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# **Strategic Approaches to Corruption Prevention in the OSCE Region**

**Review Report**

**on the Implementation of OSCE Commitments**

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## *List of acronyms*

ACN	Anti-Corruption Network (for Eastern Europe and Central Asia)
ADB	Asian Development Bank
CoE	Council of Europe
CoSP	Conference of States Parties to the UN Convention against Corruption
CSO	Civil Society Organisation
DFID	UK Department for International Development
EBRD	European Bank for Reconstruction and Development
EU	European Union
GRECO	Group of States against Corruption
IACA	International Anti-Corruption Academy
IAP	Istanbul Action Plan
IRG	Implementation Review Group of the CoSP
NGO	Non-Governmental Organisation
OCEEA	Office of the Co-ordinator of OSCE Economic and Environmental Activities
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PCAW	Public concern at work
SAI	Supreme Audit Institution
SC	Security Council of the United Nations
SDC	Swiss Agency for Development Cooperation
SIGMA	Support for Improvement in Governance and Management
TI	Transparency International
UNO	United Nations Organisation
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNODC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme

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## *Executive summary*

### *Study outline*

The theme of the 2012 Economic and Environmental Forum cycle being ‘Promoting Security and Stability through Good Governance’, the OCEEA commissioned a **study analysing the strategic approaches to corruption prevention in the OSCE region**. This report presents the findings from this encompassing analysis of legal texts (international instruments and national legislation), documents issued by public entities (states, international organisations, etc.) as well as studies and reports compiled by non-state actors (academics, NGOs, consultant firms, etc.) pertaining to corruption prevention measures. In doing so, the report identifies legislative and policy trends as well as pertinent measures and practices to prevent corruption and their respective impact across the entire OSCE region. The report also contains references to pertinent OSCE commitments and other existing regional and international anti-corruption instruments and co-operation arrangements (Section 1). It further comprises an analysis of essential components of a long-term strategic, comprehensive and co-ordinated approach to prevent corruption (Section 2). These components include (i) corruption prevention strategies and institutions; (ii) public sector integrity; (iii) public sector management; and (iv) transparency, accountability and civic participation. The final section of the report outlines conclusions and presents recommendation on corruption prevention in the OSCE region with a focus on the OSCE’s future role in this regard (Section 3).

Having identified corruption as a trans-border phenomenon with detrimental impacts on stability, security and economic development in the OSCE region, the **OSCE has adopted multiple measures** to address the problem. As part of its anti-corruption strategy, the organisation has placed its own anti-corruption commitments and activities in the wider context and has repeatedly encouraged participating States to ratify and implement existing international anti-corruption instruments. The organisation has further made several strategic and policy commitments, namely through the 1999 Charter for European Security, Ministerial Council decisions and documents dating from 2003 and 2004 as well as through the thematic focus of certain of its annual Economic and Environmental Forum processes. In addition, the OSCE has undertaken and supported anti-corruption activities at different levels, which is to say centrally and regionally through publications and the engagement of the OCEEA (Secretariat), and at national level through OSCE field operations. In general, the OSCE has been concerned with awareness-raising activities, needs assessments, trainings and policy dialogues in the form of workshops, roundtables and conference, many of which organised in co-operation with other pertinent international organisations.

### *The international context*

As regards **regional and international anti-corruption instruments**, four conventions are applicable in the OSCE region, all having their own review mechanism: The OECD Foreign Bribery Convention (1998) whose monitoring methodology entails self-assessments based on questionnaires, on-site visits and peer reviews with lead examiners and plenary discussions. Most OSCE participating States are also State Parties to the two Council of Europe conventions on corruption, namely the Criminal Law Convention on Corruption (1999) and the Council of Europe Civil Law Convention on Corruption (1999). As it is the case for a range of Council of Europe anti-corruption standards, these conventions are monitored through GRECO on the basis of mutual evaluations, based on self-assessments and peer review with evaluation teams and plenary sessions. The United Nations Convention Against Corruption (UNCAC; 2003) has also been ratified by the great majority of OSCE participating States. The monitoring mechanism of this instrument is designed as a peer review process based on self-assessments, overviewed by the Implementation Review Group of the Conference of States Parties to the UN Convention against Corruption.

In addition to the existing abovementioned instruments, a number of **regional anti-corruption initiatives** have evolved in the OSCE region over the past two decades. Multi-lateral initiatives include (i) the EU-OECD SIGMA programme; (ii) the OECD Anti-Corruption Network with its Anti-

Corruption Action Plan; (iii) the Regional Anti-Corruption Initiative for South-Eastern Europe (RAI-SEE); and (iv) the Working Group on Prevention (under the auspices of the Conference of the States Parties to the UNCAC). Moreover, bi-lateral partnerships and twinning programmes have been established in a range of subject matters.

### *Common features of corruption prevention in the OSCE region*

Specific **anti-corruption policies and plans**, which can be identified as a common feature in a range of Eastern and South-Eastern European and Central Asian countries, generally tend to be part of wider development strategies drafted for example in the context of an accession or a possible future accession to the EU or of regional co-operation projects or donor programmes. Most Central European and Western European countries, on the other hand, are not vested with stand-alone anti-corruption programmes. Instead, they have opted for an integrated approach in which anti-corruption components are part of the general administrative framework and legislation.

Required by several international anti-corruption instruments (namely the CoE Conventions and the UNCAC), **three different models of anti-corruption institutions exist across the OSCE region:** (i) multi-purpose agencies which are entrusted with both law enforcement powers and preventive missions; (ii) specialised departments within police or prosecutorial services; and (iii) specialised institutions in charge of prevention as well as of policy development and co-ordination. Overall, effectiveness of these institutions is varied, and many suffer from a lack of independence, scarce resources or attempts of undue political influence. Furthermore, the report finds that anti-corruption policies and institutions cannot be effective and efficient if they operate in a vacuum. Certain **socio-political as well as legal and institutional prerequisites** need to be fulfilled. Political will and commitment as well as public trust and transparency are of utmost importance. This holds also true for active implication of key stakeholders and awareness-raising amongst citizen. Anti-corruption efforts also need to be embedded in a genuine overall governance framework and the rule of law. In addition, institutional and organisational settings of anti-corruption bodies need to be independent, impartial, accountable, vested with integrity, sufficient resources (financially and regarding personnel) should be allocated, and the recruitment, appointment and training of staff members need to follow good governance procedures.

**Public sector integrity**, i.e. public officials and institutions acting with integrity, are the backbone of a democratic society in which the rule of law is guaranteed. Indeed public sector integrity constitutes a critical element for fostering citizens' trust in public institutions and government and is of utmost importance in the context of corruption prevention. Yet, recent reports have found that public administrations across the OSCE region tend to be the weakest parts of the so-called National Integrity Systems (see section II.1.). The many elements of public sector integrity targeting individuals' behaviour and the development of checks and controls are interlaced and actual integrity is based on their fruitful interplay. The report analyses them in the following aspects:

- **Codes of conduct** serve to clearly establish expectations and requirements of professional conduct of public officials. They thereby set out fundamental behavioural standards and ethical principles to be respected by the concerned persons. In addition, they define more concrete behavioural rules, such as regarding the management of financial and non-financial conflicts of interest; outside business or other activities; disclosure of assets; declaration of gifts; public reporting; and post-employment restrictions. In case of non-respect of its rules, the code should foresee disciplinary action, including the possibility of dismissal. While some OSCE participating States have opted for essentially voluntary codes of conduct, other countries of the region have incorporated behavioural rules into existing administrative laws or other legislation. Finally, in line with what is considered good practice, some countries have also enacted special codes of conduct for members of the executive and elected public officials. Overall the report finds that two areas require particular attention across the region, namely the need for filling codes of conduct with life, through regular awareness raising and training events; and the need to ensure the ownership of codes of conducts by those concerned

by means of participatory approaches to developing codes of conduct and training and other implementation programmes developed around codes of conduct.

- Throughout the OSCE region, different legal approaches to **conflict of interest regulation and the declaration of assets** are found. Some OSCE participating States have been legislating on conflict of interest of public officials, while others have opted to manage conflicts of interest through personal commitments. Similar legislative trends can be observed with regard to asset declarations. Some countries have integrated asset declaration provision in more general legislation, such as civil service and administrative procedure laws. Other countries have included the asset declaration obligation in codes of conducts. Another approach, which is to include asset declaration obligations in anti-corruption laws, can mostly be found in States having undergone a transition from socialist rule. Generally speaking, countries with encompassing conflict of interest regulations require the declaration of interests and of assets and make provision on recusal or self-recusal from decision-making.
- Judicial institutions are at the very heart of guaranteeing the rule of law and therefore a crucial element of public sector integrity. As such they are also tasked with adjudicating on corruption cases and their integrity is thus particularly at stake. The **integrity of judicial bodies** depends to a large extent on their independence from undue political influence. Another essential factor for integrity of the judiciary is its level of transparency which confers them legitimacy and, eventually, public trust. Many OSCE participating States have also developed **codes of conduct** for judges and other types of judicial personnel, aware of the particular importance of the judiciary in the so-called National Integrity System. However, the integrity of judicial bodies in the OSCE region has been found to be of quite variable quality and thus should remain of acute concern to future efforts to enhance corruption prevention.
- Although the **financing of political parties** is a key element of public sector integrity and despite the fact that international instruments entail requirements in the matter which are backed up by the activities of several organisations, legislation pertaining to political financing often entails loopholes and deficiencies and actual enforcement is rather weak. Political financing therefore remains one of the areas most at risk of corruption in the OSCE region, both due to the actual prevalence of political corruption cases as well as the weakness of respective remedies throughout the OSCE region.

Public institutions generally administer, allocate and spend considerable amounts of money. Public officials are in charge of preparing and executing budgets, and of allotting public funds in procurement procedures. This situation automatically leads to considerable corruption opportunities and in turn to a degree of corruption vulnerability. Key processes with considerable vulnerability to corruption in this context are the management of public finances and public procurement. **Preventing and curbing bureaucratic corruption** in these areas primarily consists in limiting the individual public officials' margins of discretion, reducing opportunities for undue external influence regarding procedural and decision making matters, and enhancing opportunities for detecting potential misuse.

- As to **public financial management**, parliamentary oversight as well as the existence of internal and external control institution is essential. Transparency, however, recognised as the core element of preventing corruption in this field, is not a given feature of public finances in some countries of the OSCE region. On the other hand, the credibility of the budget is increasingly paid attention to in the region and countries make efforts to align actual aggregate expenditure and the originally approved budget. This allows better detecting potential loopholes and misuses of public funds, a role that is usually allocated to Supreme Audit Institutions which score comparatively well across the whole region.
- As a consequence of the transposition of EU regulation into national law, most EU States operate with one main central purchasing body for their **public procurement**. Other legal references in the field of public procurement in the OSCE region are the OECD Principles for



Integrity in Public Procurement, the WTO Agreement on Public Procurement and the UNCITRAL Model Law on Public Procurement. Despite the availability of relatively comprehensive legislations on public procurement, public procurement remains an area of high corruption incidents.

Assuring the **transparency and accountability of public institutions and enabling the participation of non-state actors** is at the very heart of corruption prevention as it provides for public scrutiny and reduces opportunities for corruption and other forms of misuse:

- Across the OSCE region many States have taken legislative measures to comply with their international commitments in relation to **access to information**. But a range of countries have still not effectively granted access to information, usually citing the (justified, as long as not excessive) need to protect national security, privacy, data protection, or tradition. Core elements of an encompassing legislation in this matter entail provision on procedural guarantees, Proactive disclosure, e-government and public participation, possible exceptions and appeals mechanism and oversight. One finds that more recently enacted access to information legislations in the OSCE region tend to be more encompassing and generally entail provisions of proactive information disclosure. It is however a matter of concern that across the region, the implementation and enforcement of these provisions are often lacking or at best incomplete.
- **Freedom of opinion, freedom of expression and freedom of the media** – all of which are fundamental rights to be granted in a democratic society – are closely interlinked. Laws on the freedom of expression and the freedom of the media deal with a great variety of issues. Two essential elements are the media's independence as well as the protection of journalistic sources. Self-regulatory mechanisms are another issue of importance in this matter. While in some countries reports find that the media is capable and completely or relatively free to report on corruption, other countries from the region receive very low scores regarding media freedom when it comes to corruption cases. These considerable inequalities should be an area of concern and future work, with good potential for regional collaboration. Many restrictions imposed on media players are also of indirect nature, such as criminal libel and defamation laws which in some OSCE countries constitute a hindrance for effective freedom of the press. Another tool used in some states to restrict the freedom of the press is the mandatory registration, a means to control the information market, and OSCE countries again score very different in these matters.
- **Civic participation in anti-corruption programmes** is a key factor for long-term success as it paves the way for enhanced societal awareness of corruption-related problems. This in turn creates continuous demand for corruption prevention, enables public scrutiny of the public sector in general, and its efforts to prevent and combat corruption in particular, and paves the ground for participatory decision making and bottom-up reform processes. Civil society can participate in anti-corruption efforts through monitoring international anti-corruption instruments, monitoring and revealing acts of corruption or awareness raising, public education and training, to cite only some examples. Indispensable prerequisites for effective civic participation at any stages of anti-corruption efforts are the freedom of expression discussed above, and the freedom of association. Overall, it would seem the role of non-state actors in the fight against corruption in the OSCE region remains primarily focused on awareness raising, public education and advocacy, and only limited space is provided for a constructive participation of civil society in anti-corruption reforms or for the use of non-state actors for monitoring of key processes.
- The importance of **whistleblowing** in the prevention and fight against corruption is widely recognised. As a consequence provisions on public reporting and the legal protection of reporting persons have been incorporated in several international instruments, including in article 33 of UNCAC. Yet, despite the international interest in and promotion of public

reporting and whistle-blower protection, the pertinent legal frameworks at national level in most OSCE states remains weak or at best incomplete. Most legislative texts dealing with the protection of reporting persons are not stand-alone legislations but part of other legislation (labour laws, administrative legislation, etc.). It is also true that whistleblowing continues to have a negative connotation in many countries, a fact that is principally due to cultural and historical reasons and still broadly hinders the deterring and detecting role of whistle-blowers in a comprehensive anti-corruption framework.

More detailed pertinent findings in relation to these topics are summarised in section 3 (conclusion and recommendations), which also provides suggestions for ways forward to address these matters at the national level by OSCE participating States as well as by OSCE through regional and national level programmes.

#### *Future orientation of OSCE support to corruption prevention*

In view of the status quo of corruption prevention in the OSCE region, the international and regional context, and especially in view of OSCE's past activities and contributions towards the region's efforts to prevent corruption, two general remarks regarding the OSCE's future role in corruption prevention can be made at this point. **First, the OSCE's general approach to preventing corruption should be built on the one hand upon the organisation's role as a co-operation platform, and on the other hand on its expertise, network and existing work on the ground.** The OSCE as a forum for political exchange and co-operation with an impressive track record in these regards has an important role to play in fostering co-operation as well as supporting existing projects and international standards through its network and field operations. The OSCE has already pursued this approach through strategy and policy commitments (such as the 2003 Maastricht strategy) as well as by taking a partnership approach (with other international organisations or national governments) in many of the projects carried out by its field operations. Second, the **OSCE should help strengthen political will and consensus across its participating States as regards the importance of corruption prevention.** A major role of the OSCE could be to help build the necessary political consensus regarding the importance of corruption prevention across the region, both at the central and national level. Whilst the responsibility for this lies with the political elite, an informed citizenry, including an active civil society, are important elements on this path; participating States as well as the OSCE should therefore endeavour to strengthen such complementary structures.

## *Introduction*

Corruption is a serious and complex phenomenon affecting individuals and organisations of the public and private sectors. It may often have a trans-border dimension. As the preamble of the Council of Europe (CoE) Criminal Law Convention (1999) puts it, ‘corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.’<sup>2</sup>

The far-reaching and often devastating social, political and economic consequences of corruption have become a matter of international concern and decision makers have taken significant steps to remedy the problem. The OSCE (Organization for Security and Co-operation in Europe) and its participating States have expressed on several occasions their commitment to prevent and fight corruption and to collaborate within the OSCE region and beyond in order to overcome this threat to social, political and economic security and stability. More remains to be done to fully transpose these commitments into reality. The United Nations Convention against Corruption (UNCAC) (2003) is another manifestation of the increased global awareness of the harmful effects of corruption and the growing willingness of politicians and lawmakers to engage in the fight against corruption, and other conventions as well as bilateral and regional programmes also had and continue to have an important impetus to anti-corruption efforts in the OSCE region. Indeed, OSCE participating States have been increasingly active in the last two decades in strengthening legislation and institutions, implementing preventive anti-corruption programmes and enforcing anti-corruption legislation as well as related efforts to strengthen the broader framework of good public sector governance.

**Section 1** of this paper will therefore briefly present and review the OSCE’s anti-corruption commitments while placing them in the wider context of regional and international anti-corruption instruments and co-operation. **Section 2** will then analyse how essential components of a long-term strategic, comprehensive and coordinated approach to prevent corruption are implemented across the OSCE region, using a comparative approach and drawing on a broad range of national examples. Topics covered in this comparative review include **(i)** corruption prevention strategies and institutions; **(ii)** public sector integrity; **(iii)** public sector management; and **(iv)** transparency, accountability and civic participation in anti-corruption efforts. **Section 3** of this paper will summarise the key findings from the comparative review and conclude with a series of recommendations about how future OSCE efforts in the area of anti-corruption can best contribute to and strengthen these on-going efforts across the region.

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<sup>2</sup>Criminal Law Convention on Corruption, CETS No.: 173 (1999).

## *Section 1: Regional and international anti-corruption instruments and co-operation with a special focus on OSCE commitments*

### **I. OSCE commitments and activities regarding corruption prevention**

For its 56 participating States in Europe, Central Asia and North America the OSCE constitutes a unique forum for political exchange, negotiation and decision-making, and a co-operation platform for security matters, understood in a comprehensive way. The OSCE also maintains regular dialogue and co-operation with its 12 Asian and Mediterranean Partners for Co-operation<sup>3</sup>. The OSCE and its participating States have recognised that ‘corruption represents one of the major impediments to the prosperity and sustainable development of the participating States that undermines their stability and security and threatens the OSCE’s shared values’<sup>4</sup>. The organisation has therefore adopted multiple measures to curb the problem. In doing so, it has placed its own anti-corruption commitments and activities in a wider context and has repeatedly encouraged participating States to ratify and implement international anti-corruption instruments, notably those described in sub-section II below.

#### **I.1. Strategic and policy commitments**

##### **I.1.1. Charter for European Security (1999)**

The 1999 Charter for European Security represents the first OSCE document to explicitly make reference to corruption as a threat to stability and as having severe impacts on security, economic and human issues.<sup>5</sup> The Charter further presents the OSCE’s program of work to contribute to the international fight against corruption, namely **promoting existing international anti-corruption instruments and international co-operation** on the one hand, and **strengthening the rule of law** in close co-operation with NGOs through targeted anti-corruption programmes, on the other hand.

##### **I.1.2. Corruption-related relevant Ministerial Council decisions**

*OSCE strategy document for the economic and environmental dimension (Maastricht 2003)*

The 2003 Maastricht OSCE strategy marks an important step forward in the organisation’s efforts to prevent and combat corruption. Making ‘the elimination of all forms of corruption a priority’<sup>6</sup>, the Strategy calls upon participating States to ratify and implement existing international anti-corruption instruments and to develop comprehensive long-term anti-corruption strategies. In practice, the strategy calls for corruption to be tackled through increased **transparency and accountability**. This, in turn, implies effective access to public information, free pluralistic media and active civil society participation. Furthermore, the management of public resources, including public procurement procedures which are particularly prone to corruption, is to be improved.

#### **Box 1: Excerpts of the OSCE strategy document for the economic and environmental dimension (2003)**

##### **Promoting transparency and combating corruption**

2.2.4 Transparency in public affairs is an essential condition for the accountability of States and for the active participation of civil society in economic processes. Transparency increases the predictability of,

<sup>3</sup> Afghanistan, Algeria, Australia, Egypt, Israel, Japan, Jordan, Republic of Korea, Mongolia, Morocco, Thailand and Tunisia.

<sup>4</sup> OSCE Ministerial Council, Decision No. 11/04 – Combating Corruption, MC.DEC/11/04, Preamble.

<sup>5</sup> OSCE, Charter for European Security (1999), §33.

<sup>6</sup> OSCE Strategy document for the economic and environmental dimension, MC (11).JOUR/2, 2.2.7.

and confidence in an economy that is functioning on the basis of adequate legislation and with full respect for the rule of law. Free and pluralistic media which enjoy maximum editorial independence from political and financial pressure have an important role to play in ensuring such transparency.

2.2.5 We will make our governments more transparent by further developing processes and institutions for providing timely information, including reliable statistics, about issues of public interest in the economic and environmental fields to the media, the business community, civil society and citizens, with a view to promoting a well-informed and responsive dialogue. This is essential for decision-making which is responsive to changing conditions and to the needs and wishes of the population.

2.2.6. Transparency is also important for the exposure and prosecution of all forms of corruption, which undermines our economies and our societies. In addition to transparency, the fight against corruption requires the adoption by the participating States of a comprehensive and long-term anti-corruption strategy.

2.2.7 We agree to make the elimination of all forms of corruption a priority. We will consider accession to, encourage ratification of, and support full implementation of, international conventions and other instruments in the field of combating corruption, in particular those developed by the Council of Europe and the Organisation for Economic Co-operation and Development (OECD). We welcome the adoption of the UN Convention against corruption and look forward to its early signature, ratification and entry into force.

#### Improving the management of public resources

2.2.8 Another component of good governance is the effective management of public resources by strong and well-functioning institutions, a professional and effective civil service and sound budgetary processes. Good management of public resources, including revenue collection, budget formation and execution and public procurement, is particularly important in order to provide the best possible public and social services. We will seek to provide a solid financial basis for our public administration systems and to further strengthen their effectiveness and efficiency at all levels.

Source: OSCE Strategy document for the economic and environmental dimension, MC(11).JOUR/2 Annex 1, 2.2 Strengthening good governance

#### *Decision No. 11/04 on Combating Corruption (Sofia 2004)*

The 2004 Ministerial Council decision on combatting corruption reiterates the need to sign and ratify the UNCAC as well as to fully implement the convention. It also entails concrete provisions as regards the **responsibilities of the OSCE Secretariat and of the OCEEA** (Office of the Co-ordinator of OSCE Economic and Environmental Activities) when it comes to fighting corruption. According to this decision, the OCEEA is, upon the request of the OSCE participating States, tasked to 'provide support in mobilizing technical assistance, including necessary expertise and resources, from relevant competent international organizations, with due regard to their respective mandates, in the ratification or/and the implementation of the United Nations Convention against Corruption'<sup>7</sup>.

#### I.1.3. The Economic and Environmental Forum

The Economic and Environmental Forum, constituting the OSCE's highest level annual meeting, is intended to provide political impetus to the exchange of ideas on security-relevant economic and environmental issues and to identify existing challenges. At the same time, the Forum is to help develop specific recommendations and follow-up strategies to address the identified challenges. In 2001, the 9th Economic Forum dealt with '**Transparency and governance in economic matters**', a topic which was consecutively addressed by the OSCE in the context of other themes, including at the 18<sup>th</sup> Economic and Environmental Forum on 'Promoting good governance at border crossings, improving the security of land transportation and facilitating international transport by road and rail in the OSCE region' (2010). The theme of this year's Forum cycle, under the 2012 Irish OSCE Chairmanship– including the Concluding Meeting in Prague and two preparatory meetings – is

<sup>7</sup> OSCE Ministerial Council, Decision No. 11/04 – Combating Corruption, MC.DEC/11/04.

**‘Promoting Security and Stability through Good Governance’** which is a strong indication of the OSCE’s commitment to the matter. This report has been drafted in the context of this work.

## **I.2. OSCE supported anti-corruption programmes and activities**

The OSCE has undertaken anti-corruption activities at different levels, which is to say centrally and regionally through publications and the engagement of the OCEEA (Secretariat), and at national level through OSCE field operations. In general, the OSCE has been concerned with awareness-raising activities, needs assessments, trainings and policy dialogues in the form of workshops, roundtables and conference, many of which organised in co-operation with other pertinent international organisations.

### **I.2.1. OCEEA/OSCE Secretariat– selected recent examples**

#### *OSCE Handbook on ‘Best practices in combatting corruption’ (2004)*

The OSCE Handbook on ‘Best practices in combatting corruption’ has been compiled to provide OSCE participating States with assistance and guidance. To this end the publication, which addresses public and private actors alike, also contains examples of best practices from the countries of the OSCE region and beyond.<sup>8</sup>An updated version of this publication is currently in preparation.

#### *Expert Seminar on Anti-Corruption and Integrity Training (March 2011)*

In co-operation with the OECD Anti-Corruption Network (ACN) for Eastern Europe and Central Asia, the 2011 Lithuanian OSCE Chairmanship, the Special Investigation Services of Lithuania and the Chief Official Ethics Commission of Lithuania, the OCEEA organised an Expert Seminar on Anti-Corruption Policy and Integrity Training which took place in March 2011 in Vilnius. The 60 attending government officials and experts, belonging to the public sector, business community and civil society, dealt with (i) the **development, implementation and monitoring of effective anti-corruption policies and strategies**; (ii) **public ethics and integrity training of public officials and public awareness raising**.

