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CORRUPTION IN EUROPE: WHAT CAN BE DONE?

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Corruption in Europe:

What Can Be Done?

Laurence Cockcroft*

Introduction: Corruption Perceptions in the EU

In 2012 seventy four per cent of the citizens of the European Union felt that corruption was a major problem in their country.(1) Within this overall figure, the percentage ranged from 98 per cent in Greece to 19 per cent in Denmark. In the northern countries of the Eurozone the public believed that the crisis surrounding the Euro was largely attributable to incompetence, and by inference corruption, in the southern countries. In London it was widely held that it was the corrupt émigré Russian oligarchs whose money was bidding up real estate prices to levels which prevented 'true Londoners' from buying a house. The ex-Prime Minister of Italy, Silvio Berlusconi, was recognised as being at the centre of a network which depended on a business empire which had used corrupt payments to secure his position. In Spain Prime Minister Mariano Rajoy was obliged to admit that officials in his People's Progress Party had used party political funding for private purposes. In the case of Greece a whole country was engulfed in a crisis which could clearly be attributed to corruption ranging from fraudulent benefit payments to party finance. In Ireland, two decades of a corrupt and incestuous relationship between political parties, bankers, and construction companies was seen to unravel as the Eurocrisis accelerated amidst a series of dramatic exposes. In the relatively new member states, such as the Czech Republic, there have been a slew of cases incriminating Ministers in procurement decisions who have typically left their ministerial posts but not their parliamentary seat. In 2012

alone international banks, including Deutsche Bank, UBS, Credit Suisse, HSBC, Standard Bank, and Barclays paid fines to European and US regulators of a total \$20.8 billion for various forms of fraud, corruption and rate rigging. Barclays Bank confessed to the manipulation of LIBOR; other banks were to follow.

It is clear that public opinion was right in its broad judgement that corruption is a major issue in their countries. But is corruption in these countries really a more acute problem now than in the 1980s, in spite of a set of new conventions and stronger anti corruption legislation than at any time in the past?

Political Parties: The Weak Spot?

The assessment that political parties are corrupt is derived from both an awareness that their funding is often derived from forms of corruption, and that the governments which they form are wide open to influence by the same funders. This perception has, with justification, survived innumerable changes in the rules which govern political funding in each country and at the level of the European Parliament. The Global Corruption Barometer of Transparency International (TI) includes all the countries of Europe in its poll of attitudes to corruption. In 2012 it asked the question : which of eleven institutions do you consider to be most corrupt? In each of Germany, France, Ireland, the UK and Latvia political parties were awarded this accolade.(2)

Why have political parties sunk so low in public esteem? In Germany Helmut Kohl's immensely successful career culminated in his semi disgrace in 2000 as a result of fund raising deals for his CDU Party which were linked to escrow accounts in Liechtenstein and Switzerland, and had origins in both arms deals and the privatisation of east German assets. In France, Jacques Chirac's Presidency was dogged by a corruption case surrounding his time as mayor of Paris, which led to a court case and a verdict of guilty after his term expired. A funding scandal with an equally long history reverberated in a legal battle between Nicolas Sarkozy and Dominique de Villepin over the use of funds for political purposes (which had originated in the controversial sale of frigates to Taiwan held in the accounts of 'Clearwater', a corporate entity in

Luxembourg). In Italy public procurement has been seen as a major source of funds for party funding both before and after the 'Tangentopoli' cases conducted by the prosecutor Antonio de Pietro in the early 1990s. In 2012 a flow of media reports indicated that the Calabria based N'drangheta had successfully captured important strands of public procurement in Piedmont. In the UK the role of Lord Ashcroft, a financial tycoon who had made his fortune in Belize and whose UK tax status was in doubt, played a critical but well publicised role in raising money for the Conservative Party in the 2010 election campaign. In Croatia former Prime Minister Ivo Sandar was found guilty in 2012 of taking large scale bribes of more than 12 million Euros from a Hungarian energy company and an Austrian bank. In Romania former Prime Minister Adna Nastase attempted to commit suicide after being found guilty of taking a 1.5 million Euro bribe in 2004. These cases have all contributed to an increasingly negative perception of political parties.

The behaviour of MPs, once elected has also been the subject of major public disquiet. In Norway, in spite of its reputation as one of the least corrupt countries in the world, a pension fund scam involving MPs undermined public trust in 2010. In the Czech republic a patronage racket was exposed in 2010 with a similar effect. In the UK in 2009 an MP's expense shocked the public and brought public regard for politicians to an all time low. MPs also have their own interests to defend, but in many member states these remain murky. In eleven of twenty-five states there is either no disclosure or very limited disclosure.⁽³⁾ The most comprehensive system is that of Latvia which has to be updated annually. In only eight states is there a Code of Conduct for MPs.

