Strategy
Poland	Lack of will to produce anti-corruption strategy Off-budget agencies Independence of prosecution Corruption as a populist political issue	Public perceptions of corruption Lack of coherent approach, coordination and resources
Romania	Judiciary, prosecution and police Party finance Parliament: immunities Political party funding Legal provisions against media	Lack of secondary legislation to follow anti-corruption law Non-functioning anti-corruption agency Party finance
Slovakia	Tolerance of corruption Failure to implement anti-corruption strategy Judiciary Public administration Health and education	Judiciary Anti-corruption strategy not yet implemented
Slovenia	Lack of anti-corruption strategy Conflict of interest, clientelist networks Weak law enforcement Local government Public procurement Weak civil society	Conflict of interest

3.4 Anti-corruption policy in candidate States

3.4.1 The evidence

A number of trends in anti-corruption policy in candidate States emerge from the evidence presented in EUMAP's country reports. An overarching theme is a lack of political will to tackle corruption.[91] The evidence for this is widespread, including the inability of candidate States to achieve cross-party consensus on anti-corruption policy,[92] the unwillingness of executive authorities to grant sufficient independence to anti-corruption prosecutors,[93] and tendencies to fulfil the easier components of national anti-corruption strategies or to fulfil anti-corruption policies in formal terms but without genuine implementation.[94] An apparent exception to these reservations appears to be Lithuania, which has formulated one of the most comprehensive and sophisticated anti-corruption strategies in the region, put in place a number of very important legislative measures that are being increasingly well enforced, and above all created the only truly independent anti-corruption agency among all candidate States.

Where Governments have put in place anti-corruption strategies, these have been oriented by design or in implementation towards repression and a criminal law-based approach, and have been directed primarily towards low-level corruption rather than high-level corruption. This has been most clearly the case in Romania, but is characteristic of the implementation of most anti-corruption strategies, where efforts to tighten provisions of criminal law or tackle administrative corruption tend to be passed much more easily than for example, stricter conflict of interest provisions for high-level officials or provisions to regulate lobbying or stricter party financing provisions. Again, a notable, if partial, exception is Lithuania; Estonia has also put in place more comprehensive legislation than other candidate countries, although the extent to which the legislation has been implemented is questionable.

The repressive bias of most current anti-corruption strategies in candidate countries itself reflects the fact that such strategies have been in a number of cases overly "top-down;" that is, created at elite level with little or no incorporation of business, civil society and lower level officials. Although such an approach may yield results in

[91] This is due at least in part to the incentives facing power holders in post-communist countries. See Section 3.

[92] This has been a particularly severe problem in Poland, but has also clearly hindered anti-corruption policy in Bulgaria, the Czech Republic and Slovakia, for example.

[93] This appears to be a particularly visible problem in Poland and Romania, although EUMAP findings are not sufficiently detailed to conclude that it is not equally serious in certain other States.

[94] This has been noticeable in the Czech Republic and Slovakia, for example.

reducing administrative corruption, it suffers from major drawbacks by failing to build lasting societal pressure against corruption, and failing to incorporate the officials who are the targets of policy into the policy-making process, thereby losing an important opportunity to gain their support.[95]

In fact, these general tendencies in the anti-corruption strategies of candidate States are formally consistent with the requirements of the European Commission, and allow local elites to satisfy accession requirements such as the signature and ratification of international conventions, while in reality making little real progress against corruption or in formulating promising anti-corruption policies. Given the character of accession negotiations as a dialogue between the Commission and candidate Governments, this is difficult to avoid. Nevertheless, it inevitably raises questions about the feasibility of tackling high-level corruption through a process in which the Commission relies for both policy initiation and implementation on the very elites who can be expected to undermine anti-corruption policy.