#### *Memorandum of Understanding with the International Anti-Corruption Academy (March 2011)*

Also in March 2011, the OSCE signed a Memorandum of Understanding with the Austria based International Anti-Corruption Agency. The Memorandum formalises the **exchange of experience and co-operation** between the two organisations which both take an inter-disciplinary approach to combating corruption.

#### *Roundtable ‘On the road to Marrakesh: the role of civil society in fighting corruption’ (July 2011)*

In July 2011, in preparation of the CoSP (Conference of States Parties to the UN Convention against Corruption) held in Morocco in October 2011, the OCEEA held a roundtable with the title ‘On the road to Marrakech: the role of civil society in fighting corruption’. The roundtable was concerned with matters pertaining to (i) **access to information** so as to build a well-informed civil society in the fight against corruption; (ii) **media freedom**, allowing journalists to uncover public and private sector corruption; (iii) transparency provisions and civic participation in **public procurement**; and (iv) transparency and accountability in the **public management of national resources**.<sup>9</sup>

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<sup>8</sup> OSCE, *Best practices in combatting corruption*, (Vienna: OSCE, 2004), available at: <http://www.osce.org/eea/13738?download=true>.

<sup>9</sup> For more information, please see <http://www.osce.org/eea/78911>.

### I.2.2. OSCE field operations – selected recent examples

The OSCE has also launched numerous anti-corruption projects at the national and local level through its field operations. This type of OSCE intervention is illustrated in the following examples of project and country examples in two important areas of anti-corruption:

#### *Civil society empowerment, awareness raising and strengthening journalists*

Several OSCE projects at national/local level aimed at **strengthening the role of civil society** in the fight against corruption and at **awareness raising** on corruption-related issues. Such efforts have been conducted in Albania and Kazakhstan, and roundtables on the matter have also been organised in Tajikistan. **Educational and training programmes** focussing on the fight against corruption have further been conducted in Armenia, while in Serbia a training programme and publication for **investigative journalists** was supported. In 2008 was also released a guidebook on self-regulating measures regarding the media, being of use when developing or amending existing codes.<sup>10</sup> In Ukraine, the OSCE mission initiated a public-private dialogue to address **accountability in local government**. Efforts of the national chapter of the international anti-corruption NGO Transparency International (TI) were supported in Georgia to ensure that the **voices of non-state actors** would be heard by the Task Force in charge of developing the new Anti-Corruption Strategy and Plan.

#### *Public sector integrity and ethics*

In Albania, more than 400 government officials have received **training** regarding their obligations under the conflict of interest legislation in force. Further anti-corruption trainings for public officials were carried out, for instance for the Tajik border police, as well as for the Serbian Anti-corruption Agency with regard to conduct background checks of public officials' asset declarations. In Serbia and in Armenia, the OSCE field operations have also supported the concerned authorities in relation to the development and strengthening of **codes of ethics for public officials**. The OSCE has also jointly with the Parliament of Georgia organised a conference on 'Codes and Standards of Ethics for Parliamentarians' addressed to Georgian Members of Parliament and civil society. In addition, **public sector procurement** was addressed in Serbia. Matters pertaining to **integrity and corruption prevention in the justice sector** were at the heart of programmes launched in Moldova and Ukraine. The OSCE Centre in Bishkek as well as the OSCE Missions to Montenegro and to Bosnia and Herzegovina have also been active in these areas.

## **II. International anti-corruption instruments and their monitoring mechanisms**

### **II.1. Legal anti-corruption instruments**

As mentioned above, anti-corruption efforts of the OSCE are embedded in a wider context and are coordinated with broader global instruments to fight corruption. Indeed, many OCSE commitments outlined above (Section I, 1.) explicitly encourage OSCE participating States to ratify and implement pertinent international instruments. In the OSCE-region, four relevant international anti-corruption instruments are applicable, with varying thematic scope and geographic reach: (i) the OECD Foreign Bribery Convention (1998); (ii) the Council of Europe (CoE) Criminal Law Convention on Corruption (1999); (iii) the CoE Civil Law Convention on Corruption (1999); and (iv) the UNCAC (2003).

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<sup>10</sup>OSCE, *The Media Self-Regulation Guidebook: All questions and answers*, (Vienna: OSCE, 2008), available at <http://www.osce.org/fom/31497/>.

**Table 1: Content of international anti-corruption instruments**

International instrument	Content
<p><b>OECD Foreign Bribery Convention</b> (1998)</p>	<p>‘The OECD Anti-Bribery Convention establishes <b>legally binding standards to criminalise bribery of foreign public officials in international business transactions</b> and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the ‘supply side’ of the bribery transaction.’</p> <p>Source: <a href="http://www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html">http://www.oecd.org/document/21/0,3746,en_2649_34859_2017813_1_1_1_1,00.html</a></p>
<p><b>CoE Criminal Law Convention on Corruption</b> (1999)</p>	<p>The Council of Europe’s Criminal Law Convention on Corruption of 1999 ‘[...] aims principally at developing <b>common standards concerning certain corruption offences</b> [...]. In addition, it deals with <b>substantive and procedural law matters</b>, which closely relate to these corruption offences and seeks to improve international co-operation. [...] By harmonising the definition of corruption offences, the requirement of dual criminality will be met by the Parties to the Convention, while the provisions on international co-operation are designed to facilitate direct and swift communication between the relevant national authorities.’</p> <p>Source: Explanatory Report, Criminal Law Convention on Corruption, (ETS No. 173), §21.</p>
<p><b>CoE Civil Law Convention on Corruption</b> (1999)</p>	<p>‘The [Council of Europe] Civil Law Convention [of 1999] aims at requiring each Party to <b>provide in its internal law for effective remedies for persons who have suffered damage as a result of corruption</b>, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. This Convention, which is the first attempt to define common principles and rules at an international level in the field of civil law and corruption, [also] deals with the definition of corruption, [...] liability, contributory negligence, limitation periods, the validity of contracts, the protection of employees, accounts and audits, the acquisition of evidence, interim measures, [and] international co-operation [...].’</p> <p>Source: Explanatory Report, Criminal Law Convention on Corruption, (ETS No. 173), §§22-25.</p>
<p><b>UNCAC</b> (2003)</p>	<p>The UNCAC contains four major elements. Chapter II of the Convention is exclusively dedicated to <b>prevention measures</b>, encompassing both the public and private sectors. Chapter II includes, for instance, standards in relation to anticorruption bodies and strategies or regarding enhanced transparency in the financing of election campaigns and political parties. States must further endeavour to ensure that their public services are subject to adequate safeguards. Chapter III sets standards to be followed by countries when establishing <b>criminal offences</b> to cover a wide range of acts of corruption and corruption-related wrongdoings. Chapter IV covers all aspects of <b>international co-operation</b> as it pertains to transnational aspects of the fight against corruption, including trans-border investigation and prosecution of offenders. Finally, chapter V on <b>asset-recovery</b> enshrines the recovery of stolen assets as a fundamental principle of the instrument; this chapter is seen by many as the single most important element of the convention.</p> <p>Adapted from: <a href="http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html#Criminalization">http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html#Criminalization</a>.</p>

The **UNCAC** is the only anti-corruption legal instrument with a global scope of application given that it was open for signature and now for ratification/accession to all UN Member States. Almost all OSCE participating States have ratified the UNCAC (with the exception of Andorra, the Czech



Republic, Germany, the Holy See and San Marino), though some<sup>11</sup> with reservations. Reservations raised by OSCE Participating States are primarily in relation to Art. 66 (Settlement of dispute) which Azerbaijan, Georgia, Kazakhstan, Malta and Uzbekistan do not recognise as applicable, in relation to the statute of limitation (Belgium) and in relation to certain limitations in fully applying the convention due to particularities of the federal system in the United States. The relevant **CoE Conventions** and the **OECD Foreign Bribery Convention** are primarily open to Member States of the respective organisations, although some non-Member States of the said organisations (some of which are OSCE participating countries) have ratified or acceded to these instruments. Belarus, for instance, has ratified both the CoE conventions in the matter despite not being a CoE member state, and the United States have signed the CoE Criminal Law Convention on Corruption. As to the OECD convention, the OSCE participating States Bulgaria and Russia have adopted the instrument. The OECD and the CoE Criminal Law Conventions also allow for reservations to be deposited by member states, while the CoE Civil Law Convention does not have such provisions.

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<sup>11</sup> The following OSCE Participating States have made reservations under the UNCAC ratification process: Azerbaijan, Belgium, Georgia, Kazakhstan, Malta, United States and Uzbekistan.

**Table 2: Status of signature and ratification of international anti-corruption instruments.**

OSCE participating State	International Instrument							
	OECD Foreign Bribery Convention(1998) <sup>12</sup>		CoE Criminal Law Convention on Corruption (1999) <sup>13</sup>		CoE Civil Law Convention on Corruption (1999) <sup>14</sup>		UNCAC (2003) <sup>15</sup>	
	Signature	Ratification/ accession	Signature	Ratification/ accession	Signature	Ratification/ accession	Ratification/ accession	Ratification/ accession
Albania	-	-	✓	✓	✓	✓	✓	✓
Andorra	-	-	✓	✓	✓	-	-	-
Armenia	-	-	✓	✓	✓	✓	✓	✓
Austria	✓	✓	✓	-	✓	✓	✓	✓
Azerbaijan	-	-	✓	✓	✓	✓	✓	✓
Belarus	-	-	✓	✓	✓	✓	✓	✓
Belgium	✓	✓	✓	✓	✓	✓	✓	✓
Bosnia and Herzegovina	-	-	✓	✓	✓	✓	✓	✓
Bulgaria	✓	✓	✓	✓	✓	✓	✓	✓
Canada	✓	✓	-	-	-	-	✓	✓
Croatia	-	-	✓	✓	✓	✓	✓	✓
Cyprus	-	-	✓	✓	✓	✓	✓	✓
Czech Republic	✓	✓	✓	✓	✓	✓	✓	-
Denmark	✓	✓	✓	✓	✓	-	✓	✓
Estonia	✓	✓	✓	✓	✓	✓	-	✓
Finland	✓	✓	✓	✓	✓	✓	✓	✓
France	✓	✓	✓	✓	✓	✓	✓	✓
Georgia	-	-	✓	✓	✓	✓	-	✓
Germany	✓	✓	✓	-	✓	-	✓	-

<sup>12</sup>OECD, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status as of April 2012, available at <http://www.oecd.org/investment/bribery/internationalbusiness/anti-briberyconvention/40272933.pdf>.

<sup>13</sup> Council of Europe Treaty Office, Criminal Law Convention on Corruption (CETS No.: 173), Status as of 8 August 2012, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=173&CM=&DF=&CL=ENG>.

<sup>14</sup> Council of Europe Treaty Office, Civil Law Convention on Corruption (CETS No.: 174), Status as of 8 August 2012, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=174&CM=&DF=&CL=ENG>.

<sup>15</sup>UNODC, UNCAC Signature and Ratification Status as of 12 July 2012, available at <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>.

OSCE participating State	International Instrument							
	OECD Foreign Bribery Convention(1998)		CoE Criminal Law Convention on Corruption (1999)		CoE Civil Law Convention on Corruption (1999)		UNCAC (2003)	
	Signature	Ratification/ accession	Signature	Ratification/ accession	Signature	Ratification/ accession	Ratification/ accession	Ratification/ accession
Greece	✓	✓	✓	✓	✓	✓	✓	✓
Holy See	-	-	-	-	-	-	-	-
Hungary	✓	✓	✓	✓	✓	✓	✓	✓
Iceland	✓	✓	✓	✓	✓	-	-	✓
Ireland	✓	✓	✓	✓	✓	-	✓	✓
Italy	✓	✓	✓	-	✓	-	✓	✓
Kazakhstan	-	-	-	-	-	-	-	✓
Kyrgyz Republic	-	-	-	-	-	-	✓	✓
Latvia	-	-	✓	✓	✓	✓	✓	✓
Liechtenstein	-	-	✓	-	-	-	✓	✓
Lithuania	-	-	✓	✓	✓	✓	✓	✓
Luxembourg	✓	✓	✓	✓	✓	-	✓	✓
Malta	-	-	✓	✓	✓	✓	✓	✓
Moldova	-	-	✓	✓	✓	✓	✓	✓
Monaco	-	-	✓	✓	-	-	-	-
Montenegro	-	-	-	✓	✓	✓	-	✓
Netherlands	✓	✓	✓	✓	✓	✓	✓	✓
Norway	✓	✓	✓	✓	✓	✓	✓	✓
Poland	✓	✓	✓	✓	✓	✓	✓	✓
Portugal	✓	✓	✓	✓	-	-	✓	✓
Romania	-	-	✓	✓	✓	✓	✓	✓
Russian Federation	✓	✓	✓	✓	-	-	✓	✓
San Marino	-	-	✓	-	-	-	-	-
Serbia	-	-	-	✓	✓	✓	✓	✓
Slovakia	✓	✓	✓	✓	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓	✓	✓	-	✓
Spain	✓	✓	✓	✓	✓	✓	✓	✓

OSCE participating State	International Instrument							
	OECD Foreign Bribery Convention(1998)		CoE Criminal Law Convention on Corruption (1999)		CoE Civil Law Convention on Corruption (1999)		UNCAC (2003)	
	Signature	Ratification/ accession	Signature	Ratification/ accession	Signature	Ratification/ accession	Ratification/ accession	Ratification/ accession
Sweden	✓	✓	✓	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	-	-	✓	✓
Tajikistan	-	-	-	-	-	-	-	✓
The former Yugoslav Republic of Macedonia (FYROM)	-	-	✓	✓	✓	✓	✓	✓
Turkey	✓	✓	✓	✓	✓	✓	✓	✓
Turkmenistan	-	-	-	-	-	-	-	✓
Ukraine	-	-	✓	✓	✓	✓	✓	✓
United Kingdom	✓	✓	✓	✓	✓	-	✓	✓
United States	✓	✓	✓	-	-	-	✓	✓
Uzbekistan	-	-	-	-	-	-	-	✓

## II.2. Implementation monitoring and review mechanisms

### II.2.1. Comparative overview

International conventions and treaties, to be effective, ideally comprise a monitoring and review mechanism that serves to evaluate whether and how State Parties comply with the instrument's provisions. For the anti-corruption conventions listed above (Section 1, II.1), the existing **review mechanisms differ, amongst others, in their structure, methodology and scope of review**. Questionnaires and desk reviews, on-site visits, the use of experienced independent experts or by peer country experts are generally used to assess a country's level of implementation and enforcement. The review reports are to be systematically rendered public for some of the mechanism (e.g. OECD Foreign Bribery Convention); for others (e.g. CoE Conventions) the publication of the entire report takes only place upon request (which is to say agreement) of the assessed country in the absence of which a summary of the evaluation is made public<sup>16</sup>; again other mechanisms (e.g. UNCAC) produce confidential reports of which only summaries are published. The degree of involvement of civil society in the review process also varies from one instrument to the other. An overview of all these elements is to be found in the table below.<sup>17</sup>

**Table 3: A comparative overview regarding international anti-corruption instruments**

	OECD Foreign Bribery Convention	CoE anti-corruption instruments	UNCAC
Legal basis	Convention on Combating Bribery of Foreign Officials in International Business Transactions, article 12.	<ul style="list-style-type: none"> <li>• Criminal Law Convention on Corruption, article 24</li> <li>• Civil Law Convention on Corruption, article 14</li> </ul>	Resolution 3/1 of the CoSP (2009)
Monitoring methodology	Self-assessments based on questionnaire, on-site visits and peer reviews with lead examiners and plenary discussions	Mutual evaluation based on self-assessments and peer review with evaluation teams and plenary sessions	Peer review process based on self-assessments, overviewed by the IRG
Timeframe of monitoring	Phase 1: started in 1999 Phases are overlapping	Round 1: 2000-2002 Round 2: 2003-2006 Round 3: 2007-2011 Round 4: 2012-	Phase 1: Cycle 1: 2010-2014 Cycle 2: 2015-2019
Scope of review	<p><u>Phase 1:</u> Adequacy of a country's legislation to implement the Convention</p> <p><u>Phase 2:</u> Enforcement of existing legislation</p> <p><u>Phase 3:</u> Enforcement of</p> <ul style="list-style-type: none"> <li>• the Convention</li> <li>• the 2009 Anti-Bribery Recommendation</li> <li>• outstanding recommendations from phase 2</li> </ul> <p>→ All State Parties are to be</p>	<p><u>Round 1:</u> Independence, specialisation and means of national bodies engaged in the prevention and fight against corruption</p> <p><u>Round 2:</u></p> <ul style="list-style-type: none"> <li>• Identification, seizure and confiscation of corruption proceeds</li> <li>• Prevention and detection of corruption in public administration</li> <li>• Prevention of legal persons (corporations, etc.) from being used as shields for</li> </ul>	<p><u>Cycle 1:</u></p> <ul style="list-style-type: none"> <li>• Criminalization and law enforcement</li> <li>• International cooperation</li> </ul> <p><u>Cycle 2:</u></p> <ul style="list-style-type: none"> <li>• Preventive measures</li> <li>• Asset recovery</li> </ul>

<sup>16</sup>GRECO, Rules of Procedure as amended 2011, Greco (2011) 20E, Rule 34, available at

[http://www.coe.int/t/dghl/monitoring/greco/documents/Greco%282011%2920\\_RulesOfProcedure\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Greco%282011%2920_RulesOfProcedure_EN.pdf).

<sup>17</sup>Conference of the States Parties to the United Nations Convention against Corruption, 'Parameters for defining the review mechanism for the United Nations Convention against Corruption – Background paper prepared by the Secretariat', CAC/COSP/2008/10, available at <http://www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0789281e.pdf>.

	assessed during each phase.	corruption  <u>Round 3:</u> • Incriminations provided for in the Criminal Law Convention on Corruption • Transparency of party funding  → All State Parties are to be assessed during each round.	
In-country visits	Yes (for phase 2)	Yes	Yes
Civil society participation	Yes (both in phase 1 and 2)	Yes, upon invitation for plenary sessions and systematically for on-site visits	Encouraged, but not mandatory
Publication of reports	The country reports with recommendations are published after discussion and adoption by the working group.	A summary of the assessments is published by GRECO and the entire evaluations and compliance reports are published, including recommendations, with the agreement of the reviewed countries.	The country review reports may remain confidential, but the reviewed State parties may also decide to make them available in the public domain. The Executive Summaries of the country review reports are official UN documents, translated in all official UN languages and are submitted to the Implementation Review Group (IRG) of the COSP.

## II.2.2. Strengths, weaknesses and impact

When the **UNCAC** review mechanism was established in 2009, State Parties intended to design an intergovernmental review mechanism that would respect certain principles, including transparency, efficiency, impartiality, and assistance in effective implementation. Another guiding principle was that the mechanism should not be punitive, should not compare State Parties and should take into account a balanced geographical approach.<sup>18</sup> The review mechanism is still at an early stage, which makes a comprehensive evaluation of its effectiveness or medium- and long-term impact difficult. Efforts can be continued to further enhance the review mechanism's transparency and thoroughness, and the level of public participation. The executive summaries that have been published so far regarding the first cycle of country assessments, published in 2011 and 2012, show varied implementation results, though it may be too early to make a comprehensive assessment of the global status of implementation due to the limited number of countries evaluated so far and the relative shortness of the summary reports. Thematic reports prepared by the UNODC Secretariat for chapters III and IV based on findings from the first two years of review complement these summary country reports, by highlighting issues in implementation that deserve further attention, providing input with regard the further strengthening of the implementation of the Convention and the facilitation of upcoming reviews, and including information on technical assistance needs identified during the reviews.<sup>19</sup> Nonetheless, it constitutes an

<sup>18</sup> Terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, §3, available at [http://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism for the Review of Implementation - Basic Documents - E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism%20for%20the%20Review%20of%20Implementation%20-%20Basic%20Documents%20-%20E.pdf).

<sup>19</sup> The IRG reports can be found at <http://www.unodc.org/unodc/en/treaties/CAC/IRG-sessions.html>. Thematic reports can be found at <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1254039.pdf>; and

important step forward that countries have agreed to a review mechanism, and its impact will continue to grow over the coming years.

**GRECO** was designed as a flexible monitoring mechanism. Mutual evaluation backed up by peer pressure is used to ensure compliance with different instruments, including the two CoE conventions on corruption. Only those State Parties fully participating in the peer review process and accepting to be evaluated are granted full membership. GRECO is deemed a strong and efficient mechanism, benefitting from ‘a strong secretariat, adequate funding and an associated technical assistance programme’.<sup>20</sup> The review mechanism also includes the assessment of the implementation of recommendations made. The accession process of Central and Eastern European countries to the EU constituted a substantial leverage for GRECO’s work. Throughout Europe, the impact of GRECO has also been significant leading, amongst others, to the adoption or adjustment of anti-corruption strategies, policies and institutions and resulting in an increased number of financial investigations and proceedings for corruption-related crimes and wrongdoings.<sup>21</sup> Yet, the review mechanism tends to produce reports focused on legal and formal aspects of compliance with the CoE legal instruments instead of assessing the impact of the legislative or institutional measures taken. The publication of Evaluation or Compliance reports is subject to approval by the country under review (the publication of a report takes place shortly or up to a few months after its adoption. Also, civil society participation is not mandatory.

The **OECD review mechanism** is based on an elaborate monitoring process with, according to a report of the anti-corruption resource centre U4, ‘well-designed questionnaires, well-organised country visits, active civil society and private sector participation at various stages of the process, detailed published reports with recommendations as well as a process of follow-up on reports and recommendations, especially for countries performing inadequately’.<sup>22</sup> But as for GRECO, review reports at least of phases 1 and 2 are relatively legalistic and lengthy; this was improved in Phase 3 which focuses specifically on enforcement practices. The TI report has further identified instances of lacking cooperation by the review country and unequally qualified reviewers as further weaknesses.<sup>23</sup> Despite this the mechanism has overall proven to be a relatively powerful tool to promote implementation and actual enforcement of the convention with all 37 State Parties having complied with their commitments (criminalisation of foreign bribery, disallowance of tax deduction for bribe payments, etc.).

### **III. Regional and international co-operation and the OSCE’s potential role in corruption prevention**

Several regional and international anti-corruption initiatives have been developed in the OSCE-region. The approaches differ, as do the structures and mechanisms in place, ranging from regional donor programmes, over multi-lateral review mechanisms to twinning projects and bi-lateral aid. A short overview in chronological order of the different multi-lateral initiatives will be provided in the following.

#### **III.1. Multi-lateral initiatives**

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<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1254081.pdf>

<sup>20</sup> Marie Chêne and Gillian Dell, ‘Comparative assessment of anti-corruption conventions’ review mechanisms’, U4 Expert Answer (2008:April), p. 3, available at <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=163>.

<sup>21</sup> Ibidem p. 7.

<sup>22</sup> Ibidem, p. 2.

<sup>23</sup> Ibidem.

### III.1.1. EU-OECD SIGMA programme

The SIGMA (Support for Improvement in Governance and Management) programme is a joint initiative of the European Union (EU) and the OECD, principally funded by the EU. SIGMA was established in 1992 jointly by the European Commission's Phare Programme<sup>24</sup> and the OCED, to support five Central European States in their public administration reforms. Preceding the **accession of Central and Eastern European countries** to the EU in the 2000s, the programme was extended to all twelve EU entrants. Since 2008, SIGMA has also been active in countries covered by the **European Neighbourhood Policy**.

SIGMA provides **assistance in 4 main areas** through tailor-made activities on an individual and multi-country basis: (i) legal framework, civil service, administrative justice and integrity; (ii) external and internal audit and financial control; (iii) public expenditure management; and (iv) public procurement. Annual assessment reports are prepared at the request of the European Commission, providing a valuable evaluation of progress made with regard to strengthening the rule of law and fighting anti-corruption.

So far, SIGMA has had an **important leverage concerning anti-corruption efforts** as the assessments undertaken are a contribution to the annual Progress Reports on EU accession candidates and potential candidate countries. As a matter of fact, significant progress has been made in the fight against corruption in numerous EU entrants prior to their accession.<sup>25</sup> SIGMA's work furthermore constitutes a basis for programming EU technical assistance.

### III.1.2. OECD Anti-Corruption Network

The **Anti-Corruption Network (ACN) for Eastern Europe and Central Asia** is a regional outreach programme for non-member States of the OECD. Countries in Eastern Europe and Central Asia can take part in the initiative which was established in 1998 for the purpose of supporting participating States in their anti-corruption efforts through targeted anti-corruption activities, information exchange, the development of best practices and donor coordination. The main actors are national government and anti-corruption authorities, but the network also brings together representatives from civil society, the business sector, international organisation and international financial institutions. The forum operates through general meetings and conferences, as well as through sub-regional initiatives and thematic projects. The OSCE has co-operated with the ACN and has, for instance, jointly organised events on corruption prevention matters (e.g. the aforementioned Expert Seminar on Anti-Corruption Policy and Integrity Training which took place in March 2011 in Vilnius).

A cutting-edge and effective project of the ACN is the **Istanbul Action Plan (IAP, 2003)**, a sub-regional peer review programme within the ACN framework with the objective to support anti-corruption reform efforts in economies in Central, Eastern and South Eastern Europe, Caucasus and Central Asia. The IAP is implemented in several phases through an approach which is similar to the one of the review mechanism of the OECD Foreign Bribery Convention described above: (i) review of legal and institutional framework for fighting corruption (2004-07); (ii) implementation of the recommendations endorsed during the reviews (2008-12); and (iii) monitoring process in implementation the recommendations (from 2012 onwards).<sup>26</sup> The concrete impact and outputs of the IAP will be discussed in Section 2 of this paper, notably with regard to anti-corruption policies and institutions.