The Growing Role of Lobbyists

The role of lobbyists, and the sense that key decisions are taken behind the scenes, often linked to political contributions, has added to this sense of corruptly arranged deals. Lobbying to secure a specific political outcome is a legitimate exercise by companies and civil society. However lobbying on an ad hoc basis by unregistered lobbyists is now widely regarded as part of a slippery slope to a corrupt outcome. In Ireland the reports of the Moriarty and Mahon tribunals in 2011 and 2012 exposed the rigging of mobile phone and construction contracts, painting a picture of enthusiastic collusion between MPs and lobbyists. In France, a joint report

by *Transparency-France* and *Regards Citoyens* showed that between 2007 and 2011 there were 9300 meetings between Ministers and lobbyists involving 5000 organisations represented by 16000 people – but there were only 127 lobbyists registered in 2011 by the National Assembly. In Germany the register of lobbyists covers only ‘lobbying associations’, and not individual companies and law firms. In the context of the EU itself, and with reference to both the Commission and the Parliament, there is now a ‘Transparency Register’ which in 2012 listed 3000 lobbyists, only a fraction of potential lobbyists across the EU who have every reason to seek to influence the decisions of the European Parliament.(4)

Behind Corruption: International Organised Crime

All of these factors have acted as a drip feed to public opinion, revealing corrupt incidents and processes which have created a justified perception of increased corruption. But beyond perception, there are also the realities of the impact of organised crime, which is alive and well in much of the EU. A recent report by Europol(5) confirmed earlier analyses suggesting that organised crime groups (OCGs) are successfully diversifying their activities in ways that are more easily defined by function than product or nationality, and channel some of their products in and out of the formal sector. Although the drugs business remains the dominant activity (with the opiates market alone valued at 13 billion euros), organised crime groups are also very active in human trafficking (taking advantage of Schengen arrangements), counterfeit goods and cyber crime. To be effective OCGs need to manipulate and corrupt border security, elements of the police force, the judiciary, and bankers (to disguise laundered funds). The distortion of markets supposed to be bound by EU competition rules, both through the pricing of counterfeit goods, access to low cost labour, and the distortion of real estate markets, is the consequence of some of these activities. Where OCGs are particularly strong - as in the Balkans, Greece and Italy - political cover is particularly important and is a key source of corruption in the political system. ‘Secrecy jurisdictions’, with their disguised beneficial ownership, play a key part in enabling OCG’s to channel their funds in ways which are difficult to trace. Overall, there has been a reluctance to recognise the strength and impact of OCGs and their interface with corruption which is long overdue for correction.

Corporate Bribery

International corporate bribery has become a focus of national legislation and, in some cases, prosecution since the OECD Anti Bribery Convention was signed in 1997. The Council of Europe's Anti-Corruption Convention of 1998 set a broader definition of corruption and initiated the 'GRECO'(6) process of peer review which examines the extent to which countries are compliant with the convention. Compliance with both conventions is limited. In the case of the OECD Convention TI ranks countries according to the seriousness of their legislative and prosecutorial follow up. Of twenty-two EU states who are also members of the OECD only six were found to be active in the enforcement of the convention in 2012, and in the case of ten there was effectively no enforcement.(7) The propensity to bribe across national frontiers is often an indicator of the seriousness with which bribery is treated on the domestic front. This assessment by TI confirms that the countries of the EU are not yet prepared to take foreign bribery as a major issue. In huge cases, such as those involving Siemens (fined a total of \$1.5 billion in 2008) and BAE Systems (fined a total of \$450 million in 2009), it has required the US Department of Justice to lend its weight to successful investigation and prosecution. It would not be difficult for EU member states to raise their game in this area: evidence and international collaboration is more readily available than ever before. GRECO's peer review reports paint a similar picture of lacklustre implementation of the Council of Europe Convention, particularly in the key areas of party funding and 'trading in influence'.

Banking

The extreme liberalisation of the UK banking sector under the government of Prime Minister Thatcher in the late 1980s created a context in which American banks could operate free of relatively tough regulatory processes in the US. As a result, London played host to a banking system which became increasingly influenced by the complex evolution of financial products which, while purporting to minimise risk, actually increased it. By the first decade of the new century in the US, the rolling out of credit derivatives on a huge scale, the securitisation of bundled mortgages and the low regard by the banks for the interests of their depositors all contributed to a culture that put the welfare of executives and traders above that of customers. The cumulative effect was to place short term profitability before fiduciary responsibility.