3.4.2 The impact of the accession process on anti-corruption policy

The EU accession process has had a major impact on legal and institutional frameworks that are involved in the fight against corruption. Commission pressure has led to important legislative changes, especially in the areas of public procurement legislation, criminal and civil procedure, anti-corruption legislation, and civil service legal frameworks. The relative clarity of the EU approach in the area of enforcement of criminal law has led to important changes in candidate States, such as increased coordination between the various organs of enforcement, training of law enforcement officials and EU-assisted reform of the judiciary. The progress achieved in the Czech Republic in increasing the effectiveness of enforcement bodies and the courts in tackling corruption and economic crime has been to a large extent made possible by EU assistance, for example.

However, even in the area of anti-corruption policy narrowly-conceived, as above, the Commission has lacked the mandate or any standard of EU best practice in the areas of criminal investigation and proceedings that would allow it to pressure candidate States

[95] The most obvious example of this has been the adoption by a number of candidate countries of civil service codes of ethics. These have generally been adopted at government level without consultation with the officials to whom the codes will apply.

to take steps to ensure the freedom of institutions of prosecution enforcement from improper influence, for example in Poland and Romania.[96]

Moreover, the influence of the Commission on the development in candidate States of policies that would effectively limit corruption has been limited for a number of reasons. First, as Section 2.1 showed, the Union itself lacks a broadly based anti-corruption framework. Second, as noted above, the top-down elite focus of Commission influence in this area prevents attempts to encourage on a systematic basis more broadly conceived strategies, beyond supporting initiatives that Governments have already expressed their willingness to adopt. Again, this is perhaps inevitable in the area of anti-corruption policy, if the Commission is not to risk coming into open conflict with corrupt Governments. The absence of any Commission pressure on candidate States to deal with problems of corruption of legislative processes stands out in this area.

Third, in a number of policy areas the EU standards that exist are not directed primarily at preventing corruption. For example, the primary objective of Commission directives on public procurement is to encourage a single market in procurement, and the anti-corruption effects of procurement legislation are secondary.[97] Likewise, the pressure exerted by the Commission on candidate countries to carry out civil service reform is not motivated primarily by a desire to limit corruption but by the need to put in place a professional public administration capable of implementing the *acquis*.

In itself, the broader focus of such Commission directives is a good thing. Corruption is not the only, and probably not the most, important problem facing public administrations in Central and Eastern Europe, and this fact should be taken into account when designing reforms. However, this underlines the importance of underlining the positive aspects of such reforms for candidate Governments and officials, rather than emphasising their "negative" impact on corruption. As mentioned earlier (see Section 1.2.2), the best way of fighting corruption may often be not to fight against corruption but to pursue other primary policy objectives whose fulfilment reduces corruption as a side-effect.

EU assistance for anti-corruption policy

Although the European Commission wants candidate States to deal with corruption, in practice the support offered for anti-corruption policies has been organised in an uncoordinated fashion. PHARE projects related to anti-corruption policy are created on an *ad hoc* basis, often relying on consultancy contracts with private firms; there is no centralised pool of resources or official EU expertise, nor any system of twinning or secondment organised on a systematic and planned basis.

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[96] For example, the chief prosecutor in France is the Minister for Public Prosecutions.

[97] See for example European Commission, *Public Procurement in the European Union*, Commission Communication, COM (98) 143, 11 March 1998.

4. CORRUPTION AND THE ACCESSION PROCESS: OPTIONS FOR THE FUTURE

Corruption is an issue of major importance for candidate States, primarily as a barrier to consolidation of their own democracies and market economies. Anti-corruption policy has also been made one of the most important requirements for EU accession. However, the approach of the European Commission to corruption in candidate States has not always prompted the development of anti-corruption policies appropriate to the problems that exist. Likewise, it has not been made sufficiently clear to candidate countries what benchmarks they must fulfil (or are supposed to have fulfilled) in terms of anti-corruption policy in order to satisfy the accession criteria.