### III.1.3. Regional Anti-Corruption Initiative for South-Eastern Europe (RAI-SEE)

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<sup>24</sup> For more information on the programme, please visit the following website:  
[http://europa.eu/legislation\\_summaries/enlargement/2004\\_and\\_2007\\_enlargement/e50004\\_en.htm](http://europa.eu/legislation_summaries/enlargement/2004_and_2007_enlargement/e50004_en.htm).

<sup>25</sup> Transparency International, 'Money, Politics, Power: Corruption Risks in Europe', 2012, p. 3

<sup>26</sup> [http://www.oecd.org/pages/0,3417,en\\_36595778\\_36595926\\_1\\_1\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/pages/0,3417,en_36595778_36595926_1_1_1_1_1_1_1,00.html).



Within the broader framework of the Stability Pact for South Eastern Europe<sup>27</sup> set up in 1999, the Regional Anti-corruption Initiative (RAI) was established in 2000, initially under the name 'Stability Pact Anti-corruption Initiative'. The objective of this **framework for coordination** is to address corruption-related issues in the participating States of South Eastern Europe (SEE) (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia and FYROM; UNMIK also participates in the initiative having an observer status.

The initiative follows a multidisciplinary approach in **five main areas**: (i) adoption and implementation of international anti-corruption instruments as well as implementation of regional agreements; (ii) promotion of good governance and reliable public administration; (iii) strengthening of national legislation and promotion of the rule of law; (iv) promotion of transparency and integrity in business operations; and (v) promotion of an active civil society and raising public awareness. Concrete action follow overall programmatic objectives which have been sub-divided into specific programme objectives.

Since the initiation of the initiative in 2000, the environment for anti-corruption cooperation in South-Eastern Europe has significantly changed. All countries of the region have, for instance, become members of GRECO and some also participate in the monitoring mechanism of the OECD. In addition, international anti-corruption instruments such as UNCAC have been ratified by a number of SEE States. Moreover, anti-corruption plans have been developed in many SEE countries and specific institutional changes to implement anti-corruption efforts have been made.<sup>28</sup> It is noteworthy that the websites of the respective participating States constitute a considerable **public outreach** achievement.<sup>29</sup> The said web-sites contain valuable information about national anti-corruption efforts (strategy documents, assessment reports by international organisations, etc.) and projects; moreover, up to date anti-corruption news and articles covering the initiative's region are available on these web-sites which allows citizens to be informed about on-going matters.

#### III.1.4. Working Group on Prevention (under the auspices of the Conference of the States Parties to the UNCAC)

At its third session, held in Doha from 9 to 13 November 2009, the Conference of the States Parties to the United Nations Convention against Corruption adopted resolution 3/2 entitled 'Preventive measures'. In that resolution, the Conference decided to establish an interim open-ended intergovernmental working group. The mandate of this group has been defined as follows: (a) assist the Conference in developing and accumulating knowledge in the area of prevention of corruption; (b) facilitate the exchange of information and experience among States on preventive measures and practices; (c) facilitate the collection, dissemination and promotion of best practices in corruption prevention; and (d) assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption. The working group, whose work can be consulted on-line<sup>30</sup>, has met so far three times in Vienna. The following link provides access to the work of the working group: <http://www.unodc.org/unodc/en/treaties/CAC/working-group4.html>.

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<sup>27</sup> The Stability Pact for South Eastern Europe was launched in Cologne in 1999 by the Foreign Ministers of the Member States of the European Union, the European Commission, the Foreign Ministers of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Romania, the Russian Federation, Slovenia, the former Yugoslav Republic of Macedonia, Turkey, the United States of America, the OSCE Chairman in Office and the Representative of the Council of Europe representing the participants in today's Conference on South Eastern Europe; and the Foreign Ministers of Canada and Japan, Representatives of the United Nations, UNHCR, NATO, OECD, WEU, International Monetary Fund, the World Bank, the European Investment Bank and the European Bank for Reconstruction and Development. Cf. SCSP Constituent Document, available at <http://www.stabilitypact.org/constituent/990610-cologne.asp>.

<sup>28</sup> <http://www.stabilitypact.org/anticorruption/default.asp>.

<sup>29</sup> See, for instance, <http://www.anticorruption-albania.org/> (Albania), <http://www.anticorruption-croatia.org/> (Croatia) or <http://www.rai-see.org/serbia/> (Serbia).

<sup>30</sup> <http://www.unodc.org/unodc/en/treaties/CAC/working-group4.html>.

### III.2. Bi-lateral partnerships and twinning programmes

Numerous **twinning projects** have been launched in the context of EU programmes. By way of example, the ‘Anti-corruption measures for Border Police and Customs’ between Romanian authorities and the Spanish Guardia Civil was carried out under the Phare programme in 2004. Also, from 2007 to 2008, German authorities helped their Polish counterparts improve their anti-corruption activities. According to the EU, twinning programmes have proven successful, as they enable ‘candidate countries to understand the *acquis* correctly and translate it into operational practice. One of the most valuable, if intangible, side-effects of twinning was an increase in candidate countries’ understanding of the EU’s ‘soft *acquis*’ of public administration as well as their technical knowledge of the relevant area of the *acquis*.’<sup>31</sup>

As to **bi-lateral partnerships**, the Norwegian authorities, for instance, provided reform support to the Armenian Police through the OSCE office in Yerevan from 2010-11. The UK Department for International Development (DFID), to name another example, has been involved in anti-corruption programmes in Tajikistan and the Kyrgyz Republic in the past years.<sup>32</sup> The Swiss Agency for Development and Cooperation (SDC) has recently started a 4-year programme in the Kyrgyz Republic strengthening accountability and transparency in public service delivery<sup>33</sup> and supports numerous programmes directly aimed at combating corruption (and organised crime) in such countries as Bulgaria, Latvia, Romania and the Slovak Republic; other donors from within and outside the OSCE region are involved in similar projects.

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<sup>31</sup> European Commission (Directorate-General Enlargement), ‘Supporting enlargement- what does evaluation show? - Ex post Evaluation of Phare support allocated between 1999-2001, with a brief review of post-2001 allocations’, consolidated summary report (2007), available at [http://ec.europa.eu/enlargement/pdf/financial\\_assistance/phare/evaluation/consolidated\\_summary\\_report\\_phare\\_ex\\_post\\_evaluation.pdf](http://ec.europa.eu/enlargement/pdf/financial_assistance/phare/evaluation/consolidated_summary_report_phare_ex_post_evaluation.pdf).

<sup>32</sup> <http://www.dfid.gov.uk/Documents/publications1/op/2011/central-asia-1-summary.pdf>.

<sup>33</sup> [http://www.deza.admin.ch/de/Home/Projekte/Project\\_Detail?projectdbID=211444#form2](http://www.deza.admin.ch/de/Home/Projekte/Project_Detail?projectdbID=211444#form2).

## Section 2: Essential components of a long-term strategic, comprehensive and co-ordinated approach to prevent corruption

### I. Corruption prevention strategies and institutions

Increasingly it is understood today that corruption prevention is a complex crosscutting issue that needs to be tackled by a multifaceted approach. Corruption involves both public and private actors and touches upon political, economic, social and legal aspects alike. As noted earlier, ‘corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society.’<sup>34</sup> Given this complexity, it is considered suitable to develop comprehensive policies and institutions to address corruption, especially in countries with high levels of corruption.

#### I.1. Preventive anti-corruption policies

##### I.1.1. Regional initiatives and international instruments

First steps towards recommending a comprehensive anti-corruption approach have been taken by the Twenty Guiding Principles for the Fight against Corruption (1997) of the **Council of Europe** (CoE), calling on States to take ‘effective measures for the prevention of corruption’ (principle 1)<sup>35</sup> and the evaluation of this principle by GRECO in the course of its First Evaluation Round (2000-2002). More concrete steps with regard to anti-corruption policies in the OSCE-region were taken in 2003 when the **OECD** launched the Istanbul Action Plan (IAP) as a sub-regional peer review programme within the framework of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN). Most IAP countries have subsequently developed more or less comprehensive anti-corruption policies and plans.<sup>36</sup> Since the early 2000s, the **EU** has also adopted measures with regard to fighting and preventing corruption in both the public and private sectors. As such in 2003, the Council legislated on combating corruption in the private sector,<sup>37</sup> and as to the public sector, the rule of law, including anti-corruption efforts, has been and remains an essential accession criterion and has also become a constitutive element of the EU Neighbourhood Policy. Also in support of a comprehensive view on corruption, the EU in early 2012 has given green light to ANTICORP<sup>38</sup>, an encompassing pan-European research programme dealing with corruption in the context of the 7<sup>th</sup> Framework programme.

At the international level, **UNCAC** entails provisions on preventive anti-corruption policies. According to its article 5§1, State Parties shall ‘develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.’ State Parties shall also regularly review their legal and administrative frameworks regarding corruption prevention (article 5§3) and engage in international cooperation in the matter (article 5§4).

#### **Box 2: UNCAC, article 5 on preventive anti-corruption policies and practices**

<sup>34</sup>Criminal Law Convention on Corruption, CETS No.: 173 (1999).

<sup>35</sup>Council of Europe, Committee of Ministers, Resolution (97) 24 on the Twenty Principles for the Fight against Corruption, [http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924_EN.pdf).

<sup>36</sup>OECD, Anti-Corruption Network, ‘The Istanbul Anti-Corruption Action Plan: Progress and challenges’, 2008, p. 21ff.

<sup>37</sup>European Union, Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, available at .

<sup>38</sup>ANTICORP stands for ‘Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption’ and includes 21 European research institutions.

1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.

The **OSCE** has co-operated with other organisations to develop and carry out activities related to national anti-corruption policies, such as in the context of an expert seminar on anti-corruption policy and integrity training organised with the OECD in 2011. Moreover, the organisation has launched national level projects addressing national anti-corruption policies within wider rule of law programmes, such as for instance in Serbia and Tajikistan.

#### I.1.2. Legal basis

##### *Legal approaches*

**Specific anti-corruption policies and plans**, a common feature in a range of Eastern and South-Eastern European and Central Asian countries (including Armenia, Azerbaijan, Croatia, Georgia, the Kyrgyz Republic, Latvia, Lithuania, Montenegro, Poland, Turkey, Ukraine), **generally tend to be part of wider development strategies** drafted for example in the context of an accession or a possible future accession to the EU (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYROM, Iceland, Montenegro, Romania, Serbia, Turkey) regional projects (OECD Istanbul Action plan, for instance) or donor programmes. Most Central European and Western European countries, on the other hand, are not vested with stand-alone anti-corruption programmes. Instead, they have opted for an **integrated anti-corruption approach** (such as Denmark, Finland, France, Iceland, Norway, Sweden) in which anti-corruption components are part of the general administrative framework and legislation. Some countries have chosen a mixed approach for certain aspects (Germany, Estonia) combining elements of a stand-alone anti-corruption policy with legal or administrative measures embedded in other policies or procedures.

##### *Content and scope*

As aforementioned, article 5 of the UNCAC may give an indication of the **aspects to be covered** by an encompassing anti-corruption strategy. As academic research has shown, different anti-corruption methods or elements produce different effects in higher income and lower income countries (see Table 4).

**Table 4: Measures against public corruption and fraud and their effectiveness depending on the respective context**

Methods	Effectiveness	
	Higher income country	Lower income country
More commitment by politicians	1	4
Internal control and supervision	2	1
Transparent party finances	3	2
Examples given by management at the top	4	8

Influencing attitude of public servants	5	11
Combating organised crime	6	6
More public exposure	7	8
Creating independent institutions	8	5
Stronger selection of public personnel	10	3
Reasonable standards of living	17	7
(n)	(190)	(67)

Source Rob McCusker, 'Review of anti-corruption strategies', Technical and Background Paper n°23, Canberra: Australian Institute of Criminology, 2006, p. 25.

Consequently, the **scope and priorities of anti-corruption policies** depends on the actual level of corruption to be found in a State: in low-level corruption contexts, such as the Scandinavian countries, anti-corruption strategies comprise different components than they do in supposedly high-risk corruption contexts where the rule of law is generally not guaranteed (see Table 5).

**Table 5: Different priorities regarding anti-corruption efforts**

Incidence of corruption	Quality of governance	Priorities of anti-corruption efforts
High	Poor	Establish rule of law, strengthen institutions of participation and accountability; establish citizens' charter, limit government intervention, implement economic policy reforms
Medium	Fair	Decentralize and reform economic policies and public management and introduce accountability for results
Low	Good	Establish anticorruption agencies; strengthen financial accountability; raise public and official awareness; anti-bribery pledges, conduct high-profile prosecutions

Source: Anwar Shah, 'Corruption and decentralized public governance', policy research working paper series 3824, Washington DC: World Bank, 2006, p. 14.

Moreover, many Eastern European and Central Asian countries have reviewed and enlarged their policies and strategies gradually to make them fit the respective exigencies, and this is generally recognised as good practice. Indeed anti-corruption policies should be **living documents that are continuously enhanced** to respond to emerging risks and challenges.

A comparison of different national anti-corruption strategies of several OSCE participating States (namely Croatia, Estonia, Lithuania and Serbia) reveals that they look surprisingly alike<sup>39</sup>: while their structure (slightly) differs, the content is almost identical. National priorities are merely standing out which might be an indication for the fact that international actors often encourage governments to develop all-embracing strategies without sufficiently taking into account the respective national context and specificities. In this context, it is noticeable that in marked contrast to measures taken in many other policy areas, corruption is often addressed without systemic knowledge of its patterns and modalities. Perception-based indicators often represent the only 'quantitative' source on corruption, yet it is thought that more solid and actionable information could result from evidence-based approaches and the analysis of data on the practical experience of corruption.<sup>40</sup>

<sup>39</sup>The sources of the cited national anti-corruption strategies will be listed in alphabetic order: (1) Croatia (2008): <http://www.anticorruption-croatia.org/strategy>; (2) Estonia (2008-2012):

<http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=35712/ANTI+CORRUPTION+STRATEGY+2008-2012.pdf>; (3) Lithuania (2002-2007): <http://www.stt.lt/documents/laws/programe.pdf>; (4) Serbia (2005): [http://www.rai-see.org/serbia/index.php?option=com\\_content&view=category&layout=blog&id=34&Itemid=54](http://www.rai-see.org/serbia/index.php?option=com_content&view=category&layout=blog&id=34&Itemid=54).

<sup>40</sup>Note a recent UNODC report on this matter: Methodologies, including evidence-based approaches, for assessing areas of special vulnerability to corruption in the public and private sectors. <http://www.unodc.org/unodc/en/treaties/CAC/working-group4-meeting1.html> (CAC/COSP/WG.4/2010/4)

### I.1.3. Implementation and enforcement

Many countries make use of **international (peer) review mechanisms to monitor the implementation of anti-corruption policies**. In the case of Council of Europe member States, GRECO assesses compliance with the organisation's anti-corruption standards, notably the CoE Criminal and Civil Law Conventions on Corruption (the various CoE anti-corruption instruments, whether 'hard law' or 'soft law', are subject to monitoring). The Istanbul Action Plan (IAP) initiated by the OECD also foresees regular peer reviews of anti-corruption efforts. The IAP notably also looks closely at the implementation of policies and plans. In the context of the wider EU anti-corruption policy, a mechanism for the periodic assessment of EU States' efforts in the fight against corruption, composed of national experts, was established up in June 2011.<sup>41</sup> The implementation of UNCAC is monitored by the Intergovernmental Review Group (IRG) that was set up in 2009<sup>42</sup>, though the anti-corruption policies and measures of the States parties to the UNCAC will be part of the second round of reviews (2015-2019). As part of the UNCAC review mechanism, countries use a computer based self-assessment checklist as the basic methodological tool for conducting UNCAC gap analyses.

Such international review and monitoring processes are useful to complement nationally driven monitoring efforts. In Bulgaria, for instance, the implementation of the national anti-corruption strategy is periodically assessed. For making the best use of them, experience has shown that a wide range of national stakeholders should be involved to secure broad national involvement and raise awareness about the country's efforts to implement international standards and fight corruption. When carried out thoroughly and with strong in-country commitment, an international review process such as the ones related to the IAP or the UNCAC can become a nationally owned process whereby national governmental and non-governmental actors are committed to the exercise and its outcomes. By applying a participatory approach and widely publicizing results of review processes, whether national or international, such monitoring mechanisms will also encourage inter-institutional dialogue and cooperation. Information gathered through review mechanisms can provide a clear overview of technical assistance needs. The UNCAC Self-Assessment puts particular emphasis on this aspect and therefore produces useful information for governments that wish to draw on international technical assistance providers. UNODC has also been mandated by the CoSP to utilize the Self-Assessment Checklist software to identify technical assistance needs globally and to share this information with technical assistance providers. Finally, international review processes such as the ones under UNCAC or the IAP also provide an opportunity for countries to share knowledge and expertise with other countries on implementing international standards.

However, the existence of and participation in such international review processes should and cannot replace the need for a locally created and owned monitoring and evaluation process. Rather, locally developed anti-corruption policies and strategies – many of which will of course be inspired by the widely recognised standards of regional and international conventions – ideally must be equipped with a specific, and time-bound implementation plan, the achievement of which is monitored and regularly reported on. The findings from such national performance evaluation mechanisms can feed into international monitoring mechanisms. Whilst international monitoring mechanisms will evaluate against a broad set of standards, national evaluation processes can be more targeted towards national priorities. Another socio-political aspect is that international organisation tend to expect a large number of substantive legal, institutional and procedural changes within a comparatively short period of time, which risks leading to a 'reform fatigue' of already overloaded and overstretched administrative national structure; focus on targeted priorities at the national level is thus often more effective and will eventually lead to more concrete change.<sup>43</sup> Finally, rather than assessing compliance with standards, as do international monitoring mechanisms, national evaluation processes can monitor

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<sup>41</sup>European Union, Commission Decision of 6.6.2011 Establishing an EU Anti-corruption reporting mechanism for periodic assessment ('EU Anti-corruption Report'), C(2011) 3673 final, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/com\\_decision\\_2011\\_3673\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/com_decision_2011_3673_final_en.pdf).

<sup>42</sup>UNODC, Resolution 3/1 of the Conference of the States Parties to the United Nations Convention against Corruption, §18.

<sup>43</sup>SIGMA, 'SIGMA Assessment Montenegro', 2011.

progress made practically in achieving commonly agreed goals not only of both legal and institutional nature but also in relation to practical implementation. This allows identifying causes for delays and then to develop specific measures targeting these causes.

In summary, international monitoring mechanisms are important for advancing the global fight against corruption and encouraging countries to step up their fight against corruption. They provide excellent tools for comparative reviews and for identifying technical assistance needs. However, they cannot fully replace nationally driven performance evaluation mechanisms geared towards assessing implementation of national anti-corruption policies and strategies. The importance of such processes is indeed highlighted in numerous studies (e.g. by GRECO, SIGMA, TI and the Hertie School of Governance) that note that actual implementation and enforcement of anti-corruption policies at the national level is still mitigated. Indeed national monitoring and evaluation mechanisms are extremely rare across the OSCE region, putting a question mark to the effectiveness and efficiency of policies and strategies that have been developed over the past decades.

## **I.2. Institutions in charge of combating and preventing corruption**

International instruments such as UNCAC recognise the need to anchor the task of preventing and combating corruption within specialised institutions. Anti-corruption bodies play a pivotal role in corruption prevention: they centralise essential technical and institutional know-how and efforts regarding the fight against corruption. In addition, some institutions are also tasked with law enforcement functions.

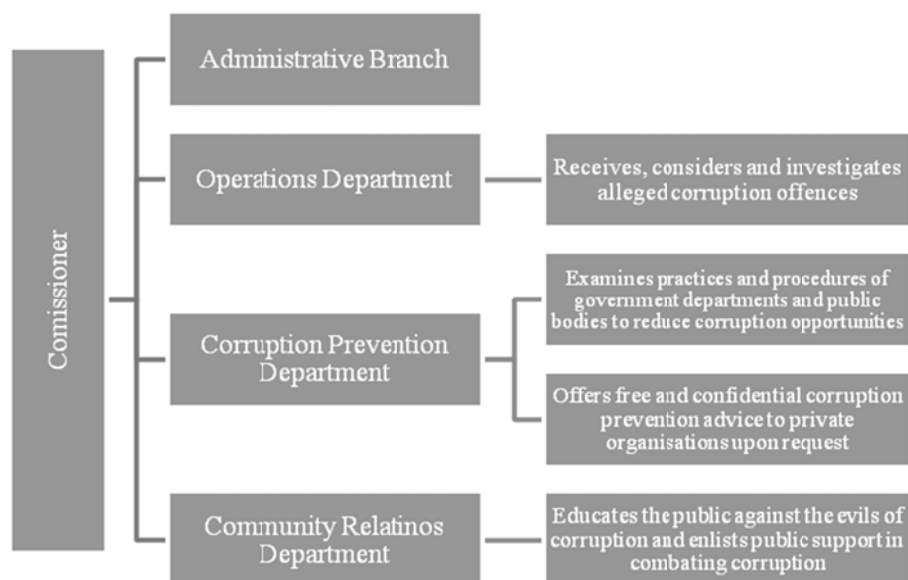
An important challenge of ACAs is that they are given a very difficult, yet often not clearly defined task. They are expected to combat corruption in an independent, knowledge-based manner by developing specialized enforcement competences along with preventive and educational/research capacity. They have to overcome the inadequacy of traditional law enforcement structures and processes and assume a leading role in implementing national anti-corruption strategies. Last but not least, they must reassure the public of the government's commitment to fighting corruption.<sup>44</sup> In view of this, the performance of ACAs is therefore dependent on how clearly these broad tasks are defined and whether the variety of related tasks has been clearly assigned to concerned institutions. On the other hand, whether these tasks are assigned to one or more institutions has not been found to be decisive for the effectiveness of the fight against corruption.

Indeed a range of different institutional arrangements can serve the same purposes, and across the OSCE region different types of anti-corruption structures exist. These range from institutions with both preventive and law enforcement functions, over specialised law enforcement bodies integrated into existing prosecutorial or police structures to multi-faceted agencies in charge of co-ordination and prevention. Over the past two decades countries in many parts of the world had a tendency to establish for this purpose a dedicated institution. Where such centralised agency is in place it often fulfils both the preventive and the law enforcement tasks. As one of the first and still best known specialised anti-corruption bodies, Hong Kong's Independent Commission against Corruption (ICAC) was established in 1974, tasked with community education, corruption prevention and law enforcement functions. As we will see in more detail below (Section 2, I.2.2), the success of this commission motivated other countries to follow Hong Kong's example by setting up their own bodies specialised in the fight against corruption, some of which are stand-alone institutions (as it is the case in many Eastern and South-Eastern European as well as Central Asian States). Other such bodies are integrated in existing structures as it is frequently the case in Western and Northern Europe, where the tasks generally assigned to anti-corruption agencies are fulfilled by a multitude of existing institutions and structures, such as the police and prosecutorial services or civil service commissions.

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<sup>44</sup> Patrick Meagher, 'Anti-Corruption Agencies: A Review of Experience', IRIS Discussion Paper 04/02, (College Park, MD: University of Maryland Center for Institutional Reform and the Informal Sector, 2004).

**Figure1: Structure of Hong Kong’s Independent Commission Against Corruption (IACA)**



Source: [http://www.icac.org.hk/en/about\\_icac/os/index.html](http://www.icac.org.hk/en/about_icac/os/index.html)

### I.2.1. Regional initiatives and international instruments

International anti-corruption instruments have taken up the issue and generally require the establishment or existence of an anti-corruption body or bodies. The **Council of Europe (CoE)** played a cutting-edge role in this regard. The Twenty Guiding Principles for the Fight against Corruption (1997) entail two principles pertaining to anti-corruption bodies (principles 3 and 7).<sup>45</sup> The CoE Criminal Law Convention on Corruption (1999) also comprises provision on specialised anti-corruption entities (article 20).<sup>46</sup> The **UNCAC** differentiates between (i) preventive anti-corruption bodies (article 6) and (ii) authorities in charge of combating corruption through law enforcement (article 36), though the convention recognises that anti-corruption functions can be clustered in one or in a number of institutions, thus allowing countries to choose between a centralised and a decentralised system. In furtherance of these commitments and standards, the **OSCE** in the last decade has increasingly supported programmes aimed at strengthening governance and anti-corruption bodies in its participating States.

### I.2.2. Legal basis

#### *Mandated functions and institutional settings*

The tasks in relation to the fight against corruption are multiple, and therefore anti-corruption institutions have a broad range of activities in their portfolio. These generally consist in providing assistance with policy and technical matters; performing research and analysis; engaging in public outreach activities including awareness raising; and, last but not least, monitoring and coordinating the implementation of anti-corruption strategies. In addition, the enforcement of anti-corruption legislation

<sup>45</sup>Council of Europe, Committee of Ministers, Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption, [http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/Resolution%2897%2924_EN.pdf).

<sup>46</sup>Criminal Law Convention on Corruption, CETS No.: 173 (1999)



is in some countries also considered the task of a dedicated anti-corruption body. In this regard, and with reference to OECD literature, there are **three different models of anti-corruption institutions**: (i) multi-purpose agencies which are entrusted with both law enforcement powers and preventive missions; (ii) specialised departments within police or prosecutorial services; and (iii) specialised institutions in charge of prevention as well as of policy development and co-ordination.<sup>47</sup> All three models are further discussed below.