There was a reckoning. European banks which were fined either by the FSA in the UK or one of several regulatory authorities in the US for the selling of mortgage bundles which were known to be 'toxic', for hedging themselves against risks they had recommended to customers, or for assisting customers to avoid tax, included Deutsche Bank, UBS, and Credit Suisse. Six European banks(8) pleaded guilty in the US to falsifying data about the origin of funds sourced in countries subject to US sanctions; HSBC pleaded guilty in the US to laundering funds totalling more than \$9 bn from Mexico into the US and paid a total fine of \$275 M. It is true that much of this activity took place in the US market, but many of the executive decisions associated with the business were taken in Europe – as with Credit Agricole in France and Northern Rock in the UK.

The easy access to financial 'secrecy jurisdictions' which in some cases (such as Switzerland) had a long history but in others (British Territories in the Caribbean) were only about forty years old, ran in parallel to the liberalisation of banking. The list of such jurisdictions extends to Liechtenstein, Monaco, and Cyprus, as well as seven British dependencies in the Caribbean(9), three Channel Islands, and the Isle of Man. Arrangements involving these jurisdictions provide a domicile for many of the financial vehicles used by the banks, for multinational companies to 'park' their profits before entering a principal domicile, and for shell companies set up to hide the fruits of organised crime. The interlocking corporate arrangements established to disguise these arrangements were just as likely to disguise funds held in the City of London as in the Cayman Islands.(10) (For this reason the City itself is increasingly being described as an 'offshore centre'.) Although the OECD has placed nearly all these centres on its 'white list' in the last two years, their ability to disguise beneficial ownership remains a reality in many cases, as demonstrated by the Financial Secrecy Index published each year since 2010 by Tax Justice Network. This combination of fraud within leading banks, the widely recognised use of secrecy jurisdiction for tax evasion and a recognition that the fruits of organised crime were using the same jurisdictions has created an unprecedented sense that the whole mechanism is a seedbed for corruption.

A Role for the G20?

The problems and solutions at an EU level are inevitably part of a broader picture. This year, Russia's Presidency of the G20 is apparently responding to this, and the Cyprus crisis may actually intensify this response. Since its meeting in Seoul in 2010, the G20 has had a remarkable agenda on corruption and has a standing Working Group on the issue. In the run up to Russia's Presidency there was a fear that this part of the group's agenda would be dramatically downplayed. In practice Russia and Canada share the chair of the Working Group and current indications are that key issues such as secrecy jurisdictions, disguised beneficial ownership, and illicit transfers will remain a key part of the programme. Even more remarkably, David Cameron's Agenda for the meeting in May extends to these questions. It may be that 2013 is to be year when some of the more egregious manifestations of corruption in Europe are addressed to some effect.

However, the danger is that the deep public suspicion of the political process itself, the sense of secretive wealth held without responsibility and the failure to implement the anti corruption measures which are already in place will not be reversed merely by the G20 and G8 agendas. In the final analysis it is only an end to the impunity of individuals, MPs and companies which will convince the public that governments are prepared to tackle the corruption which is seen to be real, toxic to public life and in the ascendant.

** Laurence Cockcroft is a co-founder of Transparency International, served on its international board for nine years and was Chairman of TI(UK) from 2000-2008. He is the author of "Global Corruption: Money, Power and Ethics in the Modern World", (London and New York: IB Tauris), 2012.*

NOTES

- (1) Eurobarometer 2012.
- (2) Question 2, Global Corruption Barometer 2012, TI, Berlin.
- (3) “Money, politics, power: corruption risks in Europe,” TI, 2012.
- (4) Ibid.
- (5) “Serious and Organised Crime Threat Assessment,” Europol, The Hague, 2013.
- (6) Group of States Against Corruption.
- (7) The six active enforcers were Germany, UK, Italy, Switzerland, Norway, and Denmark.
The record of zero enforcement extended to Ireland, Poland, the Czech Republic, Greece, and Estonia.
- (8) Standard Chartered, ING, Lloyds TSB, Credit Suisse, ABN Amro, and Barclays.
- (9) Cayman Islands, Antigua, Anguila, British Virgin Islands, St Kitts, Turks and Caicos Islands, Grenada.
- (10) See the “Puppet Masters”, World Bank, 2010.