This may no longer be of immediate relevance for the eight candidate countries that are likely to be invited into the Union in the near future. However, it remains of immediate relevance in the case of Bulgaria and Romania – the two countries that will not be invited to join the EU in the initial enlargement, and that appear to suffer from the most severe problems of corruption. Clearly it is of relevance to countries that are at an earlier stage of talks with the EU, but are expected to join eventually (for example the Western Balkan countries). In reality, it is also of relevance for the countries that will be invited to join. Corruption is not only an "EU accession issue," but a problem that is of concern for candidate countries as a phenomenon that to varying extents undermines the quality of their democracies and perhaps their economic development as well.

Moreover, corruption in candidate States should also remain a concern for the Commission itself. The coming accession wave heightens the concern that the European Union itself lacks a clear anti-corruption framework. Currently, the framework is limited to conventions that are narrowly focused, not ratified by a large proportion of member States[98] and therefore not yet in force. The mandate of the Commission to raise issues of corruption in candidate States was artificially widened by the Copenhagen mandate, which has allowed the Commission to require candidate countries to carry out reforms and policies that it does not have the mandate to impose on existing member States. However, the Copenhagen mandate will cease to exist once candidates are invited to join the Union, despite the fact that problems of corruption remain serious in most of the countries expected to be invited to join in the near future. In this situation, attention must be refocused on tackling corruption through clarified standards and strengthened mechanisms for the EU as a whole.

[98] The failure of the majority of member States to ratify the 1995 Convention on Protection of the European Communities' Financial Interests is one example, as is Italy's unwillingness to join GRECO.

A useful starting point for analysis of future options for the EU in the area of anti-corruption policy is the observation that the Union lags behind several other international organisations in terms of the creation of anti-corruption instruments and mechanisms. In the absence of any real EU anti-corruption framework, this raises urgent questions concerning how the EU will tackle corruption in member States after accession. This problem may become acute if, as much of the available evidence suggests, administrative corruption is much more widespread in candidate States than in the vast majority of member States, which could undermine implementation of the *acquis* and the distribution of Union funds. However, it is also a problem in EU member States, where corruption may be becoming an increasingly important issue. Even if corruption does not directly undermine implementation of the *acquis*, it undermines the core democratic values the Union seeks to represent, not to speak of the integrity of the single market.

Given the observations made in this Overview concerning the lack of quality information and research on corruption, and the inevitably long-term nature of effective anti-corruption policy, there appear to be two primary areas in which the EU needs to find solutions. Firstly, there is a need for much more research on corruption in both current EU member and candidate States to identify the real loci and causes of corruption on a sector-specific basis. Such research might be carried out directly under the auspices of the Commission itself, but – given the limited formal mandate of the Commission in the area of corruption – is at present more likely to come from other international organisations such as the World Bank, EBRD, OECD, and civil society organisations. Second, the EU clearly lacks a framework of anti-corruption standards or a mechanism for monitoring adherence to such a framework.

In this situation, the clear way forward for the EU is to forge deeper links with the Council of Europe in this area. As outlined in Section 2.2, the Council of Europe has approved a number of key anti-corruption documents, in particular the two anti-corruption conventions and the Twenty Guiding Principles, and a separate organisation of States against corruption, GRECO. GRECO organises monitoring of adherence to the Principles (and the Conventions as they come into force). The strengths of this framework in particular are that:

- The Principles are embedded in a framework that is flexible and allows for national variation: adherence or approximation to the Guiding Principles does not necessarily mean exactly the same policies and priorities in every State.
- The Principles are amenable to development on the basis of dialogue between a community of equals.
- GRECO has established a functioning evaluation process based on peer review and dialogue with Governments of member States, and the review process

incorporates in evaluation teams representatives of Western and Eastern European States on an equal basis.