The structural design and mandated functions of an anti-corruption institution **need to fit to the respective context**, including amongst others legal, institutional as well as social aspects. When opting for a multi-purpose agency, it is important that anti-corruption efforts are not limited to this institution but that other public authorities are implied and take an active role in fighting and preventing corruption so as to ensure the effective implementation and enforcement of anti-corruption policies. On the other hand, when several institutions jointly work in combatting corruption, the coordination of their activities and priorities is essential to achieve the desired outcome. In the following, national examples of different types of anti-corruption institutions will briefly be described to provide the reader with concrete insight as to the existing structures

- Anti-corruption institutions with both preventive functions and law enforcement powers

Some States have set up ‘multi-purpose’ anti-corruption institutions dealing with the prevention and the repression of corruption (following the Hong Kong model presented above); prosecution is a separate function in most cases. The **Latvian Corruption Prevention and Combating Bureau**, which follows this model and was established in 2000, has recently been qualified as success story<sup>48</sup> despite initial operational difficulties<sup>49</sup>. The Bureau is mandated with a variety of tasks, including prevention functions, investigation, educational outreach, the co-ordination of the national anti-corruption programme and the monitoring of political financing. The Bureau releases activity reports to the Cabinet of Ministers and the Parliament (every six months) and regularly compiles public reports on a range its activities, available in Latvian and English on the website. A similar type of organisational set up can be found in **Lithuania**.

- Specialised departments within police or prosecutorial structures

In some OSCE participating States, specialised units with law enforcement powers are institutionally integrated in existing police or prosecutorial hierarchies. Some of these however also perform preventive, research and co-ordination tasks that go beyond the mere law enforcement aspects of anti-corruption. By way of example, the **Spanish** Special Prosecutors Office for the Repression of Economic Offences Related to Corruption (ACPO), established in 1995, is part of the State Prosecution Service. Unlike traditional prosecution offices it is of a multidisciplinary nature. With the support of the European Commission and in close cooperation with the Spanish Special Anticorruption Prosecutor’s Office, the **Romanian** National Anti-corruption Directorate was set up, being similar to the Spanish structure. Comparable anti-corruption institutions of this type also exist in **Belgium** (Central Office for the Repression of Corruption), **Croatia** (Office for the Prevention and Suppression of Corruption and Organised Crime), **Kazakhstan** (State Agency for the Fight against Economic and Corruption Crime), **Kyrgyz Republic** (anti-corruption service within the State national security committee), **Moldova** (Centre for Combating Economic Crime and Corruption) and **Norway** (Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, Økokrim). In other countries specialised investigation units are entrusted with a more narrow mandate of detecting and investigating corruption within the law enforcement bodies, as for instance in **Germany** (Department of Internal Investigations) and the **UK** (Metropolitan Police / Anti-corruption Command – though it should be noted that in addition, the UK has established the Serious Fraud Office mandated with investigating and prosecuting serious or complex fraud and corruption in more general terms).

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<sup>47</sup> OECD, Anti-corruption Network for Eastern Europe and Central Asia, ‘Specialised Anti-Corruption Institutions. Review of models’, (Paris: OECD, 2008).

<sup>48</sup> Transparency International, ‘Money, Politics, Power’, pp. 16 and 19.

<sup>49</sup> OECD, ‘Specialised Anti-Corruption Institutions. Review of models’, p. 67-68.

- Institutions in charge of prevention and co-ordination

This anti-corruption institution model is the most heterogeneous as it comprises a great variety of structures with differing degrees of independence and organisational settings. In **France**, the Central Service for Prevention of Corruption (1993)'s task is to centralise information, to provide assistance to judicial authorities and opinion to administrative bodies, and to engage in educational activities. The **Maltese** Permanent Commission against Corruption (1988) is mandated to 'consider alleged or suspected corrupt practices and to investigate such allegations or suspicions when it determines that there are sufficient grounds for an in-depth investigation' and also performs tasks related to instruction, advice and assistance on corruption-related matters for government members and other public officials.<sup>50</sup> Bodies with similar cross-cutting prevention and co-ordination functions can also be found in **Albania** (Anti-corruption Monitoring Group), **Azerbaijan** (Commission on Combating Corruption under the State Council on Management of the Civil Service), **Bulgaria** (Commission for the Co-ordination of Activities for Combating Corruption), **Serbia** (Anti-corruption Council), **Slovenia** (Commissions on Corruption Prevention), **FYROM** (State Commission for Prevention of Corruption), and in the **United States** (Office of Government Ethics).

### I.2.3. Implementation and enforcement

Assessing the effectiveness of anti-corruption institutions is a complex task, as is widely recognised. It may prove comparatively easy to assess whether legal provisions are enforced, if the pertinent statistics of investigative and prosecutorial activities and court decisions are available. It is however harder to evaluate the actual impact of their work in terms of education, awareness raising and – beyond case numbers – even deterrence through enforcement.

According to a comprehensive assessment undertaken by the OECD in 2008, the evaluations of anti-corruption institutions 'indicate more failure than successes'<sup>51</sup>. This statement has recently been confirmed by studies carried out by TI in 2011 covering 25 European countries, which find that **existing anti-corruption institutions are comparatively weak** in the national anti-corruptions structure.<sup>52</sup> In this context, effectiveness is considered to be depending on the institution's independence from political influence, its financial and human resources independence and the integrity of staff. Positive examples include Latvia and Slovenia where these necessary prerequisites were deemed fulfilled. In other countries, the impact of anti-corruption institutions was found to be impeded due to political influence (Romania, Slovakia<sup>53</sup>).

An interesting piece of work regarding the **monitoring and evaluation of anti-corruption agencies** was published in 2011 by the anti-corruption resource centre U4.<sup>54</sup> The report notably stresses the importance of improving evaluations (composition of the assessment team, methodological issues, budgetary and financial aspects, etc.) and to conduct impact assessments, and furthermore outlines essential aspects with regard to performance indicators.<sup>55</sup>

## I.3. Prerequisites for effective anti-corruption strategies and institutions

When combining the necessary preconditions for successful anti-corruption institutions and interventions more broadly, as identified by pertinent organisations such as the OECD<sup>56</sup>, the EU<sup>57</sup> or

<sup>50</sup> Chapter 326 of the Laws of Malta or Permanent Commission Against Corruption Act, article 4.

<sup>51</sup> OECD, 'Specialised Anti-Corruption Institutions. Review of models', p. 33.

<sup>52</sup> Transparency International, 'Money, Politics, Power', p. 19.

<sup>53</sup> Transparency International, 2011 NIS studies for Romania and Slovakia, available at <http://www.transparency.org/enis>.

<sup>54</sup> Jesper Johnson, Hannes Hechler, Luis De Sousa, Harald Mathisen (team leader), 'How to monitor and evaluate anti-corruption agencies: Guidelines for agencies, donors, and evaluators', U4 Issue (2011:8).

<sup>55</sup> Ibidem, chapters 5 to 7.

<sup>56</sup> OECD, 'Specialised Anti-Corruption Institutions. Review of models', pp. 33-34.

<sup>57</sup> The EU Progress reports on accession candidates ([http://ec.europa.eu/enlargement/press\\_corner/key-documents/reports\\_oct\\_2011\\_en.htm](http://ec.europa.eu/enlargement/press_corner/key-documents/reports_oct_2011_en.htm)) as well as the SIGMA assessment reports

TI<sup>58</sup>, one can pinpoint to a range of socio-political as well as legal and institutional factors favouring the actual success of anti-corruption bodies, policies and initiatives more broadly. These are discussed in the following sections, using country examples from the OSCE region to illustrate different practices.

### I.3.1. Socio-political factors

#### *Political will and commitment*

The key precondition for any successful anti-corruption effort, be it a national strategy or an anti-corruption institution, is political will and commitment.<sup>59</sup> The importance of political motivation and support is, to some extent, illustrated by the developments as a result of efforts in the last decade of Central and Eastern European countries to join the EU. The rule of law (including anti-corruption initiatives) being an accession condition, the accession candidates were eager to engage in programmes and to develop policies to curb corruption-related problems. Yet, once these countries have become EU Member States, anti-corruption efforts have somewhat diminished, leading to a perceivable rollback in the matter (noticed notably in the Czech Republic, Hungary and Slovakia<sup>60</sup>). The existence – or lack – of **political will and commitment can thus be qualified as the pivotal element of corruption prevention**. Yet it is important to distinguish between externally triggered political will and internally generated political will, the latter clearly showing more sustainability than the former. Thus, any externally triggered initiatives should be mindful to seek a long-term local anchor and to engage with local partners that can carry forward the necessary political will beyond the expiry date of external pressure points. Civil society, as discussed later in this report, is generally playing an important role to maintain this political will from within a society.

#### *Public trust and transparency*

The citizenry's **trust in the government's anti-corruption efforts is also of utmost importance** and to a great degree a result of the sincerity of the political leadership's will and commitment to fight corruption. To enhance public confidence it is essential to **regularly inform citizens** about the strategic goals of the anti-corruption policies and the launched programmes, on the one hand, and about the mandated functions as well as the performance of the anti-corruption bodies and other institutions tasked with implementing anti-corruption functions, on the other hand. Maintaining an informed public-private dialogue on corruption-related issues has proven to be a key success element of anti-corruption efforts.<sup>61</sup> As a positive example in this regard, reference can be made to the Latvian Corruption Prevention and Combating Bureau which, as described earlier, releases regular public reports on its activities, available in Latvian and English on the website. The UK Serious Fraud Office also publishes annual reports and accounts on the Internet.<sup>62</sup> Another example are the Romanian anti-corruption agencies<sup>63</sup> which are also bound to publish reports on-line. Yet, transparency alone is not sufficient in this regard: the inclusion of non-state actors is also of great importance, as the following paragraph will illustrate.

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([http://www.sigmaweb.org/document/37/0,3746,en\\_33638100\\_34612958\\_35550053\\_1\\_1\\_1\\_1,00.html](http://www.sigmaweb.org/document/37/0,3746,en_33638100_34612958_35550053_1_1_1_1,00.html)) are particularly interesting in this regard.

<sup>58</sup> Transparency International, 'Money, Politics, Power'.

<sup>59</sup> OECD, Anti-Corruption Network, 'The Istanbul Anti-Corruption Action Plan: Progress and challenges' (2008), pp. 16-17.

<sup>60</sup> Transparency International, 'Money, Politics, Power', p. 3.

<sup>61</sup> OECD, 'Specialised Anti-Corruption Institutions. Review of models', p. 34.

<sup>62</sup> Please see: <http://www.sfo.gov.uk/about-us/annual-reports--accounts/annual-reports.aspx>.

<sup>63</sup> There are three different anti-corruption agencies in Romania. (1) The National Integrity Agency (ANI) is an administrative body in charge of collecting, monitoring and verifying declarations of assets and interest in order to identify incompatibilities, conflicts of interests and illegally acquired assets. (2) The National Anticorruption Directorate (DNA), placed within the General Prosecution Office, is a prosecution office specialized in corruption offenses and offenses related to corruption. (3) Finally, the General Anticorruption Directorate (DGA), integrated in the Ministry of Administration and Interior, is a specialized body in charge with preventing and fighting corruption within the Ministry and working with a large number of police officers and police procedures. (Adapted from: Transparency International, National Integrity System Assessment Romania 2012, available at [http://www.transparency.org/whatwedo/nisarticle/romania\\_2012](http://www.transparency.org/whatwedo/nisarticle/romania_2012)).

### *Active implication of key stakeholders and awareness raising amongst citizens*

It is recommended to **incentivise key stakeholders** to take part and push forth anti-corruption projects while showing them the positive impacts of such initiatives. A recent study by Alina Mungiu Pippidi also highlights the particular importance of inclusiveness when it comes to implementing programmes dealing with governance issues. Based on the experience of ECE countries, the study states that one ‘has to incentivize key groups and not just rely on the presumption that what is good for the country is also good for them.’<sup>64</sup> **Raising awareness** of the benefits of reforms for those directly concerned by them (bureaucrats and non-state actors) has to become a constitutive element of anti-corruption strategies so as to ensure their interest in the matter and pave the way for an informed citizenry capable of engaging in a fruitful **public participation**.<sup>65</sup>

#### I.3.2. Legal provisions and institutional settings

##### *A genuine overall governance framework and the rule of law*

Anti-corruption policies and institutions will not produce the desired effects regarding corruption prevention if they constitute the sole institution of integrity in a country. There needs to be a **broader governance framework favouring the fight against corruption in the public and the private sector** as well as public sector integrity. Northern European countries (Denmark, Norway and Sweden notably) are generally cited as good practice examples when it comes to illustrating the importance of a good overall governance framework in order to effectively prevent corruption. Notably transparency and accountability of public services and the public sector in general are key components of a good governance framework. These contribute of course not only to preventing corruption but, at least as importantly, to a broader increase of effectiveness and fairness of public services and the public sector in general.

Similarly, the respect for the **rule of law** is a crucial prerequisite not only for the effective fight against corruption but generally for the effective functioning of a state. The impediment for anti-corruption measures posed by a deficient rule of law system is, for instance, pointed to in several 2011 SIGMA assessment reports which find that despite overall improvement of the rule of law across the region, in some countries considerable deficiencies exist. By way of example, the SIGMA report on **Albania** points to a lack of separation between the executive and legislative branches and questions the independence of the judiciary, resulting in a lack of confidence of individuals in the legal system. Similar concerns are voiced in the respective reports with regard to other countries, for example **Bosnia-Herzegovina** (inadequate legislation and lack of understanding of the legal system), **Montenegro** (disregard by public sector institutions of court judgements, legal provisions or procedures), **Serbia** (poor quality of legislation, disregard by public sector institutions of legal provisions or procedures), **FYROM** (discretionary non-application of legislation and procedures in the public administration), and **Turkey** (impeded separation between judiciary and executive) to name but those covered by SIGMA reports as recent as 2011.<sup>66</sup> Whilst these reports focus on EU accession countries, in other countries too concerns with regard the respect for the rule of law are regularly voiced, for example when instances of political interference or apparently discretionary decision-making in the judiciary (e.g. in Italy) are reported by the media.

<sup>64</sup> Alina Mungiu-Pippidi (editor and main author), ‘Contextual choices in fighting corruption: lessons learned’ p. 109.

<sup>65</sup> OECD and OSCE, Anti-corruption policy and integrity training – proceedings of the expert seminar, 2001, <http://www.oecd.org/dataoecd/3/17/47912383.pdf>.

<sup>66</sup> The SIGMA assessment reports in question are available at: [http://www.sigmaweb.org/document/37/0,3746,en\\_33638100\\_34612958\\_35550053\\_1\\_1\\_1\\_1,00.html](http://www.sigmaweb.org/document/37/0,3746,en_33638100_34612958_35550053_1_1_1_1,00.html).

### *Institutional and organisational settings of anti-corruption bodies*

As noted earlier, the structure, scope of functions and institutional format of an anti-corruption body or bodies can and should vary from one country to another, taking into account local political, economic and social context. Their settings have, for instance, to take into account the estimated level of corruption or the existence of other bodies entrusted with powers when it comes to corruption combating and prevention. Other key institutional prerequisites for the effectiveness of anti-corruption bodies, briefly hinted at earlier in this report, are discussed in the next sections:

- Independence and impartiality

The institutional setting as well as the organisational structure of an anti-corruption body must permit **independent and impartial work** and must protect staff of the institution from potential reprisals or fears of reprisals. The need for independence is highlighted by an example described in the 2008 OECD assessment of the Romanian anti-corruption unit (NAD), entrusted with law enforcement and investigative powers. There has been a reluctance to investigate cases of high-level corruption as prosecutors did not feel sufficiently protected from political influence to engage in investigations regarding politically powerful persons – a situation which had led to substantial internal reforms in the course of 2005.<sup>67</sup>

- Accountability and integrity

Whilst it is important to grant anti-corruption institutions operational independence as noted earlier, they nonetheless ought to be accountable for their actions; adequate oversight over their performance is important to guarantee integrity and appropriate performance, as well as to protect them from suspicions of impropriety which may be used against them by opponents of the anti-corruption drive. **Accountability mechanisms** in most countries foresee that anti-corruption bodies are to submit regular activity reports to the authority they are responsible to. This authority might be the government or government-related structures (Latvia, France), the President and the Parliament (Lithuania), the Parliament (Slovenia), or police and/or prosecutorial services (Belgium, Croatia, Norway).

- Financial and human resources

In order to put into practice anti-corruption strategies, the importance of **adequate resources** is particularly true for anti-corruption institutions. The funds available for anti-corruption efforts have to correspond to the size of the initiative, the number of actors implied and the overall performance objectives set. According to TI, the Latvian anti-corruption agency for instance is relatively well funded<sup>68</sup>, which contributes to its good performance. The Latvian agency receives its own budget allocation within the annual state budget law. The French Central Service for Prevention of Corruption has its independent budget allocations within the budget of the Ministry of Justice.

The availability of sufficient human resources is another key prerequisite for the performance of an anti-corruption body, as is the available staff's expertise and specialisation, which of course is indispensable to perform the required tasks.

- Recruitment, appointment and training of staff members

Finally, as is discussed to a greater extent for the entire public sector later in this paper, **recruitment as well as appointment procedures for staff of anti-corruption agencies need to be regulated and handled transparently** so as to not to hamper public trust. In Lithuania, for instance, detailed rules regarding the nomination of top management position at the Special Investigation Service (STT) are in place; there are rules for the screening and recruitment of officers, subject to conflict of interest provisions.<sup>69</sup> As the complexity of the crimes that the agencies have to investigate and address through

<sup>67</sup>OCED, 'Specialised Anti-Corruption Institutions. Review of models', p. 89.

<sup>68</sup>Transparency International, National Integrity System Assessment Latvia 2011, p. 126.

<sup>69</sup>OCED, 'Specialised Anti-Corruption Institutions. Review of models', p. 83.

preventive means continues to increase, their staff also needs to receive training on a regular basis to keep abreast with trends and developments. Integrity staff training did, for instance, take place in Albania and Serbia as we have seen above (Section 1, I.2.2).

## II. Integrity in the public sector

### II.1. Cross-cutting issues pertaining to public sector integrity

Public officials and institutions acting with integrity are the backbone of a democratic society in which the rule of law is guaranteed. Indeed public sector integrity constitutes a critical element for fostering citizens' trust in public institutions and government and is of utmost importance in the context of corruption prevention. Whilst public integrity measures at first sight primarily target the behaviour of individuals working in and/or representing the public sector, their ultimate goal is to establish control systems that ensure that the public sector as a whole functions according to principles of transparency, accountability and integrity.

The many elements of public sector integrity targeting individuals' behaviour (codes of conduct and other behavioural standards, conflict of interest regulation, asset declaration regimes, recruitment and appointment procedures, etc.) are interlaced and actual integrity is based on their fruitful interplay. To ensure integrity in the public sector, adequate regulations and laws on the one hand, and administrative procedures on the other hand need to be in place, taking into consideration possible integrity-risks. Fundamental ethical competence and awareness of public officials of course are a fundamental prerequisite for the success of any such integrity measures.

Provisions regarding public sector integrity apply to all public officials, including judicial personnel. Codes of conduct are a key tool to foster integrity in the public service. For a range of actors and institutions that are particularly exposed to corruption risks, additional targeted measures may be taken. Particular transparency measures can thus be applied to elected public officials and to political parties (especially with regard to the political financing) as well as to senior ranking public officials or members of the Executive. Similarly, special measures may apply to certain public institutions that are either at the heart of the enforcement of integrity and anti-corruption standards, such as the judiciary and law enforcement agencies and anti-corruption agencies, or to public institutions that are particularly prone to corruption, such as public procurement, customs administration, offices for business licences, etc. Transparent and merit-based recruitment and appointment procedures are crucial for the public sector's integrity too, as noted above in the context of anti-corruption agencies; as this matter is often addressed in the context of reforms aimed at improving public sector management, the present paper will discuss human resources management in sub-section III.

#### II.1.1. Regional initiatives and international instruments

In the last two decades increasing attention has globally been paid to issues surrounding the integrity of the public sector. The **OECD** has been one of the first organisations to conduct extensive research on the matter identifying, amongst others, the prerequisites and essential means to achieve public sector integrity.<sup>70</sup> The OECD has further helped to develop standards for codes of conduct and ethic codes, conflict of interest regulation and asset declaration regimes. As concerns the **Council of Europe**, the integrity of public administration including, in particular, the transparency of the decision-making process, has been emphasised by the aforementioned Twenty Guiding Principles for the Fight against Corruption. Moreover, the Committee of Ministers of the CoE has issued a comprehensive recommendation on codes of conduct for public officials in 2000, comprising *inter alia*

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<sup>70</sup> See, for instance, OECD, 'Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for implementation' (GOV/PGC/GF (2009)1).

provisions on conflict of interest management and asset declarations.<sup>71</sup> The aforementioned body has, in addition, taken important steps to promote the integrity and efficiency of the judiciary.<sup>72</sup> The various CoE legal instruments are subject to monitoring by **GRECO**, which has been concerned not only with analysing public sector integrity provisions (Second Evaluation Round, 2003-2005) but also with assessing the transparency of political party financing<sup>73</sup> (Third Evaluation Round, 2007-2011) and corruption prevention in respect of members of parliament, judges and prosecutors (Fourth Evaluation Round, as from 2012). Global efforts to enhance public sector integrity have received a new boost recently with the endorsement of such initiatives as the **Open Government Partnership** launched in 2011.<sup>74</sup>

The relevant work of the **OSCE** has in the past been particularly focused on integrity matters pertaining to the political and the judicial landscapes. Indeed the OSCE has taken a leading role when it comes to analysing and assessing election-related topics, such as political financing, given its long-standing and somewhat unique role as an electoral observer. The Core Group of Experts on Political Parties<sup>75</sup>, established in 2011, is to enhance the OSCE's stance in the matter. Moreover, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) has been active concerning judicial integrity and has, for instance, drafted recommendations on judicial independence in Eastern Europe, South Caucasus and Central Asia in cooperation with the Minerva Research Group of the Marx Planck Institute in Heidelberg.<sup>76</sup>

At the international level, Chapter II of **UNCAC** on prevention contains non-mandatory provisions for all aforementioned aspects of public sector integrity.<sup>77</sup> Its article 7§4 touches upon conflict of interest prevention, a matter that is also addressed in article 8. In addition, article 8 contains provisions on (i) codes of conduct for public officials (no distinction is made between elected or non-elected public officials) and (ii) asset declarations; asset declarations are again addressed in article 52§5 in the context of asset recovery. Further, article 11 of the UNCAC deals with the integrity of the judiciary.

#### II.1.2. Implementation and enforcement – general trends

Despite the numerous efforts made by international organisations and the international commitments subscribed by States, implementation of public sector integrity at the national level continues to be inadequate. This has recently been illustrated by a pan-European report on corruption issued by the international NGO Transparency International. This comprehensive assessment of anti-corruption policies and institutions in 25 European States ('Money, Politics, Power: Corruption risks in Europe'), conducted with the financial support of the European Commission, has found that public administrations throughout Europe tend to be one of the weakest parts of the so-called national integrity systems. It is further noteworthy that the report identifies political financing as a matter of particular concern in almost all countries analysed.<sup>78</sup>

In the following, the key elements of an encompassing public sector integrity policy and legislations will be briefly outlined, with reference to pertinent national legislative examples and an assessment as to the most frequent problems in relation to implementation and enforcement.

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<sup>71</sup> Council of Europe, Committee of Ministers, Recommendation No.R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials.

<sup>72</sup> Council of Europe, Committee of Ministers, Recommendation No. R (94) 12 of the Committee of Ministers to Member states on the independence, efficiency and role of judges, and also the works of the European Commission for the Efficiency of Justice (CEPEJ, since 2002) and of the European Commission for Democracy through Law (Venice Commission).

<sup>73</sup> GRECO, Twelfth General Activity Report (2011), GRECO (2012) 1E Final.

<sup>74</sup> More details about this initiative are to be found in the section IV dealing with Transparency, Accountability and Public Participation.

<sup>75</sup> For more information, please see <http://www.osce.org/odihr/83683>.

<sup>76</sup> OSCE, ODIHR, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, November 2010.

<sup>77</sup> The Convention at stake asks State Parties to 'consider' or to 'endeavor' to establish such measures.

<sup>78</sup> Please see [www.transparency.org/enis/report](http://www.transparency.org/enis/report).

## II.2. Codes of conduct

### II.2.1. Legal basis

#### *Legal approaches*

At the international level, the **UNCAC** asks each State Party to ‘endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.’<sup>79</sup>

At the **national level**, some countries have opted for ‘minimal legislative intervention and an essentially voluntary code of conduct’<sup>80</sup> (as in the UK), whereas other OSCE participating States – generally those with a Civil Law system and an administrative law tradition – have incorporated behavioural rules into existing administrative laws or other legislation (France, Germany, Spain, Germany, to give only some examples).

#### *Scope and content*

Codes of conduct serve to clearly **establish expectations and requirements of professional conduct of public officials**. They thereby set out fundamental behavioural standards and ethical principles to be respected by the concerned persons. A sample list of standards of behaviour, focusing on the underlying values and ethics, is provided in Box 3. In addition to such guidance on the ethical values and/or principles, codes of conduct usually define more concrete behavioural rules, such as regarding the management of financial and non-financial conflicts of interest; outside business or other activities; disclosure of assets; declaration of gifts; public reporting; and post-employment restrictions.

In case of non-respect of its rules, the code should foresee disciplinary action, including the possibility of dismissal.

The UK Independent Committee on Standards in Public Life has developed seven core values for public officials in the UK, these being selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These were recently reviewed and combined, in the 2010 UK Civil Service Code, into just four

core principles, namely integrity, honesty, objectivity and impartiality, though both the original and the revised set of values remain highly relevant when compared to the respective guidelines provided by the UNCAC Technical Guide (see Box 3 above) and have indeed served as practice example widely as acknowledged by the aforementioned Committee in its first report (1995). The codes of other OSCE countries indeed reflect similar values, including in Canada (Values and Ethics Code for the Public Sector, 2005), Denmark (Good Conduct in the Public Sector), Greece (Code of Civil Servants, 1999), Italy (Code of Conduct for Government Employees, 2001), Norway (Ethics Guidelines for the State Service, 2005), Poland (Code of Ethics for the Civil Service 2002), Spain (Code of Good Governance, 2005) and the US (standards of Ethical Conduct for Employees of the Executive Branch, 2002). Yet, not all of these codes have legal force as such, but become enforceable

#### **Box 3: Standards of behaviour and codes of conduct according to the Technical Guide to the UNCAC**

- (i) Serving the public interest;
- (ii) Serving with competence, efficiency, respect for the law, objectivity, transparency, confidentiality and; impartiality, and striving for excellence;
- (iii) Acting at all times in such a way as to uphold the public trust;
- (iv) Demonstrating respect, fairness and courtesy in their dealing with both citizens and fellow public officials.

Source: UNODC, *Technical Guide to the United Nations Convention Against Corruption* (New York: UN, 2009), p. 21.

<sup>79</sup>UNCAC, article 8§2.

<sup>80</sup>David Hine, ‘Codes of Conduct for public officials in Europe: common label, divergent purposes’, *International public Management Journal*, 2005 8(2), pp. 153-174.



as they are linked to labour contracts, for instance, and therefore mainly constitute an expression of the profession (Denmark, Norway).<sup>81</sup>

In line with good practice as outlined above, some countries have also enacted **special codes of conduct for members of the executive and elected public officials**, such as Ireland (Cabinet Handbook) and the UK (Ministerial code: A Code of Ethics and Procedural Guidance for Ministers), and for officials working in sensitive areas such as France for the Police (*Code de déontologie de la police nationale*) and the Republic of Korea for customs officers (Code of Conduct for Customs Officers). Generally speaking, such targeted codes, although considered good practice, are however the exception rather than the norm at this stage, and thus might constitute an area for further work in the OSCE region. Targeted measures in relation to the judiciary are described below.

## II.2.2. Implementation and enforcement

Codes of conduct can be rendered **legally effective through legislative texts or by means of individual commitments**, in other words by making public sector employment conditional upon acceptance of the code, as the OECD suggests.<sup>82</sup> Also **clear provisions regarding potential sanctions** for non-compliance with the codes and the effective and impartial enforcement of these sanctions is an essential prerequisite for their effectiveness. In most Civil Law countries, disciplinary sanctions are foreseen in administrative laws, and penal sanctions are included in the respective Penal Code, as is the case for example in France<sup>83</sup> or Germany<sup>84</sup>. In addition, it is increasingly recognised that **positive incentives** can go a long way in promoting compliance with the codes. Notably, making promotion contingent upon a good integrity track record is increasingly recommended<sup>85</sup>, though practice somewhat lags behind and is still largely at the discretion of individual managers, including across the OSCE region. A generic code of conduct can be enhanced in its effectiveness when additional **institution-specific codes** exist, as for example in Latvia. Finally, it has been found that the **identification of public officers with the code of conduct** is a crucial factor for acceptance and effective implementation. Yet most codes of conduct continue to be drafted either by senior level public officials or by external experts. It is recommended instead that the participation of mid- or low-level public officials is considered when designing or revising a code of conduct or other type of framework for conduct.

In some countries the **oversight** of the implementation of codes of conduct is delegated to dedicated bodies that are either part of a ministry (in general the ministry for public administration) or an independent body affiliated to the government. The Committee on Standards in Public Life in the UK, for instance, is an advisory body to the government. In most Civil Law countries, the implementation of the behavioural rules is ensured in each of the concerned public authorities (ministries, etc.) through internal structures in charge of disciplinary matters (as long as no penal infraction has occurred).

Finally, it is essential that codes of conduct are filled with life by **strengthening ethics competence** among those expected to comply with it. Indeed the minimalistic approach of the late 20<sup>th</sup> century, whereby the mere existence of a code of conduct was thought to be sufficient to instil an ethical culture in an organisation, has been widely criticised. Modern practice encourages the regular provision of training, awareness raising campaigns and open debate about ethics challenges and dilemmas, as well as the adoption of human resource management strategies that for example link ethical performance with entry and promotion within the civil service.<sup>86</sup> Not enough attention is generally paid to this important aspect of public sector integrity effectiveness throughout the region.

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<sup>81</sup> OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (Paris: OECD Publishing, 2011), p. 35.

<sup>82</sup> *Ibidem*, p. 35.

<sup>83</sup> French Penal Code (*Code pénal*), articles 432.1-435.5.

<sup>84</sup> German Penal Code (*Strafgesetzbuch*), §331 ff.

<sup>85</sup> Jairo Acuña-Alfaro, 'Incentives and Salaries in Vietnam's Public Sector' (2012), UNDP Vietnam.

<sup>86</sup> Howard Whitton, 'Implementing effective ethics standards in government and the civil service', Transparency International, 2001, available at <http://www.oecd.org/dataoecd/62/57/35521740.pdf>.

### II.3. Conflict of interest regulations and asset declaration requirements

The aim of any conflict of interest policy or legislation is above all to ensure that decisions taken by public actors and institutions are taken in the public interest rather than based on private concerns. According to the OECD, a conflict of interest 'is a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.'<sup>87</sup> This interest can be of any nature, be it pecuniary, non-pecuniary, personal or family-related. Such conflicts cannot always be excluded and avoided, but they have the potential to lead to a wrongdoing by a public official. It is therefore essential to provide the pertinent legal framework to properly regulate and manage conflicts of interest so as to reduce the risk that they end up inducing wrongdoings. Declaring one's interest and assets is essential in this regard.

#### II.3.1. Legal basis

##### *Legal approaches*

Throughout the OSCE region, different legal approaches to **conflict of interest** regulation and the declaration of assets are found. Some OSCE participating States have been **legislating on conflict of interest** of public officials, while others have opted to manage conflicts of interest through **personal commitments**. As to the first group, the French legislator has integrated conflict of interest provisions in different existing laws, such as the Penal Code, the law on public officials, the law on corruption prevention, or the Electoral Code. Canada, on the other hand, has passed a stand-alone conflict of interest law for public officials (Law on conflicts of interest, 2006) besides pertinent provisions in the code of conduct. As to the latter group, the UK or the United States have chosen to regulate conflicts of interest based exclusively on codes of conduct, and these are applicable specifically for elected public officials and members of the Executive.

Similar legislative trends can be observed with regard to **asset declarations**. Some countries have **integrated asset declaration provision in more general legislation**, such as civil service and administrative procedure laws. This is the case in Ukraine and Belarus (regular filing of declaration form set out by the text of the law) as well as in Germany or Sweden (duty to notify one's superior about outside employment and private interest without necessarily having recourse to regular declaration forms). Other countries have included the asset declaration obligation in **codes of conducts**, as it is the case in Norway and Denmark. Another approach, which is to include **asset declaration obligations in anti-corruption laws**, can mostly be found in States having undergone a transition from socialist rule, including Azerbaijan, Estonia, Kazakhstan, Latvia, Lithuania, Montenegro, Serbia and Tajikistan. Other countries have enacted **stand-alone asset declaration laws** (which can apply to all officials or to certain categories of officials only). The OECD recommends enacting specialised asset declaration regimes for different types of public officials (elected officials, high-ranking executive officials, civil servants, etc.) so as to adapt the texts according to the officials' respective responsibilities and powers.<sup>88</sup> Such targeted rules have, for instance, been established for parliaments, as it is the case in the UK, Germany and Spain. Also, some countries have developed asset declaration regimes especially for cabinet members (UK). According to the 2011 Global Integrity scorecards, relatively stringent conflict of interest laws for the executive and legislative branches are in place and enforced in Georgia, Ireland, FYROM and the United States. Other countries from the region (e.g. Azerbaijan, Bosnia and Herzegovina, and Tajikistan) fare considerably less well.<sup>89</sup>

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<sup>87</sup> OECD, Recommendation of the Council on Guidelines for Managing Conflict in Interest in the Public Service [C (2003)107], Annex, Preface §11.

<sup>88</sup> OECD, Asset Declarations for Public Officials: A Tool to Prevent Corruption (Paris: OECD Publishing, 2011), p. 13.

<sup>89</sup> Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.

### *Scope and content*

Generally speaking, encompassing conflict of **interest regulations require the declaration of interests and of assets**. Typically such regulations might also contain provisions on the incompatibility of mandates and restrictions on employment after leaving the public sector. Finally, provisions of recusal or self-recusal from decision-making are recommended tools to manage conflicts of interest. Conflict of interest regulation and asset declaration regimes are closely interlinked. This is for instance illustrated by article 8§5 of the UNCAC stating that declarations are to be made about (i) outside activities, (ii) employment, (iii) investment, (iv) assets and (v) substantial gifts or benefits ‘from which a conflict of interest may result’. As a matter of fact the great majority of OSCE countries require public officials to file only one declaration form covering both interests and assets. Exceptions to this are Portugal and Lithuania where separate declarations have to be filed.

**Asset declarations usually also comprise other types of information**, while in some countries no specific data about assets is required at all. Generally asset declarations require information about (i) income, (ii) assets, (iii) gifts, (iv) pecuniary and non-pecuniary interests (which is to say outside activities), (v) spouses, relatives and other pertinent persons.

- As to the **income**, different disclosure regimes exist. In Germany, members of parliament must declare incomes exceeding EUR 1.000 per month or EUR 10.000 per year. Regimes asking for the source of the income rather than the precise amounts have been set up in other countries (Ireland, UK). In CIS countries, asset declarations are often stricter which is to say that the exact amount of all forms of income (salaries, interests, fees, inheritance, etc.) has to be exposed.
- Concerning **assets**, many different types of assets can be subject to compulsory declarations: real estate, movable property, shares and securities, saving in bank deposits, etc. In many older EU Member States, civil servants are not obliged to declare assets (France, Germany, Italy, Portugal, Spain, the UK), whereas such requirements exist in most countries having accessed the EU in the 2000s (Latvia, Poland and senior executives only in Hungary).
- The **gift** provisions also take different forms. In the UK, MPs must declare gifts worth more than 1% of their salary; in Germany, parliamentarians have to declare gifts exceeding the value of EUR 5.000. In France any sort of gift to members of parliament must be declared. Furthermore, in Germany, Spain and the UK, political appointees and members of government must also declare gifts, and in Latvia not only elected officials and MPs but all public officials need to declare gifts.
- In the most encompassing asset declaration regimes, the **closer circle has to be identified** (spouses and relevant family members) so as to reduce the risk of possible conflicts of interest. Some countries, where the incomes and assets of relatives do not have to be declared, the identification of those persons is still required. This is the case in Lithuania where ‘close persons or other persons [the public official] knows who may be the cause of a conflict of interest in the opinion of the person concerned’.<sup>90</sup>

The scale of public disclosure of asset declarations generally depends on the nature of the declaration. In countries where the declarations are of limited scope in terms of information and concerned individuals, **full public disclosure** is provided (Denmark, Montenegro and Romania as well as Bosnia and Herzegovina for elected officials). On the contrary, in States where numerous data are to be detailed in the asset declaration, **limited public disclosure** tends to be the norm, i.e. only some of the information submitted in the declarations is subject to disclosure (Albania, Bulgaria, Croatia, Estonia, Georgia, Latvia, Lithuania and FYROM).

Finally, as with most measures described in this chapter, **sanctions** can be employed to comply with asset declaration regimes. In most cases, sanctions are of administrative or disciplinary nature. The range of legal sanctions to be applied to elected public officials is somewhat more limited which

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<sup>90</sup> OECD, *Asset Declarations for Public Officials: A Tool to Prevent Corruption*, p. 66.

makes the transparency requirement of asset declarations of elected officials all the more relevant. As with codes of conduct though, positive sanctions are still rare yet widely recognised by specialists as good practice.

### II.3.2. Implementation and enforcement

#### *Overview mechanisms for filed declarations*

In Croatia, a relatively comprehensive system for implementing the conflict of interest exists: As foreseen by the Croatian Public Official Conflict of Interest Prevention Act, a commission receives the public officials' asset declarations and provides guidance on the issue. The commission is elected by parliament and politicians are excluded from membership. The act further entails a broad range of possible sanctions in case of non-respect, including reprimand; withholding of a part of the net salary; a proposal to dismiss an appointed official from public office; calling on an elected official to resign from public office; and the publication of the report compiled by the oversight commission.

Across the OSCE region oversight institutions however vary in form and shape with both internal and external institutional structures to control asset declaration and conflict of interest regimes, depending mostly on the legal structure and tradition of the countries. As for the **internal overview mechanisms**, some countries have recourse to declarations made by the public officer to their superior (as mentioned above, this is the case in Germany, Sweden and also in Norway and Ukraine). In addition, legislative bodies tend to use internal arrangements to supervise the asset declarations of members of parliament or parliamentary employees (Germany, Ireland, Spain, UK). Use is also made of **external overview mechanisms**. In some OSCE participating States a specialised anti-corruption body is in charge of supervising officials' declarations (Albania, Montenegro, Romania, Serbia, Slovenia) as in these countries asset declaration is seen primarily as a tool for corruption prevention. In countries where all residents (including public officials) are to submit tax declarations, the tax authorities are entrusted with the task of controlling and processing asset declaration of public officials (Armenia, Belarus, Kazakhstan). There is also the possibility of civil service bodies (Georgia, Kyrgyz Republic) or parliamentary bodies (Estonia) overseeing asset declaration regimes. In other countries, the supreme audit bodies are in charge of supervising asset declarations (Bulgaria). Finally, some OSCE countries have assigned this responsibility to judicial bodies (Denmark, Portugal) or to bodies staffed primarily with judicial personnel (France).<sup>91</sup>

#### *Assessment of implementation*

The 2011 Global Integrity scorecards interestingly find that the overall score for regulation of conflicts of interest of public officials in all OSCE countries analysed (levelling at 48.8 out of 100 points) is higher than the score for similar regulations for members of the executive (35.5 out of 100 points); this in itself is reason for concern as whilst conflicts of interest at both levels can be a trigger for corruption, the consequences of conflicts at senior executive level are likely to be more severe in terms of consequences. This being said, both averages correspond to a 'very weak' rating and only a few positive examples exist (FYROM and the United States for executive officials).<sup>92</sup> As such, one can conclude that both in regards to the quality of regulation as well as their enforcement, the region as a whole is underperforming. When it comes to actual implementation of asset declaration requirements, legal provisions requiring the review of asset declarations of elected officials and government members exist in all OSCE countries analysed with the exception of Germany. But only few laws require an independent auditing of the filed asset declaration forms (for the legislative branch such

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<sup>91</sup>In the context of external overview mechanisms it is important to outline two elements: (i) in countries where asset declarations are managed centrally, the institutions in charge should enjoy protection against political or other undue interference; (ii) in countries where asset declaration regimes are relatively recent, it can be an advantage to set up an independent oversight body which can then gather expertise to share with other public institutions.

<sup>92</sup>Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.

requirements are in place in the United States only) and the de facto independent auditing also receives relatively low scores across the OSCE region.<sup>93</sup>

## **II.4. Integrity of the judiciary with a focus on personnel management in the context of corruption prevention**

### II.4.1. Legal basis

#### *International standards*

Judicial institutions are at the very heart of guaranteeing the rule of law and therefore a crucial element of public sector integrity. As such they are also tasked with adjudicating on corruption cases and their integrity is thus particularly at stake. The integrity of judicial bodies depends to a large extent on their **independence from undue political influence**. The crucial importance of independent judicial actors (particularly judges) has been repeatedly underlined by the Council of Europe<sup>94</sup>, and the opinions issued by the Consultative Council of European Judges (CCJE) have also highlighted this<sup>95</sup> as well as the Bangalore Principles of Judicial Conduct as endorsed through ECOSOC Resolution 2006/23.<sup>96</sup>

Another essential factor for integrity of the judiciary is its level of **transparency** which confers them legitimacy and, eventually, public trust. This is illustrated by the checklist regarding the quality of justice developed by the European Commission for the Efficiency of Justice (CEPEJ) where the judiciary's legitimacy is linked to disclosure requirements on judicial proceedings, court functioning or disciplinary measures.<sup>97</sup>

Whilst independence and transparency are viewed as the most crucial prerequisite for judicial integrity, other factors come into play. These include, notably the **funding** of jurisdictions, the quality of **case and court management**, the **capacity** and **training** of judicial personnel and their **remuneration**, and last but not least the existence and enforcement of **professional standards**<sup>98</sup>, as illustrated by the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia developed by the OSCE together with the Max Planck Institute for Comparative Public Law and International Law. These recommendations place judicial independence in a wider context, taking into consideration judicial administration, human resources selection procedures and accountability of judicial actors.

#### *Strengthening the judicial administration*

Strengthening an **independent and efficient judicial administration** in order to guarantee the rule of law has been a core condition to be fulfilled under the EU political accession criteria. Programmes to increase the independence and efficiency of judicial administrative structure thus have been and still are at the heart of **EU accession programmes** as well as of other international projects. In Croatia, for instance, legislative changes have been made in order to reinforce the institutional capacity and operability of the judiciary.<sup>99</sup> Other potential EU accession candidates, such as Serbia and Montenegro, have likewise set up programmes to strengthen the rule of law. In addition, USAID supports numerous

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<sup>93</sup> Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.

<sup>94</sup> See, for instance, Recommendation No. R (94)12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges.

<sup>95</sup> CCJE, Opinion n°1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.

<sup>96</sup> UN Economic and Social Council (ECOSOC), UN Economic and Social Council Resolution 2006/23: Strengthening Basic Principles of Judicial Conduct, 27 July 2006, E/RES/2006/23, available at: <http://www.unhcr.org/refworld/docid/46c455ab0.html>.

<sup>97</sup> European Commission for Efficiency of Justice (CEPEJ), Checklist for promoting the quality of justice and the courts (2008).

<sup>98</sup> For further information, please visit the CCJE website at [www.coe.int/t/dghl/cooperation/ccje/textes/avis\\_en.asp](http://www.coe.int/t/dghl/cooperation/ccje/textes/avis_en.asp).

<sup>99</sup> SIGMA, SIGMA assessment Croatia, 2011, pp. 12, 13.

programmes to improve judicial administration in countries formally having been under socialist rule, including Ukraine.

### *Integrity of judicial personnel*

Throughout the public sector, it is important to **recruit and promote personnel according to clearly defined and documented criteria**. In the same vein, **appointment** of judicial personnel should take place according to clear rules and criteria, and by independent judicial bodies so as to reduce the risk of undue political influence. The 2011 SIGMA reports have, for instance, pointed to a lack of political independence when it comes to appointing judicial personnel in Montenegro, whereas improvements in this regard have been made in Croatia.

In many OSCE participating States, **codes of conduct** for judges and other types of judicial personnel have been developed. This is, for instance, the case in Canada, Estonia, Serbia, the UK and the US. In case of non-respect, (disciplinary) **sanctions** apply. The Model Code of Judicial Conduct adopted by the American Bar Association<sup>100</sup> as well as the Bangalore Principles of Judicial Conduct<sup>101</sup> (2002) can serve as a general example for judicial codes of conduct. The latter comprise six core values, namely independence, impartiality, integrity, equality, propriety and competence and diligence.

#### **Box 4: Personnel management in the broader context of corruption prevention**

Despite the fact that personnel management can help prevent corruption, attention has rarely been paid to human resource management in the broader context of corruption prevention outside the context of justice sector reforms. The World Bank has, for instance, integrated human resource management matters in broader justice sector reform projects, as it has been the case in several States in South-Eastern Europe. The OECD, on the other hand, which has also been active with regard to reforming human resource management in the public sector, has been focussing on efficiency rather than on corruption prevention when dealing with personnel management. The Centre for the Study of Democracy in Sofia, however, has recently published an analysis on anti-corruption measures in EU border control<sup>102</sup>, commissioned by the EU Agency FRONTEX<sup>103</sup>, in which measures to prevent corruption within EU border control structures are detailed, including adequate personnel management.

To put it in a nutshell, **adequate human resource management can help prevent corruption**. To this end **selection criteria and procedures** with regard to recruitment, allocation and promotion of staff need to be predefined and publically known. The rules further need to be transparent, fair and coherent so as to ensure a merit-based human resource management based on an objective performance assessment free from nepotism and undue political influence. The existence of effective **appeals mechanisms** is also important with regard to personnel management as it is a means of controlling decisions taken. Another means to prevent corruption is **job rotation** of public officials.

#### II.4.2. Implementation and enforcement

Measuring judicial independence is a complex task as a variety of elements (structures, actors and decisions) has to be evaluated. According to the 2011 Rule of Law Index, which ranks countries according to different factors (such as limited government powers on judicial matters, the absence of corruption in the judiciary, access to justice, etc.), **Western European and North American OSCE**

<sup>100</sup> The Model Code in question can be consulted at [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_code\\_of\\_judicial\\_conduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct.html).

<sup>101</sup> [http://www.ajs.org/ethics/pdfs/Bangalore\\_principles.pdf](http://www.ajs.org/ethics/pdfs/Bangalore_principles.pdf).

<sup>102</sup> Center for the Study of Democracy, 'Anti-corruption measures in EU Border Control', study commissioned by FRONTEX, 2012, available

at [http://www.frontex.europa.eu/assets/Publications/Research/AntiCorruption\\_Measures\\_in\\_EU\\_Border\\_Control.pdf](http://www.frontex.europa.eu/assets/Publications/Research/AntiCorruption_Measures_in_EU_Border_Control.pdf).

<sup>103</sup> FRONTEX was established in 2004 through Council Regulation (EC) 2007/2004. The agency 'promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management'. (Source: <http://www.frontex.europa.eu/about/mission-and-tasks>).

**participating States obtain the best scores.** This is particularly true for Norway, Sweden, Germany and the Netherlands. Estonia, the Czech Republic and Poland are leading the ranks of Eastern European and Central Asian countries.<sup>104</sup> Furthermore, the 2011 Global Integrity report gives high rankings for judicial independence in Germany, the United States and reasonable scores for Georgia, Serbia and FYROM. On the other hand the report finds that Armenia and Ukraine have some way to go in this regard.<sup>105</sup>

## II.5. Transparency of political party financing

Political party financing brings up the rear when it comes to public sector integrity performance. In its twelfth activity report (2012) GRECO – which devoted its Third Evaluation Round (2007-2011) to this topic – explicitly points to political funding as one core element of corruption prevention which has not yet been adequately tackled by almost all States assessed.<sup>106</sup> The international corruption watchdog Transparency International comes to the same conclusion when analysing the existing laws and practices in 25 European countries, stating that ‘political party financing is inadequately regulated across the region’. Whilst most countries have legislation in place (see II.4.1.), there are still some notable exceptions – Sweden and Switzerland – where no mandatory rules on party financing are in place.<sup>107</sup> According to the study, as many as 80 % of the people in Greece, Ireland, Italy, Romania and Spain believe that political parties are corrupt or extremely corrupt.<sup>108</sup>

### II.5.1. Legal basis

#### *International instruments and standards*

Establishing an appropriate legal framework to govern political financing is essential when it comes to prevention of political corruption.<sup>109</sup> At the international level the **UNCAC** in its article 7§3 sets out that State Parties shall consider ‘taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where, applicable, the funding of political parties.’ The corresponding Technical Guide identifies a long list of elements to be addressed when legislating on transparent political funding, including ceilings of donations, limits on expenditures, disclosure of the donors’ identity, the form and timing of donations, etc.

The guidelines on the matter elaborated by the **OSCE/ODIHR and the Council of Europe’s Venice Commission** expose seven elements on political finance system which participating States might adopt: (i) restrictions and limits on private contributions; (ii) balance between private and public funding; (iii) restrictions on the use of state resources; (iv) fair criteria for the allocation of public financial support; (v) spending limits for campaigns; (vi) requirements that increase transparency of party funding and credibility of financial reporting and (vii) independent regulatory mechanisms and appropriate sanctions for legal violations.<sup>110</sup> Further standards and legislative guidance on the matter are provided by a recommendation dating from 2003 of the **Committee of Ministers of the Council of Europe**.<sup>111</sup>

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<sup>104</sup> The World Justice Project, Rule of Law Index 2011, available at [http://worldjusticeproject.org/sites/default/files/wjproli2011\\_0.pdf](http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf).

<sup>105</sup> Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.

<sup>106</sup> GRECO, Twelfth General Activity Report (2011), GRECO (2012) 1E Final.

<sup>107</sup> Transparency International, ‘Money, Politics, Power’, p. 5.

<sup>108</sup> *Ibidem*, p. 20.

<sup>109</sup> UNODC, *Technical Guide to the United Nations Convention Against Corruption* (New York: UN, 2009), p. 17.