Although formal links between the EU and Council of Europe are generally minimal, in the area of anti-corruption policy there are clear opportunities that the EU could pursue to increase the influence of the Council's anti-corruption framework within the EU. Under Article 5 of the Statute of GRECO, the European Community may be invited to participate in the work of GRECO in a manner to be defined by the resolution establishing such participation.[99] Second, the requirement imposed on candidate States to sign the Council of Europe anti-corruption conventions, and the membership in GRECO of almost all member States, together constitute strong moral – if not legal – fulcra for pushing all member States to ratify the conventions. Moreover, the Criminal Law Convention entered into force in July 2002, and entities that that have ratified it are automatically obliged to become members of GRECO and thereby become subject to monitoring of their adherence to the Guiding Principles. The combination of these factors provides a clear route by which both candidate and member States can be incorporated into a functioning framework for monitoring corruption and anti-corruption policy.

5. RECOMMENDATIONS

On the basis of the arguments presented in this Overview and the findings of its individual country reports, EUMAP addresses the following recommendations to candidate States and the EU regarding anti-corruption policy.

5.1 Recommendations to candidate States

The following recommendations apply to candidate States generally. See individual country reports for additional country-specific recommendations.[100]

1. Strive for cross-party consensus on the development and implementation of anti-corruption policy; to facilitate this, label as "anti-corruption policy" only those policies whose *primary* aim is to reduce corruption;

[99] Statute of the GRECO, Appendix to Resolution (99) 5, Article 5. <http://www.greco.coe.int>, (last accessed 31 July 2002).

[100] The fact that the number of recommendations differs slightly from one country to another does not signify that countries with more recommendations have more to do.

2. Sponsor more detailed research on corruption to increase knowledge of the prevalence and nature of corruption in specific areas, as a precondition for designing effective anti-corruption policy;
3. Sponsor education and public awareness initiatives on corruption to make citizens aware of their rights and encourage the development of a culture more resistant to corruption;
4. Take steps to ensure that prosecutors are free from undue influences;
5. Reform legislative processes to restrict "State capture" by changing parliamentary procedures to make corruption more difficult, and by extending reforms to include compulsory and transparent consultation with interest associations;
6. Phase out patronage in public service appointments in a realistic and systematic way;
7. Carry out an "Audit of Public Administration" and of licensing and permit procedures to identify sources of corruption, and implement recommendations;
8. Reform administrative procedures to provide citizens with real redress, and establish appeal procedures that would allow courts to influence the substance of decisions;
9. Pursue measures designed to avoid abuse of conflicts of interest – to create an anti-conflict of interest culture of disclosure and case-by-case "self-disqualification," rather than basing conflict of interest provisions primarily on incompatibility provisions;
10. Devise Codes of Ethics in public administration through a consultative process that enables officials to regard such codes as their own rather than as imposed from above;
11. In the context of decentralisation of powers to local governments, ensure that the existing competent authorities (particularly the supreme audit institution and the public procurement authority) are able to audit and control local government;
12. Reform party funding rules to prevent corruption in a number of different ways, such as: setting expenditure limits, providing sufficient State funding to allow financing of election campaigns without heavy reliance on sponsors, and entrusting monitoring to institutions likely to enjoy advantages in terms of independence (such as the Election Commission);
13. Pay more attention in public procurement reform to measures designed to ensure the integrity of public procurement officers, rather than designing procedures that can be circumvented anyway and hamstring good officials;

14. Ensure independence of broadcasting regulators as much as possible, most likely through provisions defining strictly which organisations have the right of representation in the regulator.

5.2. Recommendations to the EU

1. Sponsor comparative research on corruption in candidate States and member States;
2. Join GRECO;
3. Use the Community's membership of GRECO to provide the Community with the mandate to:
   - carry out research on specific areas of corruption (such as party finance) in which it has so far lacked a mandate; and
   - increase pressure on member States to complete ratifications of the Council of Europe anti-corruption conventions, and on the remaining non-members of GRECO to become members, thereby leading to a situation in which all candidate and member States are evaluated on the basis of the Council of Europe's Twenty Guiding Principles for the Fight Against Corruption.