<sup>110</sup> OSCE/ODIHR and European Commission for Democracy through Law (Venice Commission), Guidelines on political party regulation [CDL-AD(2010)024], October 2010, §160.

<sup>111</sup> Council of Europe, Committee of Ministers, Recommendation Rec(2003)4 of the Committee of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns.

## *Scope and content*

In terms of quality of legislation, the report by TI highlights **the new Latvian law on political party financing as a valuable example**, qualifying it as wide-ranging and comprehensive.<sup>112</sup> In the following, some of crucial elements of political financing legislation will be presented, with reference to other pertinent country examples.

- Ceilings and bans

First, some countries have enacted **bans on corporate political financing** which is a valuable means to reduce the possible influence of business interests on political actors. Such bans have been introduced in Belgium, Bulgaria, Estonia, France, Greece, Hungary, Latvia, Lithuania, Poland and Portugal. Another crucial measure supported by the OSCE and the Council of Europe is the introduction of **ceilings on individual donations**. Limits of this nature are in place in 13 European countries, namely Belgium, Bulgaria, Finland, France, Greece, Ireland, Latvia, Lithuania, Poland, Portugal, Romania, Slovenia and Spain. Some legislation also prescribe **limits on campaign spending**, which is, for instance, the case in Bulgaria, Lithuania and Russia (parliamentary candidates) and in Bulgaria, Poland, Russia and Ukraine (presidential candidates).

- Public disclosure of contributions

Another important factor to increase the transparency of political financing is to render compulsory the **registration and disclosure of donations from individuals and corporations**. General disclosure requirements for political donations are in place in Bulgaria, the Czech Republic, Estonia, France, Latvia, Lithuania, Poland, Portugal, Slovakia and Spain. In other countries the disclosure of the donor's identity depends on the amount of the contribution. In Germany, for instance, donors contributing more than EUR 500 are recorded and their identity is disclosed in case the annual donation exceeds EUR 10.000. Donations of a value superior to EUR 50.000 have to be immediately disclosed. Other annual contribution thresholds for disclosure exist amongst others in Belgium, Denmark, Finland, Hungary and Italy. In Slovenia, the contribution has been rendered public if it surpasses three average monthly salaries. In the Ireland, Norway and the UK, ceilings regarding disclosure apply to the amount of individual donations. On the other hand, in Greece, Sweden and Switzerland no disclosure regulations are in place, making political funding a 'black box'.

### II.5.2. Implementation and enforcement

As set out by the aforementioned international standards, political funding systems need to be **independently monitored**.<sup>113</sup> When it comes to the monitoring of political party financing, the strict political independence of relevant oversight institutions is of utmost importance, for obvious reasons. The Transparency International report highlights the Polish National Electoral Commission which is supervising the funding of political parties as an example of an independent and effective such institution, while also stating that in practice oversight institutions for political financing, for example in Greece and in the Netherlands, are often lacking institutional independence from political actors.<sup>114</sup>

As a matter of fact legislation pertaining to political financing often entails loopholes and deficiencies and actual **enforcement is rather weak**. Examples for loopholes are lacking penalties in case of non-compliance (Finland), the possibility to make undisclosed contributions (Greece, Sweden, Switzerland), regulations only at the central level (the Netherland) and the often circumvented disclosure threshold (Germany) to name but a few. In terms of enforcement action, many cases are known where the infringement of pertinent laws are either not detected or not investigated. This seems notably a problem in Italy, Slovakia or Slovenia for example, where national assessments conducted

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<sup>112</sup>Transparency International, 'Money, Politics, Power', p. 24.

<sup>113</sup> See, for instance, Recommendation Rec(2003)4 of the Council of Europe's Council of Ministers to Member States on common rules against corruption in the funding of political parties and electoral campaigns, article 14.

<sup>114</sup>Transparency International, 'Money, Politics, Power', p. 26.



by Transparency International have found that an inadequate monitoring methodology led to political financing scandals not being followed up, leading to de facto impunity of unlawful practices of political party funding.<sup>115</sup> Existing limits on campaign spending have, however, proven inefficient in practice (Russia, Ukraine, Poland) as they have been circumvented in the absence of an appropriate monitoring system.<sup>116</sup>

### III. Public sector management

Even though the size of the public sector varies across countries, it is indisputable that public institutions generally administer, allocate and spend considerable amounts of money. In industrialised countries the average total government spending amounts to approximately 45% of GDP, whereas considerable differences across countries can be observed (public expenditure ranges from around 30% to over 60% according to the country analysed).<sup>117</sup> Public officials are in charge of preparing and executing budgets, and of allotting public funds in procurement procedures. Preventing and curbing bureaucratic corruption therefore primarily consists in limiting the individual public official's margin of discretion as well as undue external influence regarding procedural and decision making matters. This, in turn, is achieved through increased transparency and an effective regulatory framework concerning public financial management (including public expenditure) and public procurement.

#### III.1. Public financial management

##### III.1.1. Regional initiatives and international instruments

A core element when it comes to corruption prevention in public sector management is the proper management of financial resources. Indeed many past and present public sector programmes and reforms are targeted at the management of public finances, and many regional organisations, international donors and financial institutions in the last decade have shown an increased interest in this matter in the context of corruption prevention.

Since the early 2000s, the Millennium Development Goals (2000) movement followed by the aid effectiveness agenda had an impetus to this development.<sup>118</sup> Founded in 2011, the **Public Expenditure and Financial Accountability (PEFA) Programme** for example is a multi-donor partnership between seven national and international donors and international financial institutions (European Commission, French Ministry of Foreign and European Affairs, Norwegian Ministry of Foreign Affairs, Swiss State Secretariat for Economic Affairs, UK Department for International Development, International Monetary Fund, and World Bank) that aims at 'assess[ing]the condition of country public expenditure, procurement and financial accountability systems and develop[ing]a practical sequence for reform and capacity-building actions.'<sup>119</sup> The **OCDE**, too, has been active in the field of budgeting and public expenditure as well as public finances; country reviews of budgeting systems have, amongst others, been undertaken in more than 30 countries, including non-OECD Member States such as Russia (2008), Moldova (2010), or Montenegro (2012).<sup>120</sup> **SIGMA** has also been concerned with public expenditure management in a number of (potential) EU accession countries, focussing on treasury and budget as well as on resource allocation.<sup>121</sup> Moreover, a range of **bilateral programmes**

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<sup>115</sup>Ibidem, p. 26.

<sup>116</sup> International Institute for Democracy and Electoral Assistance (IDEA), *Funding of Political Parties and Election Campaigns*, Handbook Series, 2003, p. 74.

<sup>117</sup> António Afonso et al., 'Quality of Public Finances and Growth', European Central Bank, Working Paper Series, No. 438/February 2005, available at [http://ssrn.com/abstract\\_id=647962](http://ssrn.com/abstract_id=647962).

<sup>118</sup> For more information, please see

<http://www.oecd.org/dac/aideffectiveness/parisdeclarationandaccraagendaforaction.htm#Documents>.

<sup>119</sup> <http://www.pefa.org/en/content/resources>.

<sup>120</sup> The overview of all country reviews of budgeting systems can be found at

<http://www.oecd.org/gov/budgetingandpublicexpenditures/seniorbudgetofficialcountryreviewsofbudgetingsystems.htm>.

<sup>121</sup> <http://www.oecd.org/site/sigma/activityareas/externalandinternalauditfinancialcontrol.htm>.

has been set up aimed at improving public financial management. To name but one example, the French *Assistance Technique* has, for instance, offered technical assistance to Ukrainian authorities concerning budget development, public expenditure and statistics.

The **OSCE**, too, has pursued programmes aimed at improving public financial management, for example in the context of a two-day seminar on promoting local government reform, good economic governance and sound financial management at the local level in Ukraine in December 2011, organised by the OCEEA jointly with the CoE Centre of Expertise for Local Government Reform. Another example of OSCE work in this area is the project implemented by the OSCE Mission in Kosovo, which was to help local municipalities to develop their budget and financial management processes.

As to international instruments, the call for a transparent and accountable management of public finances is an integral part of the **UNCAC** too. Article 9.2 states that each State Party is to take appropriate measures ‘to promote transparency and accountability in the management of public finances’ through procedures relating to the adoption of the national budget, the timely reporting on public revenue and expenditure and an accounting system and auditing standards with an related oversight.

### III.1.2. Legal basis

#### *Legal approaches*

**Constitutional provisions** provide for parliamentary participation in budgetary matters and can be found in the entire OESC region. Further procedural and institutional matters – the degree of implication of parliamentary committees regarding budget preparation or the oversight by internal or external oversight institutions – are regulated by **specific (organic) laws**, such as the LOLF (*Loi organique relative aux lois des finances*<sup>122</sup>) in France; the Public Financial Management and Control Law in Turkey; or the Budget and Accounting Act of 1921<sup>123</sup>, the Congressional Budget and Impoundment Control Act of 1974<sup>124</sup>, amongst other texts, in the United States. The national **budget itself is also a law** which is voted regularly by the elected representatives (e.g. *Haushaltsgesetz* in Germany).

#### *Content and scope*

As a matter of fact public financial management is a complex matter where a range of factors come into play: the level and composition of public expenditure including its financing through revenue and/or deficits; the fiscal regime in place; existing budgetary procedures including control mechanism; and last but not least social issues, e.g. social (re)distribution through public spending, to name but some components. A useful reference in this regard is the **PEFA Performance Measurement Framework (PMF)**, developed as a common tool for monitoring public financial management system, including (i) fiscal discipline, (ii) strategic resource allocation, and (iii) efficient use of resources for service delivery. As table 6 below shows, the PMF contains a set of indicators pertaining to the credibility, comprehensiveness and transparency of the budget, the budget cycle and donor practices relating to budgetary matters.<sup>125</sup> In industrialised and mid-level income countries, the PMF

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<sup>122</sup>Loi organique n° 2001-692 du 1 août 2001 relative aux lois de finances, available at [http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=2A2D6B62455D653B00DC4D5496487CA8.tpdjo11v\\_3?cidTexte=LEGITEXT000005631294&dateTexte=20120815](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=2A2D6B62455D653B00DC4D5496487CA8.tpdjo11v_3?cidTexte=LEGITEXT000005631294&dateTexte=20120815).

<sup>123</sup>Title 31 of the United States Code, available at <http://www.law.cornell.edu/uscode/text/31>.

<sup>124</sup>The text of the law can be consulted at <http://www.gpo.gov/fdsys/pkg/GPO-RIDDICK-1992/pdf/GPO-RIDDICK-1992-34.pdf>.

<sup>125</sup>For more information, please consult the following document: PEFA, ‘PFM Performance Measurement Framework’, Revised January 2011, p. 9, available at [http://www.pefa.org/sites/pefa.org/files/attachments/PMFEng-finalSZreprint04-12\\_1.pdf](http://www.pefa.org/sites/pefa.org/files/attachments/PMFEng-finalSZreprint04-12_1.pdf).

has become a benchmark against which countries assess their national public financial management system.<sup>126</sup>

**Table 6: The PFM High-Level Performance Indicator Set – overview**

<b>A. PFM-OUT-TURNS: Credibility of the budget</b>	
PI-1	Aggregate expenditure out-turn compared to original approved budget
PI-2	Composition of expenditure out-turn compared to original approved budget
PI-3	Aggregate revenue out-turn compared to original approved budget
PI-4	Stock and monitoring of expenditure payment arrears
<b>B. KEY CROSS-CUTTING ISSUES: Comprehensiveness and Transparency</b>	
PI-5	Classification of the budget
PI-6	Comprehensiveness of information included in budget documentation
PI-7	Extent of unreported government operations
PI-8	Transparency of inter-governmental fiscal relations
PI-9	Oversight of aggregate fiscal risk from other public sector entities.
PI-10	Public access to key fiscal information
<b>C. BUDGET CYCLE</b>	
<b>C(i) Policy-Based Budgeting</b>	
PI-11	Orderliness and participation in the annual budget process
PI-12	Multi-year perspective in fiscal planning, expenditure policy and budgeting
<b>C(ii) Predictability and Control in Budget Execution</b>	
PI-13	Transparency of taxpayer obligations and liabilities
PI-14	Effectiveness of measures for taxpayer registration and tax assessment
PI-15	Effectiveness in collection of tax payments
PI-16	Predictability in the availability of funds for commitment of expenditures
PI-17	Recording and management of cash balances, debt and guarantees
PI-18	Effectiveness of payroll controls
PI-19	Competition, value for money and controls in procurement
PI-20	Effectiveness of internal controls for non-salary expenditure
PI-21	Effectiveness of internal audit
<b>C(iii) Accounting, Recording and Reporting</b>	
PI-22	Timeliness and regularity of accounts reconciliation
PI-23	Availability of information on resources received by service delivery units
PI-24	Quality and timeliness of in-year budget reports
PI-25	Quality and timeliness of annual financial statements
<b>C(iv) External Scrutiny and Audit</b>	
PI-26	Scope, nature and follow-up of external audit
PI-27	Legislative scrutiny of the annual budget law
PI-28	Legislative scrutiny of external audit reports
<b>D. DONOR PRACTICES</b>	
D-1	Predictability of Direct Budget Support
D-2	Financial information provided by donors for budgeting and reporting on project and program aid
D-3	Proportion of aid that is managed by use of national procedures

Source: 'PFM Performance Measurement Framework', Revised January 2011, p. 9, available at [http://www.pefa.org/sites/pefa.org/files/attachments/PMFEng-finalSZreprint04-12\\_1.pdf](http://www.pefa.org/sites/pefa.org/files/attachments/PMFEng-finalSZreprint04-12_1.pdf)

As to the trends observable in the OSCE-region, many OSCE participating States (e.g. Canada, Denmark, France, the Netherlands, Sweden, Norway, to name but some examples) have introduced **policy and performance based budgeting** in the last two decades. Policies are translated into concrete programmes and actions with defined budget allocations and performance indicators. Also, the **credibility of the budget** is increasingly paid attention to and countries make efforts to align actual aggregate expenditure and the originally approved budget. As the national PEFA assessment of

<sup>126</sup> The numerous national assessment reports can be consulted at <http://web.worldbank.org/WBSITE/EXTERNAL/PEFA/0,,contentMDK:22687152~menuPK:7313203~pagePK:7313176~piPK:7327442~theSitePK:7327438,00.html>.

Norway (2008) has for instance shown, the difference between the actual and the budgeted expenditure amounted to less than one percent in all for the period 2004-2006.<sup>127</sup>

The **oversight role played by parliamentary bodies is another crucial issue**. Indeed, through budget oversight the legislature can hold the government financially accountable – be it through budgeted resource allocations or performance measurement. In this way, parliaments can help prevent the abuse or distortion of public funds and efficient budget allocation.

A further key element is the **existence of internal and external control institutions**. In addition to internal control, accounting and auditing units, the approved budget also needs to be audited by independent external bodies. These external monitoring of financial issues– generally performed by so-called Supreme Audit Institutions (SAI) – play a fundamental role in preventing abuses.

The very core element of preventing corruption in public financial management is **transparency**. This holds true for the preparation of the national or local budget as well as for its execution and monitoring. In this context it is interesting to mention the Open Government Partnership launched in 2011 by eight States (namely Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, UK, and the United States). The Partnership aims at improving the transparency, responsiveness, accountability and effectiveness of governments and increasing civic participation. To this end, it places a great emphasis on the systematic collection and publication of data on government spending and performance for essential public services and activities.<sup>128</sup>

### III.1.3. Implementation and enforcement

There is a general global **trend to render documents and data pertaining to budget preparation and execution publically available**.<sup>129</sup>This holds equally true for the OSCE-region. According to the 2010 assessment of the NGO Open Budget Initiative, five of the seven countries releasing ‘extensive information’ about budgetary matters are OSCE participating States, namely France, Norway, Sweden, the UK and the United States. Furthermore, the Czech Republic, Germany, Poland, Slovenia, Spain and Ukraine are reported to disclose ‘significant’ amounts of information. Another 13 countries score between 40 and 60 (out of total of 100 available points) as they publish ‘some’ budgetary information (in order of their ranking: Russia, Romania, Italy, Portugal, Croatia, Slovakia, Turkey, Bulgaria, Georgia, Serbia, FYROM, Bosnia-Herzegovina, and Azerbaijan).<sup>130</sup>The 2011 Global Integrity scores show that South-Eastern European and Central Asian countries tend to have lower rankings regarding the disclosure of information relating to budget matters: Azerbaijan, Bosnia and Herzegovina, Georgia and Tajikistan all rank ‘very weak’; Serbia and Ukraine receive a ‘weak score’. Ireland, FYROM and the United States, however, are considered ‘strong’ in this regard and Germany is even assessed as ‘very strong’. The performance across the OSCE region in this regard is therefore comparatively heterogeneous and for some countries further work in this regard seems to be advisable.

As to **financial control institutions**, public expenditure oversight through SAIs has generally proven to be a strong element in the 25 European countries assessed by Transparency International in 2011. The SAIs in France, Germany, Italy or Poland, to give only some examples, received all very high scores (between 79 in Italy and 94 in Germany). Exceptions to this positive trend have been observed in Greece, Portugal, Romania and Spain.<sup>131</sup>The 2011 Global Integrity report comes to similar assessment results, giving Germany, Ireland, FYROM, and the United States as ‘very strong’ score and Azerbaijan, Georgia and Ukraine a ‘strong’ ranking. Serbia and Tajikistan, however, receive a

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<sup>127</sup> NORAD, ‘Public Financial Management Performance Report – Norway: Based on PEFA Methodology’, NORAD report: Discussion 15/2008, p. 3.

<sup>128</sup> Open Government Declaration (2011), available at <http://www.opengovpartnership.org/open-government-declaration>.

<sup>129</sup> Open Budget Initiative, ‘Open Budget Survey 2010’, pp. 2; 5, available at [http://internationalbudget.org/wp-content/uploads/2011/06/2010\\_Full\\_Report-English.pdf](http://internationalbudget.org/wp-content/uploads/2011/06/2010_Full_Report-English.pdf).

<sup>130</sup> Ibidem, p. 9.

<sup>131</sup> Transparency International, ‘Money, Politics, Power’, p. 5.

‘very weak’ score.<sup>132</sup> Serbia also scores low in the 2010 Open Budget Survey regarding the strength of the SAI as it receives only 30 out of 100 points, and Azerbaijan (20), Bulgaria (33) and Turkey (37) also rank low. On the other hand, the United States obtain the highest scores possible (100), followed by Slovenia (97), Sweden (96), Bosnia and Herzegovina (93), Germany (87), and the UK, Poland and FYROM (all 80).<sup>133</sup>

## III.2. Public procurement

Public procurement is a significant component of the economy as numbers illustrate: according to the European Commission, the contracts governed by EU public procurement rules amounted to EUR 420 billion in 2009, representing 3.6% of the EU GDP.<sup>134</sup> Yet, public procurement procedures are particularly prone to corruption and therefore need to be adequately regulated and monitored. A key element of corruption prevention in public procurement is notably that the allocation of **public contracts must be based on transparency, competition and objective criteria in decision making.**

### III.2.1. Regional initiatives and international instruments

The **OECD** has played a crucial role in promoting good governance in public procurement procedures. The organisation has elaborated the ‘10 Principles for Enhancing Integrity in Public Procurement’ (2008) which are built around four pillars, namely (i) transparency; (ii) good management; (iii) prevention of misconduct, compliance and monitoring; and (iv) accountability and control, outlined in more detail in Box 5.

#### **Box 5: The 10 Principles for Enhancing Integrity in Public Procurement (2008)**

##### *A. Transparency*

1. Member countries should provide an adequate degree of transparency in the entire public procurement cycle in order to promote fair and equitable treatment for potential suppliers.
2. Member countries should maximise transparency in competitive tendering and take precautionary measures to enhance integrity, in particular for exceptions to competitive tendering.

##### *B. Good management*

3. Member countries should ensure that public funds are used in public procurement according to the purposes intended.
4. Member countries should ensure that procurement officials meet high professional standards of knowledge, skills and integrity.

##### *C. Prevention of misconduct, compliance and monitoring*

5. Member countries should put mechanisms in place to prevent risks to integrity in public procurement.
6. Member countries should encourage close co-operation between government and the private sector to maintain high standards of integrity, particularly in contract management.
7. Member countries should provide specific mechanisms to monitor public procurement as well as to detect misconduct and apply sanctions accordingly.

##### *D. Accountability and control*

8. Member countries should establish a clear chain of responsibility together with effective control mechanisms.
9. Member countries should handle complaints from potential suppliers in a fair and timely manner.
10. Member countries should empower civil society organisations, media and the wider public to scrutinise public procurement.

Source: OECD, *OECD Principles for Integrity in Public Procurement*, (Paris: OECD Publishing, 2009), available at <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/48994520.pdf>.

<sup>132</sup> Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.

<sup>133</sup> Open Budget Initiative, ‘The Open Budget Survey 2010 – Data Tables’, pp. 20-23.

<sup>134</sup> European Commission, Commission Staff Working Paper SEC (2011) 1586 final, §1, available at [http://ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/SEC2011\\_1586\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/SEC2011_1586_en.pdf).

A checklist has also been developed by the OECD to help governments implement the said principles throughout the procurement process (pre-tendering, tendering and post-tendering phase) and will be depicted below (IV.2.3).<sup>135</sup>

Furthermore the EU has legislated on public procurement matters, setting up a comparatively tight legal framework.<sup>136</sup> The Directive 2004/17/EC<sup>137</sup> deals with public procurement procedures in the 'classical sectors' water, energy, transport and postal service sectors, and the Directive 2004/18/EC<sup>138</sup> is concerned with public procurement procedures regarding 'utilities', which is to say public works, supply and service contracts. The two Directives at stake are currently under review and the adoption of a directive on concessions (currently only partly regulated at the European level) is in preparation. In addition Directive 2007/66/EC is to improve the effectiveness of public procurement review procedures.<sup>139</sup> Another Directive dating from 2009 addresses public contracting in sensitive fields, including defence and security.<sup>140</sup> Member States have to comply with these regulations which, moreover, constitute a fundamental entry condition as they are entailed in Chapter 5 of the accession negotiations.

The OSCE has also undertaken work in this area. In Serbia the OSCE mission has, amongst others, been supporting the drafting of amendments to the Serbian Public Procurement Law and has been working on 'capacity-building projects on topics such as legislation implementation and bidders' rights, and training on centralized procurement and utilizing IT in publishing and searching tenders.'<sup>141</sup> Another country example of such OSCE activities is Montenegro where a seminar on transparency in public procurement was organised in 2009 in co-operation with national authorities.

The UNCAC makes reference to corruption prevention in the field of public procurement (article 9.1) and sets out a list of elements to be contained in national public procurement systems, and from this article it becomes clear that as with public financial management, transparency once again is a core element of corruption prevention mechanisms. State Parties are notably encouraged to disclose information pertaining to procurement procedures and contracts (including invitations to tender and information regarding the award of the contract). Moreover, conditions for participation are to be known in advance and the selection procedure is to be based on predefined objective criteria. Also, review and appeals procedures need to be in place. Finally, measures regarding personnel responsible for procurement (declaration of interest, screening procedures, training requirements, etc.) are envisaged. For additional information see paragraphs 54-56 at: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2012-August-27-29/V1254437e.pdf>.

The WTO Agreement on Public Procurement (GPA) establishes a set of rules which govern the procurement activities of its parties. It also provides for market access opportunities.

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<sup>135</sup> OECD, *OECD Principles for Integrity in Public Procurement*, (Paris: OECD Publishing, 2009), pp. 51-73, available at <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/48994520.pdf>

<sup>136</sup> Transparency International, 'Money, Politics, Power', p. 39.

<sup>137</sup> Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:en:PDF>.

<sup>138</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0114:0240:EN:PDF>.

<sup>139</sup> Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:335:0031:0046:EN:PDF>.

<sup>140</sup> Directive 2009/81/EC of the European Parliament and the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:216:0076:0136:en:PDF>.

<sup>141</sup> <http://www.osce.org/serbia/77707>.

In addition, the European Bank for Reconstruction and Development (**EBRD**) and the UN Commission on International Trade Law (**UNCITRAL**) launched the ‘Initiative on Enhancing Public Procurement Regulation in the CIS Countries and Mongolia’ in May 2011. The initiative, supported by the OCEEA/OSCE Secretariat, is to promote the Model Law on Public Procurement developed and updated by the UNCITRAL (latest version dating from 2011<sup>142</sup>) in the concerned countries.<sup>143</sup>

### III.2.2. Legal basis

#### *Legal approaches*

The approach of EU Member States and of those countries wishing to join the Union commonly consists in bringing national legislation in line with the aforementioned relevant EU Directives on public procurement in different sectors. As a consequence of the transposition of EU regulation into national law, there is to be found one main central purchasing body in most EU Member States.<sup>144</sup> Another legal reference in the field of public procurement in the OSCE region, especially in CIS countries, is the aforementioned UNCITRAL Model Law on Public Procurement. As a consequence of the wide dominance of these international instruments across the region, legal and procedural approaches to public procurement do not vary greatly across the region, though differences exist in relation to the application and implementation of these legal foundations.

#### *Content and scope*

In addition to the elements fostering integrity in public procurement presented by the OECD (see Box 5 above), the following issues with regard to the content and scope of procurement laws should be considered: **Procurement laws ideally cover the entire procurement cycle** and not only parts of it; this is especially important as both the planning as well as the delivery phases of a procurement procedure are highly prone to corruption. In this vein procurement regulations ought to be applicable to a wide range of public entities and categories of goods and services. The core components of public procurement regulations are **transparency, equal treatment and non-discrimination**. In this regard, governments increasingly strengthen and use **e-procurement** procedures in order to simplify internal work procedures as well as the bidding process. This approach, which has of course implications regarding implementation and enforcement, is, amongst other, the case in FYROM, where e-auctions are strongly promoted.<sup>145</sup>

### III.2.3. Implementation and enforcement

As mentioned above, EU Member States are to comply with the relevant EU Directives, as do entry candidates. In addition, the OECD **checklist** helps governments implement the core principles of public procurement regulations. This checklist entails measures for each phase of the procurement cycle.

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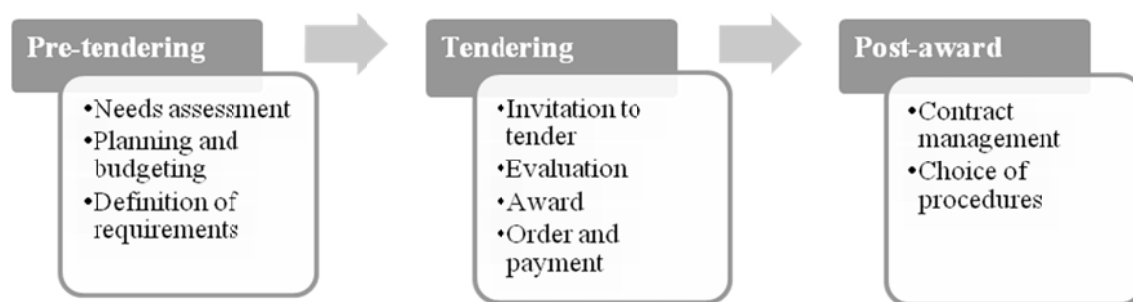
<sup>142</sup> The text of the Modal Law can be found at [http://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/ML\\_Public\\_Procurement\\_A\\_66\\_17\\_E.pdf](http://www.uncitral.org/pdf/english/texts/procurem/ml-procurement-2011/ML_Public_Procurement_A_66_17_E.pdf).

<sup>143</sup> For more information, please see <http://www.ppi-ebd-uncitral.com/index.php/en/the-initiative>.

<sup>144</sup> For a comparative overview regarding public procurement regulation in European countries, please see: Tiziana Bianchi and Valente Guide (eds.), ‘The comparative survey on the national public procurement systems across the PPN’, Department for the Supervision of Public Contracts, Rome 2010, available at <http://www.publicprocurementnetwork.org/docs/ItalianPresidency/Comparative%20survey%20on%20PP%20systems%20across%20PPN.pdf>.

<sup>145</sup> SIGMA, ‘SIGMA Assessment of the former Yugoslav Republic of Macedonia’, 2011, p. 25.

**Figure 2: Elements of the OECD checklist regarding public procurement procedures**



Source: OECD, *OECD Principles for Integrity in Public Procurement*, (Paris: OECD Publishing, 2009), p.52, available at <http://www.oecd.org/gov/fightingcorruptioninthepublicsector/48994520.pdf>

As TI analyses in its 2012 European-wide study, national legislation have been adapted to EU procurement regulations, ‘but it is an open secret in many European countries that the rules are systematically circumvented and that this can be done with impunity.’<sup>146</sup> As such, despite the availability of relatively comprehensive legislations on public procurement, modelled according to widely accepted international best practice and standards, **public procurement remains an area of high corruption incidents.**<sup>147</sup>The complex EU legal framework in the matter places high administrative burdens on contracting authorities which makes the legislation difficult to comply with. According to TI, many national authorities therefore try to avoid the prescribed procurement procedures to circumvent the administrative burden ‘by manipulating its needs and the contracts around the various margins and thresholds imposed upon them.’<sup>148</sup> Problems are reported to be most severe in Bulgaria, the Czech Republic, Italy, Romania and Slovakia.<sup>149</sup>The 2011 Global Integrity scores depict a mitigated picture regarding government procurement procedures. Georgia is ranked ‘very strong’ and Germany, Ireland, FYROM and the United States are described as ‘strong’. With the exception of Bosnia and Herzegovina (ranking ‘weak’), South Eastern European and Central Asian countries (namely Armenia, Azerbaijan, Serbia, Tajikistan, Ukraine) receive a ‘moderate’ score.<sup>150</sup>Overall, due to the high risk in public procurement in any country, continuous attention to this area in relation to corruption prevention, especially but not exclusively in those countries that have received mixed scores, is clearly warranted. For additional information also see a document at: <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2010-December-13-15/V1056970e.pdf>.

#### **IV. Transparency, accountability and civic participation**

Assuring the transparency and accountability of public institutions and business players is at the very heart of corruption prevention as it provides for public scrutiny. The prerequisites for ascertaining and monitoring public and private actors are (i) the sufficient access to information by citizens through effective freedom of information legislation and adequate transparency provisions; (ii) freedom of opinion and expression combined with the freedom of the media so as to allow the circulation of information; (iii) effective civic participation in the fight against corruption; and (iv) public reporting mechanism and the legal protection of the reporting individuals.

<sup>146</sup> Transparency International, ‘Money, Politics, Power’, p. 5.

<sup>147</sup> *Ibidem*, p. 5 and pp. 39ff.

<sup>148</sup> *Ibidem*, p. 39.

<sup>149</sup> *Ibidem*.

<sup>150</sup> Global Integrity 2011 scorecards, available at <http://www.globalintegrity.org/information/downloads>.



## IV.1. Access to information legislation and transparency provisions

A meaningful right to access information is crucial in a democratic and pluralistic society<sup>151</sup>: it is a precondition for an informed citizenry capable of scrutinising the actions and policies of their government, public administration, political parties and elected representatives.

### IV.1.1. Regional initiatives and international instruments

Legislation, jurisprudence and legal doctrine increasingly pay attention to the right to access information, which is part of the fundamental right to freedom of expression. International institutions, too, have developed an interest in the subject area comprehending it as a means to foster democratic governance and prevent corruption. The **UNESCO**, for instance, has conducted an in-depth analysis in the subject area and has published a list of fundamental principles for access to information regulation.<sup>152</sup> The **OSCE** has indeed been one of the first international organisations to stress the importance of access to information. The 1975 Helsinki Final Act contains provisions aiming at facilitating the ‘freer and wider dissemination of information of all kinds’.<sup>153</sup> Subsequent OSCE documents, such as the Charter for European Security (1999), have reiterated the importance of the public’s effective access to information.

In the OSCE region the **Council of Europe** (CoE) has been particularly active in promoting citizens’ access to public documents. The Committee of Ministers of the CoE has pursued an approach in favour of a broad public accessibility of official documents and, through its recommendations<sup>154</sup>, has managed to establish a series of fundamental principles in that matter, eventually leading to the CoE Convention on Access to Official Documents in 2009.<sup>155</sup> However only 14 out of 47 CoE Member States have so far signed, and only 6 countries have ratified the instrument.<sup>156</sup> Access to public information, based on principles 9 and 10 of the Twenty Guiding Principles for the Fight against Corruption, has also been subject to monitoring by GRECO in the course of its Second Evaluation Round (2003-2005) and has resulted in numerous recommendations addressed to the member States. Yet almost all Member States of the CoE and the OSCE (except Germany and the Czech Republic) have ratified the UN Convention against Corruption (**UNCAC**), which in its article 10 deals with access to information in the context of corruption prevention. UNCAC explicitly makes reference to the two key dimensions of the right of access to public information, namely the legal dimension by encouraging State Parties *inter alia* ‘(i) to adopt pertinent access to information legislation, including facilitated administrative procedures’ and the political dimension by stating States should ‘(ii) proactively disclose information’.

### IV.1.2. Legal basis

#### *Legal approaches*

Across the OSCE region many States have taken legislative measures to comply with their international commitments in relation to access to information. The EU Member States have in particular enacted new laws to comply with the 2003 EU Directive on the re-use of public

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<sup>151</sup> OAS, Interamerican Commission on Human Rights, Office of the special rapporteur for freedom of expression, report 2009,

[http://www.oas.org/dil/access\\_to\\_information\\_IACHR\\_guidelines.pdf](http://www.oas.org/dil/access_to_information_IACHR_guidelines.pdf).

<sup>152</sup> Toby Mendel, *Freedom of information: a comparative legal survey*, 2nd rev. ed., (Paris: UNESCO, 2008).

<sup>153</sup> OSCE, Helsinki Final Act, Section IV, Chapter II.

<sup>154</sup> See (1) Recommendation n° R(81) of the Committee of Ministers to the Member States on measures to facilitate access to Justice (1981) and (2) Recommendation Rec (2002)2 of the Committee of Ministers on the access to public documents.

<sup>155</sup> CoE Convention on Access to Official Documents (<http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>).

<sup>156</sup> The countries having ratified the convention are Bosnia and Herzegovina, Hungary, the Netherlands, Montenegro, Norway, Sweden.

information.<sup>157</sup> Nonetheless, numerous countries have not yet given up their **reluctance to effectively grant access to information**, usually citing the need to protect national security, privacy, data protection, or tradition. Yet one finds that more recently enacted access to information legislations in the OSCE region tend to be more encompassing and generally entail provisions of proactive information disclosure. By way of example, in Sweden – the first country to have enacted a freedom of information legislation in the 18<sup>th</sup> century– citizens can only access documents on proceedings which having been concluded (The Freedom of the Press Act, 1949, Article 7). On the other hand, the Hungarian law in the matter, dating from 2005, grants the public access to draft laws and draft decrees (see describes under ‘Scope and content’). These developments over time seem to indicate a trend and may be a sign that awareness of the need for and effect of an effective access to information is gradually rising across the region.

To provide further insight into the practical application of the principle of access to information in the OSCE region, the following sections will analyse pertinent national legislation and practices against existing international standards, legal commitments and best practice in four key dimensions, being (i) procedural guarantees; (ii) proactive disclosure, e-government and public participation; (iii) exceptions; and (iv) appeals mechanism and oversight.<sup>158</sup>

### *Scope and content*

The NGO ‘Article 19’ has elaborated nine principles rendering freedom of information effective, which have been endorsed by the UNESCO. After a short overview in Box 5, the said principles will be detailed by country example, while re-arranging them according to the four key dimensions mentioned above.

#### **Box 6: Nine principles for an effective freedom of information regime**

- 1) *Maximum Disclosure* - Freedom of information legislation should be guided by the principle of maximum disclosure
- 2) *Obligation to publish* - Public bodies should be under an obligation to publish key Information
- 3) *Promotion of Open Government* - Public bodies must actively promote open government
- 4) *Limited scope of exceptions* - Exceptions should be clearly and narrowly drawn and subject to strict ‘harm’ and ‘public interest’ tests
- 5) *Processes to facilitate access* - Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available
- 6) *Costs* - Individuals should not be deterred from making requests for information by excessive costs
- 7) *Open meetings* - Meetings of public bodies should be open to the public
- 8) *Disclosure takes precedence* - Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed
- 9) *Protection for whistleblowers* - Individuals who release information on wrongdoing - whistleblowers - must be protected

Source: Toby Mendel, *Freedom of information: a comparative legal survey*, 2nd rev. ed., Paris: UNESCO, 2008.

- Procedural guarantees

In order to facilitate public accessibility of information, it is deemed **important to allow citizens to use different channels to submit a request for information**. In most countries, requests are to be submitted in written form (UK Freedom of Information Act), with recently enacted legislation (e.g. the Estonian Public Information Act, Article 13) often providing not only for paper but also for electronic submissions. In a growing number of countries, such as Estonia, Azerbaijan (Law on right to obtain

<sup>157</sup>Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.

<sup>158</sup> These are, notably, the pertinent recommendations of the Committee of Ministers of the Council of Europe cited above and the principles exposed in the aforementioned UNESCO publication (authored by Toby Mendel).

information, Article 13.1) and the Kyrgyz Republic (Law on access to information held by State bodies and self-government bodies of the Kyrgyz Republic, article 7.1), information requests can *de jure* also be brought forth orally in person and on the phone.<sup>159</sup>

To **enhance transparency and enable public scrutiny of the access to information regime itself**, record keeping and the existence of prescribed schedules for information release is important. In some countries (Azerbaijan, Kyrgyz Republic), requests for information must be formally acknowledged, and recorded on a central register with the date on which the request was initiated, the name of the public official treating the request and details regarding the processing. As regards to predefined **time limits**, the Estonian law sets out that public authorities are to respond to a request within five working days, and the Azeri law foresees a time limit of seven days. These comparatively short delays are good practice but can also be challenging for the requested authority. In other countries the disposition time is longer, such as in the United Kingdom where responses are to be provided within 20 working days from the introduction of the request (Freedom of Information Act, article 10). On the other hand some laws foresee special timeframes for particular circumstances, for example when information is needed to protect the life or liberty of a person (e.g. 48 hours in Azerbaijan). Another interesting feature is contained in the Bulgarian access to information legislation which requires that the notice granting a citizen access to specific information must specify the period of time during which the information at stake can be consulted (30 days according to the Bulgarian Access to public information Act). This is considered good practice as it **increases the legal foreseeability for the requesting parties** and limits the room for arbitrary decisions or actions of officials.

Finally, **refusal notices** are another key procedural guarantee. The UK legislation, for instance, contains provisions on this matter; according to the Kyrgyz refusal notices must indicate the name of the public official having taken the decision to refuse access to information, in addition to information about appeal rights and local bodies defending human rights and dealing with information matters. This is a valuable means to enable public scrutiny and ensure transparency of the implementation of the access to information laws.

- Proactive disclosure, e-government and public participation

Relatively recent access to information laws contain **provisions on proactive disclosure**, as is the case in Estonia (2001), Hungary (2005), Azerbaijan (2005) and the Kyrgyz Republic (2007). The Estonian legislation, which has been qualified as efficient by the Council of Europe Group of States against Corruption (GRECO)<sup>160</sup>, entails encompassing provisions on the disclosure of information via electronic means. Institutions holding public information are under the obligation to set up and regularly update web-sites (articles 31 and 32) which have to display certain data, such as information pertaining to public officers, statistical data including economic and criminal data, and information regarding legislative acts and regulations in preparation. The Hungarian law also entails a detailed list of information to be published on websites (Act XC of 2005 on the Freedom of Information by Electronic Means, article 3). Interestingly, ministries must disclose information on draft laws and preliminary version of ministerial decrees (article 9), as such enabling public debate and participation in the policy decision shaping processes.

Internet-based proactive disclosure, however, is only effective if access to the Internet is widely available to all citizens. It is therefore recommended to ensure, where deemed necessary, proactive disclosure by other means. To this end, the Azeri and the Kyrgyz laws, for instance, comprise the duty to publish information via public libraries *and* via the Internet. In the Kyrgyz Republic, the law moreover provides for **open meetings**. Accordingly, citizens can in principle take part in sessions of public entities, public authorities are to publish a monthly list of such open meetings, and the public is entitled to take notes, make tapes, etc. during the open meetings. Similar provisions are unfortunately only rarely found in access to information legislation despite the fact that they constitute an effective

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<sup>159</sup> It has however been reported that, as far as the Kyrgyz Republic is concerned, only written requests are followed up.

<sup>160</sup> GRECO, Second Evaluation Round, Evaluation on Estonia, Greco Eval II Rep (2003) 4E, available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282003%294\\_Estonia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282003%294_Estonia_EN.pdf).

measure to increase public transparency and consequently accountability; in those countries that provide for such mechanisms it is further not (yet) widely in use.<sup>161</sup>

- Exceptions

Exception regimes, whilst sometimes justifiable for the sake of protecting national security or fundamental rights of individuals to privacy, risk undermining effective right to access information. A way to handle this delicate balance of interest is illustrated by the Kyrgyz legislation according to which the **public interest generally overrides** such exceptions. Other access to information regulations, e.g. those of Sweden and the United States, contain only limited public interest override.

**Historical disclosure** is regulated by most freedom of information laws, the different periods of time being based on different types of exceptions. In Azerbaijan, information held back for public grounds are to be released after five years (article 30). In most other countries, the historical disclosure provisions are much longer (20 to 30 years), for instance in the UK (article 63).

- Appeal mechanisms and oversight

It is crucial that citizens are entitled to a right to appeal in case their request has been denied. The appeal can take place before a judicial instance or before another independent and impartial body which, in many cases, is also charged with the general oversight of the rightful implementation of the access to information legislation. In certain countries, the oversight institutions are legally entrusted with a consultative status only, even though their decisions are in practice mostly followed by the public authorities. This is the case of the French Commission on access to administrative documents (*Commission d'accès aux documents administratifs*) or the Danish ombudsman (*Folketingets Ombudsman*). In other countries, however, the instance monitoring appeals can issue legally binding decisions to public institutions, as is the case for the Estonian Data Protection Inspectorate.

#### IV.1.3. Implementation and enforcement

As the previous sections highlighted, more or less comprehensive legal provisions concerning access to information are generally in place in the OSCE region. It is however a matter of concern that the **implementation and enforcement of these provisions are often lacking or at best incomplete**. In 2011 the NGO 'Global Integrity' assessed twelve OSCE participating States with regard to public requests for government information.<sup>162</sup> The 'in law' scores are overwhelmingly positive for all countries analysed. Yet the 'de facto' results paint a somewhat gloomy picture. Information requests are often not answered within a reasonable period of time or at reasonable cost and the responses tend to be of poor quality. Moreover appeals channels are not very speedy or affordable. And finally information requests are regularly denied in most countries without clear legal grounds or the concerned authority giving reasons for the denial. With regard to the effective implementation of legislation, Global Integrity only awards Ireland with an overall positive assessment. Serbia, Ukraine and the United States obtain mixed, but still reasonable results. At the bottom of the list cluster Mongolia, closely followed by Germany.<sup>163</sup>

Around the world the main cause for this insufficient level of implementation and enforcement of access to information regimes is generally said to be lack of political will. In addition, and partly as a result thereof, public authorities are not equipped with the necessary processes, staff and other resources to effectively operate under the Access to information legislations; appeals and oversight bodies are oftentimes under resourced too. Future efforts in the region with regard to access to information thus should ideally focus on strengthening implementation mechanisms and enforcing the comparatively comprehensive legislations that are in place in most countries of the OSCE region.

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<sup>161</sup>Toby Mendel, *Freedom of information: a comparative legal survey*.

<sup>162</sup>OSCE participating States assessed in 2011: Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Germany, Ireland, Serbia, FYROM, Tajikistan, Ukraine, United States.

<sup>163</sup>For further information, please visit the Global Integrity website at <http://www.globalintegrity.org/report>.

## IV.2. Freedom of opinion and expression and freedom of the media

Freedom of opinion, freedom of expression and freedom of the media – all of which are fundamental rights to be granted in a democratic society – are closely interlinked. Journalists can obviously not fulfil their informative function and play their ‘vital public-watchdog role’<sup>164</sup> unless the free expression of opinion is possible. The guarantee of these essential freedoms is an essential prerequisite for the prevention and detection of corruption and for the participation of society and key stakeholders therein in the fight against corruption.

### IV.2.1. Regional initiatives and international instruments

The freedom of opinion and expression as well as the freedom of the media are enshrined in a number of international texts. The **Universal Declaration of Human Rights**<sup>165</sup> (1948) comprises the freedom of opinion and expression and sets out that every individual is entitled to ‘seek, receive and impart information and ideas through any media and regardless of frontiers’ (article 19). This right can be subject to restrictions, but only of these are ‘determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’ (article 29§2). Article 10 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**<sup>166</sup> (1950) is largely phrased in the same way, but adds that States can require licenses for broadcasting (§1). The convention further states that the right to freedom of expression ‘carries with it duties and responsibilities’ and that it might be subject to certain limitations necessary in a democratic society prescribed by law (§2). The drafters of the **International Covenant on Civil and Political Rights**<sup>167</sup> (ICCPR, 1966) have adopted a similar wording (article 19). The Helsinki Final Act (1975) encompasses commitments of States pertaining (i) to fundamental human rights freedom, including the freedom of expression, and (ii) to the principle of a free, independent and pluralistic media.<sup>168</sup>

As regards the OSCE region, the **European Court of Human Rights** (ECHR) has played a central role in guaranteeing the respect of the aforementioned fundamental rights by Member States of the CoE. The court has been concerned with numerous cases related to the freedom of opinion and expression and has developed a jurisprudence favourable to the protection of these rights.<sup>169</sup> The **OSCE**, too, has been a leading player in the field. On the basis of the commitments contained in the 1975 Helsinki Final Act, the organisation has promoted and strengthened the freedom of opinion and expression and the freedom of the press amongst its participating States through a series of follow-up actions and provisions.<sup>170</sup> In this context, the OSCE Representative on Freedom of the Media, established in 1997, is in charge of observing media developments in all 56 OSCE participating States and, in this function, ‘provides early warning on violations of freedom of expression and promotes full compliance with OSCE press freedom commitments’<sup>171</sup>. The OSCE has further launched programmes aimed at training investigative journalists by supporting the translation and the printing of the ‘Guide to investigative journalists in the Balkans’<sup>172</sup> of the Balkan Investigative Reporting Network.

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<sup>164</sup> *Goodwin v. the United Kingdom* [GC], no. 17488/90, §39, ECHR 1996.

<sup>165</sup> The text of the Universal Declaration of Human Rights (1948) is available at the following website: <http://www.un.org/en/documents/udhr/>.

<sup>166</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No.: 005.

<sup>167</sup> The text of the ICCPR (1966) is available at the following website: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>168</sup> Final Act of the Conference on Security and Co-operation in Europe, 1975.

<sup>169</sup> Cf. European Court of Human Rights, ‘Freedom of expression in Europe: Case-law concerning Article 10 of the European Convention on Human Rights’, (Strasbourg: Council of Europe Publishing, 2007).

<sup>170</sup> For an overview of the different commitments made by OSCE participating States in the subject area at stake, please consult the following website: <http://www.osce.org/fom/31232>.

<sup>171</sup> <http://www.osce.org/fom/43203>.

<sup>172</sup> The said Guide is available at <http://www.osce.org/serbia/77517?download=true>.

#### IV.2.2. Legal basis

##### *Legal approaches*

The freedom of opinion and expression constituting fundamental human rights, it is recommended that provisions in this regard are recognised as **constitutional rights at the national level**. This is the case in the great majority of OCSE participating States, including, for instance, Canada, France, Germany, Greece, Ireland, the Netherlands, Norway, Poland, Sweden, Switzerland, Turkey and the United States.

Organisations dealing with press freedom and media have highlighted the importance of properly worded and thoroughly implemented access to information legislation for the promotion of investigative journalism, which in turn plays an important role in detecting corruption. Article 19, a non-governmental organization that promotes freedom of expression and information, has compared the effectiveness of access to information legislation in different States. The International Press Institute has analysed the implementation of such legislation by surveying the comparative difficulties that journalists around the world face when attempting to obtain information from official government sources. Both studies show that the lack of right to information acts, or the inclusion of too many exceptions to the applicability of such acts, limit journalists' ability to access information of public interest. This, in turn, hinders people's right to be informed. Furthermore, even when properly worded legislation is in place, administrative obstacles may hinder journalists' ability to access information of public interest.

##### *Scope and content*

Laws on the freedom of expression and the freedom of the media deal with a great variety of issues. Two essential elements are the media's independence as well as the protection of journalistic sources.

- Independence

A crucial prerequisite for effective freedom of expression and of the media is the existence of (politically and economically) independent media. The Bertelsmann Foundation annual assessments regarding media freedom in 31 OECD countries, resulting in the Sustainable Governance Indicators (SGI), are a valuable source in this regard. In the 2011 assessment, 11 OSCE countries are reported to **have institutionally protected independent public and private media** (namely Belgium, Canada, Denmark, Finland, Ireland, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United States.<sup>173</sup> In the UK, the British Broadcasting Corporation (BBC) takes an active and explicit approach in this matter by periodically (every 10 years in general) enters into a contractual engagement with the UK State authorities, reassuring its independence (Royal Charter for the continuance of the British Broadcasting Corporation, article 6<sup>174</sup>).

**Ownership structure of media** is seen as an important defining factor for the level of independence of the media. A diversified ownership is thought to be more likely to offer a **pluralistic journalistic landscape**. According to the 2011 SGI, Denmark, Finland, Germany, Ireland, Norway, Portugal and Switzerland present cases in which the ownership structure of media is sufficiently diversified and public media expose diverse opinion. In Germany, media concentration is even determined by law so as to ensure that a large range of opinions is represented. Italy, on the contrary, receives the lowest score as ownership structures tend to be oligarchic and the diversity of opinion comparatively weak.<sup>175</sup> In the UK, there are bans on media holding by local authorities, political and religious organisations

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<sup>173</sup>Bertelsmann Foundation, Sustainable Governance Indicators 2011, Access to Information – Media freedom, accessible at [http://www.sgi-network.org/index.php?page=indicator\\_quali&indicator=S2\\_1](http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S2_1).

<sup>174</sup>The text of the charter can be found at [http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how\\_we\\_govern/charter.pdf](http://downloads.bbc.co.uk/bbctrust/assets/files/pdf/about/how_we_govern/charter.pdf).

<sup>175</sup>Bertelsmann Foundation, Sustainable Governance Indicators 2011, Access to Information – Media pluralism, accessible at [http://www.sgi-network.org/index.php?page=indicator\\_quali&indicator=S2\\_2](http://www.sgi-network.org/index.php?page=indicator_quali&indicator=S2_2).

and publically funded bodies as well as cross-media ownership so as to limit the size of companies in the information business.

- Protection of journalistic sources

The ECHR has stated that ‘[t]he **protection of journalistic sources is one of the basic conditions for press freedom**. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest.’ This, in turn, would greatly harm the work of journalists. Ordering the disclosure of journalistic sources is therefore only justified if there is an overriding requirement in the public interest.<sup>176</sup>

Adequately protecting journalistic sources is of particular interest in the anti-corruption context as cases touched upon by the media are often politically sensitive; sources would refrain from revealing wrongdoings to journalists by fear of reprisal (including whistleblowers). Sweden, for instance, has a very liberal legislation in this regard and journalists cannot be forced to reveal their sources; journalists revealing their sources without consent may be prosecuted at the request of the source. Austria, Belgium and Germany also grant broad protection of journalistic sources through legislative texts and jurisprudence.<sup>177</sup> In Armenia, journalistic sources are not to be disclosed except in the context of criminal proceedings during which journalists can ask for a hearing closed for the public.<sup>178</sup> In Georgia, journalists are not obliged to disclose their sources either. Further examples as to national laws and cases in the matter can be found in the country reports prepared by the OSCE (2008)<sup>179</sup> as well as in a report released by the Parliamentary Assembly of the CoE in December 2010.<sup>180</sup>

- Self-regulatory mechanisms

Alongside a strong legal framework guaranteeing effective freedom of expression and the media, self-regulatory mechanisms can be used to ensure and promote media ethics and accountability. Such mechanisms include professional codes of conduct as well as press councils and internal ombudspersons which need to be independent and inclusive. Such councils do, for instance, exist in Germany, Sweden and the UK.<sup>181</sup> Even though there is no single model regarding a self-regulatory code of conduct, certain key elements need to be contained, some of which will be outlined in the following: (i) honesty, fairness, impartiality and independence; (ii) the respect of the individual’s rights, including the right to privacy; (iii) the protection of confidential sources and information; (iv) no acceptance of gifts and hospitality; and (v) cultivate the right to access information.<sup>182</sup> As mentioned above (Section 1), the OSCE has published a guidebook on self-regulating measures regarding the media which is of great use to developing or amending existing codes.<sup>183</sup>

#### IV.2.3. Implementation and enforcement

According to the 2012 Global Integrity Scorecards, German media’s ability to report on corruption is ‘very strong’ as is the case in the United States. Ireland and Serbia are reported to have reasonably free media (‘strong’) as well as Georgia and FYROM (‘moderate’). Other countries however, such as Armenia, Azerbaijan, Tajikistan and Ukraine, receive lower scores regarding media freedom when it comes to corruption cases.<sup>184</sup>

<sup>176</sup> *Goodwin v. the United Kingdom* [GC], no. 17488/90, §39, ECHR 1996.

<sup>177</sup> <http://www.article19.org/data/files/pdfs/publications/right-to-protect-sources.pdf>.

<sup>178</sup> OSCE, ‘Access to information by the media in the OSCE region: Country Reports’, p. 41.

<sup>179</sup> OSCE, ‘Access to information by the media in the OSCE region: Country Reports’.

<sup>180</sup> Council of Europe, ‘The protection of journalists’ sources’ (2010),

<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12443.htm>.

<sup>181</sup> Article 19/ International Federation of Journalists, *Freedom and accountability: safeguarding free expression through media self-regulation*, 2005, p. 26 ff, available at <http://www.article19.org/data/files/pdfs/publications/self-regulation-south-east-europe.pdf>

<sup>182</sup> For more information, please see the website of the International Press Institute (IPI), at [www.freemedia.at](http://www.freemedia.at).

<sup>183</sup> OSCE, *The Media Self-Regulation Guidebook: All questions and answers*, (Vienna: OSCE, 2008), available at <http://www.osce.org/fom/31497/>.

<sup>184</sup> Please see <http://www.globalintegrity.org/report>.

Many restrictions imposed on media players are also of indirect nature. In certain OSCE countries, **criminal libel and defamation laws** constitute a hindrance for effective freedom of the press as they may be used by political or otherwise public figures to prevent journalists from reporting certain facts. The fact of disclosing information about wrongful acts – even though true – may lead to an anti-insult indictment. Another tool used by some States to restrict the freedom of the press is the **mandatory registration**. Licensing can be used to control the information market. Licensing procedures are reported to work smoothly in Germany, but constitute a matter of concern in other countries such as, according to the Global Integrity Reports, Azerbaijan, Armenia or Tajikistan<sup>185</sup>.

### IV.3. Public participation and civil society engagement

As noted above, corruption prevention is increasingly seen as a complex and crosscutting issue involving a range of actors. Beyond the multitude of state actors concerned, the involvement of non-state actors, such as NGOs, academics, the private sector or the media is essential. Civic participation in anti-corruption programmes is a key factor for long-term success as it paves the way for enhanced societal awareness of corruption-related problems. This, in turn, can lead to a stronger demand for anti-corruption efforts and an increased public scrutiny of the progress made in the matter. Indeed, a well-informed and responsive public-private dialogue is at the very heart of this matter as it paves the ground for participatory decision making and bottom-up reform processes.

#### IV.3.1. Regional initiatives and international instruments

At the international level, active civic participation in anti-corruption efforts is stipulated by the **UNCAC**. Article 13 of the aforementioned convention requires that State Parties ‘shall take appropriate measures [...] to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.’

Within the OSCE region, there are many initiatives to foster civic participation and non-state actor engagement. The **OECD** has been among the first organisations to actively promote the empowerment of civil society and to include private actors in the fight against corruption. First steps in this direction have been taken with the launch of the Anti-Corruption Initiative for Asia-Pacific under the joint leadership of the Asian Development Bank (ADB) and the OECD in 1999. The Anti-Corruption Action Plan for Asia and the Pacific (2001) explicitly devotes one of its three pillars to ‘supporting active public involvement’ (pillar 3) through several means.<sup>186</sup> The **OSCE** has, besides backing the implementation of the UNCAC commitments in this matter, undertaken numerous projects to foster civic participation in anti-corruption efforts, including in Albania, Armenia, Kazakhstan and Tajikistan. The **World Bank** has supported civil society organisations (CSOs) in matters pertaining to good governance and anti-corruption through its Civil Society Fund (administered by participating Bank Country Offices). In the past years, grants have, amongst other, been allocated to CSOs in Armenia, Croatia, Georgia, Serbia, FYROM and Turkey. Other projects have been set up by States. By way of example, the **Open Government Partnership**, aims at improving the transparency, responsiveness accountability and effectiveness of governments and increasing civic participation, comprises a substantial component on ‘support civic participation’ in decision making and policy formulation, including ‘mechanisms to enable greater collaboration between governments and civil society organizations and businesses’.<sup>187</sup> In addition, the global NGO TI has national chapters in all OSCE participating States.<sup>188</sup>

<sup>185</sup> Please consult the Global Integrity reports on the countries mentioned at <http://www.globalintegrity.org/report>.

<sup>186</sup> ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, ‘Anti-Corruption Action Plan for Asia and the Pacific’ (2001), available at <http://www.oecd.org/dataoecd/38/24/35021642.pdf>.

<sup>187</sup> Open Government Declaration (2011), available at <http://www.opengovpartnership.org/open-government-declaration>.

<sup>188</sup> [http://www.transparency.org/whoweare/organisation/our\\_chapters](http://www.transparency.org/whoweare/organisation/our_chapters).



#### IV.3.2. Legal basis

##### *Legal approaches*

Indispensable prerequisites for effective civic participation at any stages of anti-corruption efforts (development of strategies, implementation, monitoring) are the **freedom of expression** discussed above, **and the freedom of association**. These rights are protected by a range of international texts, such as the European Convention on Human Rights (1950)<sup>189</sup> or the Charter of Fundamental Rights of the European Union (2000)<sup>190</sup>. It is important to stress here that the ECHR has deemed appropriate to qualify certain non-governmental organisations like the media as ‘social “watchdog”’, being ‘an essential element of informed public debate’<sup>191</sup>.

##### *Scope and content*

As regards civil society anti-corruption initiatives, the Romanian Coalition for a Clean Parliament has played a cutting-edge role and therefore merits close attention (see Box 5).

#### **Box 7: The Romanian Coalition for a Clean Parliament**

##### *The initiative*

Tired of the ‘government’s lack of effectiveness in fighting large-scale corruption’, Romanian civil society took the initiative and set up the first broad coalition for integrity in politics – the Coalition for a Clean Parliament (CCP) – in view of the Romanian local, legislative and presidential elections in 2004.

##### *The process*

In a first step, the CCP identified six criteria which would make a candidate unfit for a clean Parliament. Second, these criteria were discussed with the leading figures of political parties represented in Parliament. Almost all key parties agreed with the criteria chosen and the process proposed by the CCP. Third, the CCP collected and double-checked information about the candidates of the agreeing parties from print media, websites, etc. In a fourth step, the CPP drew up a list of ‘those candidates who met one or more of the agreed-upon criteria for being unfit to hold a seat in the future Parliament. The resulting ‘black lists’ were then sent to the political parties, with the request that they re-examine each case and decide whether to withdraw the candidate’. Political parties were subsequently given the chance to withdraw initial candidates of whom some appealed to the CPP. Finally, the CPP released the final ‘black lists in the form of nearly two million flyers, distributed in most of the 41 counties of Romania’.

##### *National and international echo*

‘More than two thousand people, from students to union members, participated as volunteers in this campaign’ and approximately two million flyers were distributed ‘[t]hanks to the combined efforts of both students and grassroots organizations such as the Civic Alliance and the Pro Democracy Association. Nationally as well as internationally, many well-known newspapers covered the activity of the CCP, including AP, BBC, *Die Presse*, Financial Times, *Frankfurter Allgemeine Zeitung*, *Le Monde* and Reuters.

##### *The result*

According to the CPP the ‘final accounting shows that 98 candidates on the original black lists lost their seats, having been either withdrawn by their parties or defeated by the voters. At the same time, 104 black-listed candidates won re-election. Measured in this way, the CCP’s rate of success was just below 50 percent. On the other hand, the 2004 elections brought a change of Government. On the downside, five lawsuits for defamation, against the civil society, were filed by a former head of the secret service, a former minister of Justice, a former minister of Defence and other top politicians. If Oscar Wilde is right that one should be judged by the quality of one’s enemies, then Romanian civil society has made enormous strides with its Coalition for a Clean Parliament. By end-April (2005), in any event, the

<sup>189</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No.: 005, articles 10 and 11.

<sup>190</sup> Charter of Fundamental Rights of the European Union (2000/C 364/01), articles 11 and 12.

<sup>191</sup> *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, §27, ECHR 14 April 2009.

Coalition had won the first round in nearly all the trials.’

Adapted from: Romanian Coalition for a Clean Parliament, ‘A Quest for Political Integrity - With an introductory essay by Alina Mungiu-Pippidi’, Working Paper No. 1, 2005.

In general, the social watchdog function of civil society organisations encompasses a wide range of different fields of activities when it comes to corruption prevention. In the following, short examples illustrate the different types of activities in which CSO can actively contribute to the fight against corruption.<sup>192</sup> As social media are increasingly used to by CSO, some web-based projects will also be presented so as to show how the often scarcely resourced NGOs have managed to spread their ideas.

- **Monitoring international anti-corruption instruments:** Since 2006, the UNCAC Coalition, a global network of more than 300 civil society organisations (CSOs) from over 100 countries, has been active in promoting the ratification and monitoring of the UNCAC at the international, regional and national level.<sup>193</sup> The Coalition, which has an observer status at the CoSP, is for instance advocating and active and effective CSO participation in the UNCAC review process. In preparation of the periodical reports of the newly established EU monitoring mechanism, the results of which are to be published every two years from 2013 onwards, Transparency International compiled so-called ‘National Integrity System’-studies of 25 European countries.<sup>194</sup> The same role is critical, as noted above, for civil society at national level. CSOs have for example published UNCAC shadow reports in which they present their own assessment of a given country’s compliance with UNCAC; such reports are available on the UNCAC Coalition website on countries such as Bulgaria, Lithuania, Portugal, Ukraine, the UK and the United States.
- **Monitoring and revealing acts of corruption:** Civil society and the media play an important role in publicising corruption cases and in raising the public’s awareness about the extent and concrete cases of corruption. This puts pressure on enforcement agencies to investigate and prosecute known cases, and on government to act more resolutely against corruption. Global websites such as <http://www.bribespot.com/> (developed in Estonia) and similar websites at national level, for example in Kazakhstan ([vzyatochnik.info](http://vzyatochnik.info), [vzyatka.crowdmap.com](http://vzyatka.crowdmap.com), etc.) and Russia (such as [rospil.info](http://rospil.info)), are increasingly popular for such monitoring and publicising about corruption cases. This is supported by civil society monitoring of corporate practice, such as for example practiced by TI which regularly publishes a study on ‘the transparency of corporate reporting on a range of anticorruption measures among the 105 largest publicly listed multinational companies’ being worth more than USD 11 trillion.<sup>195</sup>
- **Participation in legislative processes and monitoring implementation procedures:** The UK-based NGO ‘public concern at work’ (PCAW) which is concerned with the protection of whistleblowers has, after successful advocacy and awareness raising activities in the 1990s, been invited by the UK Government to draft a legislation protecting whistle-blowers; until today, PCAW has been supporting the effective implementation of the law. In Hungary, the national TI chapter participated in public consulting meeting with official authorities on future anti-corruption laws and projects in the field of political financing.
- **Monitoring government performance:** Typically civil society is involved in monitoring government performance in corruption prevention in corruption prone areas as well as, generally, in implementing anti-corruption reform. In relation to the former, public procurement processes are often the targets of such monitoring activity, as for example in Hungary where the national TI chapter has been monitoring the public procurement procedures of the Hungarian National Bank.

<sup>192</sup> Information is principally drawn from the UNDP paper ‘Study on the role of social media for enhancing public transparency and accountability in Eastern Europe and the Commonwealth of Independent States: emerging models, opportunities and challenges’.

<sup>193</sup> The full list of participating CSO can be found at <http://www.uncaccoalition.org/about-us/members-list>.

<sup>194</sup> The reports are available at <http://www.transparency.org/enis>.

<sup>195</sup> Transparency International, ‘Transparency in corporate reporting: Assessing the world’s largest companies’ (2012), available at

[http://www.transparency.org/whatwedo/pub/transparency\\_in\\_corporate\\_reporting\\_assessing\\_the\\_worlds\\_largest\\_companies](http://www.transparency.org/whatwedo/pub/transparency_in_corporate_reporting_assessing_the_worlds_largest_companies).

Political party financing and election processes are also relatively prone to corruption. As a consequence the monitoring of election processes is also often a focus of anti-corruption NGOs and their allies. In the Kyrgyz Republic an internet-based platform (Ushahidi) serves this purpose, and internet-based tools have also been used for the same aim in Georgia, FYROM, Turkey and Ukraine. In Poland a preventive approach is taken by the project *Mam Prawo Wiedziec* (I have a right to know) which assembles information about Polish candidates and elected public representatives. In FYROM, the Metamorphosis Foundation launched an internet-platform where the electoral promises of politician's and their actual implementation are analysed.

Finally, civil society increasingly gets involved in monitoring the implementation of official anti-corruption policies and strategies, especially where an official monitoring mechanism is missing, considered insufficient or its results are not published. The UNCAC shadow reports noted above are often used as a foundation for such monitoring.

- **Awareness raising, public education and training:** Finally, CSOs continue to be active in their traditional domain of raising awareness and fostering public debate about corruption and anti-corruption. Anti-corruption training has been conducted by several NGOs, for example in Georgia and Serbia, often with the financial support of donor organisations. The Public Integrity Education Network (PIEN) - a collaboration of the Central European University in Budapest and the NGO – also regularly organises anti-corruption lectures and trainings in Europe and Central Asia.<sup>196</sup> Despite the generally increased level of knowledge and awareness of corruption in the OSCE region this type of work continues to be of critical importance as long as anti-corruption reforms have not shown the desired results.

#### IV.3.3. Implementation and enforcement

As to the ability of non-governmental anti-corruption groups to actively perform their role in the OSCE region, the 2011 Global Integrity Scorecards assessing 'Anti-Corruption Non-Governmental Organisations' provides valuable information. The overall score regarding this indicator is 'strong' for Georgia, Germany, Ireland, FYROM and the United States; 'moderate' for Armenia, Bosnia and Herzegovina and Tajikistan; and 'weak' for Azerbaijan and Ukraine. When looking at the *de facto* results of the Global Integrity Scorecards, anti-corruption NGOs can operate very freely in Germany and the United States and reasonable freely in Serbia and FYROM. Yet, the participation in policy processes is in practice only ensured in Germany, Ireland and the United States.<sup>197</sup> As such, it would seem the role of non-state actors in the fight against corruption in the OSCE region remains primarily focused on awareness raising, public education and advocacy, and only limited space is provided for a constructive participation of civil society in anti-corruption reforms or for the use of non-state actors for monitoring of key processes.

#### IV.4. **Public reporting (mechanisms) and whistle-blower protection**

Persons reporting on illegal or improper acts in the public or private sector play a key role in corruption prevention and detection. A 2007 survey on 360 cases of fraud investigations in Europe, the Middle East and Africa revealed that approximately one quarter of frauds in the private sector were detected thanks to the information provided by individuals.<sup>198</sup> The result of another 2007 survey covering 40 countries shows that approximately 43% of frauds in enterprises are discovered by tips of

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<sup>196</sup> Please visit [http://cps.ceu.hu/teaching/curriculum\\_development/pien](http://cps.ceu.hu/teaching/curriculum_development/pien) and <http://www.tiri.org/country/integrity-education-network-ien-europe-central-asia>.

<sup>197</sup> Please see the respective scorecards at <http://www.globalintegrity.org/report> and at <http://www.globalintegrity.org/information/downloads>.

<sup>198</sup> KPMG Forensic, 'Profile of a Fraudster', Survey, 2007, p. 28, <http://www.kpmg.co.uk/pubs/ProfileofaFraudsterSurvey%28web%29.pdf>.

whistle-blowers.<sup>199</sup> Whistle-blowers are people who inform the public or the authorities about corrupt transactions or other wrongdoings that they have witnessed or uncovered.<sup>200</sup>

#### IV.4.1. Regional initiatives and international instruments

The importance of whistleblowing in the prevention and fight against corruption is widely recognised. As a consequence provisions on public reporting and the legal protection of reporting persons have been incorporated in several international instruments, including in article 33 UNCAC. The latter provision of the UNCAC is subject to review under the on-going first review cycle of the Convention's Implementation Review Mechanism. The CoE has already been concerned with whistle-blower protection in the context of anti-corruption since the mid-1990s, and the CoE Civil Law Convention on Corruption (article 9)<sup>201</sup> of 1999 contains corresponding provisions (in addition to witness protection – article 22 of the Criminal Law Convention on Corruption). Since then the protection of reporting persons has been a recurring issue in Strasbourg,<sup>202</sup> including within the GRECO context. The European Court on Human Rights too has been dealing with questions pertaining to whistle-blower protection, generally on the grounds of freedom of expression.<sup>203</sup>

The OSCE has progressively demonstrated an interest in whistleblowing and whistle-blower protection. The topic has notably been considered in working strategies and was discussed at numerous pertinent international meetings. By way of example, the 2004 OSCE Handbook on Best Practices in Combating Corruption states that whistleblowers have to be encouraged and protected. Also, a roundtable organised in Vienna in 2011 dealt, amongst other topics, with whistleblowing, including as a means to ensure effectiveness of public procurement and other pertinent public services and processes).<sup>204</sup> The Dublin preparatory meeting for the 20<sup>th</sup> Economic and Environmental Forum was also concerned with the issue.

#### IV.4.2. Legal basis

##### *Legal approaches*

Despite the international interest in and promotion of public reporting and whistle-blower protection, the pertinent legal frameworks at national level remains weak or at best incomplete. This is, for instance, illustrated by the second round (2003-2006) evaluation reports issued by GRECO which recommended that about half of the assessed countries take (legislative) measures in order to introduce or enhance the protection of reporting persons.<sup>205</sup> Assessments in the same matter carried out in OSCE participating States in 2011 come to a similar result.<sup>206</sup>

Where there is pertinent legislations in OSCE countries, an analysis shows that even though there is a different legal approach in civil and common law countries, the main distinguishing feature is (as for access to information legislations) of temporal nature. In many Western and Central European countries, whistle-blower protection is (partially) granted through labour laws (France) or freedom of expression provisions (Sweden). In States where the legal framework has undergone significant developments in recent years, the protection of reporting persons tends to be part of a corruption-related law (Slovenia). More recent legislative texts are often drafted as stand-alone legislations (UK,

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<sup>199</sup>Price Waterhouse Coopers, Investigations and Forensic Services, 'Economic crime: people, culture and control – The 4th biennial Global Economic Crime Survey', 2007, p. 10

<sup>200</sup>In reference to the definition entailed in the U4 Corruption Glossary, <http://www.u4.no/document/glossary.cfm#Whistleblowerprotection>.

<sup>201</sup>Civil Law Convention on Corruption, CETS No.: 174 (1999).

<sup>202</sup>See, for instance, CoE (Parliamentary Assembly), Resolution 1729 (2010), 'The protection of whistle-blowers'.

<sup>203</sup>*Guja vs. Moldova*, 14277/04, ECHR [GC] and *Heinisch vs. Germany*, 28274/08, ECHR.

<sup>204</sup>OSCE, OCEEA Roundtable, 'On the road to Marrakesh: the role of civil society in fighting corruption', 5 July 2011, Vienna, Final report.

<sup>205</sup>Seventh General Activity Report of GRECO (2006), GRECO (2007) 1E FINAL, p. 10.

<sup>206</sup>For further information, please visit the Global Integrity website at <http://www.globalintegrity.org/report>.

Romania). Other key components of whistle-blower legislation are discussed in the following sections, with reference to pertinent country examples.

### *Scope and content*

As noted above, most legislative texts dealing with the protection of reporting persons are **not stand-alone legislations but part of other legislation** (labour laws, administrative legislation, etc.). So far, the UK Public Disclosure Act and the Romanian law in the matter (Law no. 571/2004 on the protection of personnel in public authorities, public institutions and other units, who report violations of the law) are still rare examples of stand-alone whistleblowing legislation.

In addition in many countries (e.g. Canada in the Public Servants Disclosure Protection Act) and Romania), whistleblowing laws apply to the **public sector** only. In contrast, the pertinent legislations in the UK and Slovenia (Integrity and Prevention of Corruption Act) also provide for reporting of individuals having gained knowledge of wrongdoing in the **private sector**, and this is indeed considered good practice. The Parliamentary Assembly of the CoE has expressly called for a comprehensive legislation that should cover both sectors<sup>207</sup>, and the UNCAC in Article 33 also encourages the adoption of whistleblower legislation and protection systems covering ‘any person who reports [...] any facts concerning offences established in accordance with this Convention’. As to private sector regulations, the US legislation has internationally become a reference. Indeed the Sarbanes-Oxley Act (2002) requires all US Stock Exchange listed companies (regardless of where they are seated) to provide reporting procedures and protection for whistle-blower protection.

It is essential to specify in the respective law **what disclosures potentially qualify for protection**. Section 43B of the UK Public Disclosure Act (1998) sets out an encompassing list of disclosures qualifying for protection, covering a wide range of wrongdoings. The aforementioned Romanian law also contains a precise list of wrongdoings which can be reported (§6). This approach is very valuable as it ensures legal foreseeability; another possible practice is to allow for a broad clause protecting reports about any sort of wrongdoing.

Many whistleblowing legislations also address the **motivation** that has driven the reporting person to make a report, with a view distinguish whistleblowing from personal grievance. In this regard, UNCAC Article 33 only foresees protection of persons reporting ‘in good faith and on reasonable grounds’. This prerequisite for protection is however subjective and might be difficult to prove as jurisprudence (for instance in the United States) has shown. Rather than focusing on the messenger, the focus of attention should therefore be with the veracity of the disclosed information. Another aspect to be taken into consideration when addressing the protected motivation for information disclosure is the public interest. This, in turn, raises the question of the whistle-blower’s possibly conflicting rights and obligations (duty of loyalty towards the employer, freedom of expression, disclosure in the public interest).<sup>208</sup>

- Protected procedures of disclosure

As mentioned above, information about wrongdoings can be communicated internally and externally, whereas the second option often requires a higher threshold. Many laws on public reporting (e.g. UK and Canada) require the whistle-blower to **report internally** first to allow an institution to take appropriate measures internally (investigations, etc.). The protection of whistle-blowers however also has to extend to **external whistleblowing** when ‘internal channels do not exist, have not functioned properly, or could reasonably be expected not to function properly.’<sup>209</sup> Not all laws make such a distinction, like in France where a person wishing to report an offence must directly consult a State Prosecutor, according to the French Code of Criminal Procedure, a practice which has been found by a

<sup>207</sup>Council of Europe (Parliamentary Assembly), Resolution 1729 (2010), ‘The protection of whistle-blowers’.

<sup>208</sup>Interesting rulings in this matter have been delivered by the European Court of Human Rights: Guja vs. Moldova, 14277/04, ECHR [GC] and Heinisch vs. Germany, 28274/08, ECHR.

<sup>209</sup>Council of Europe (Parliamentary Assembly), Resolution 1729 (2010), ‘The protection of whistle-blowers’, § 6(2) (3).

2012 review of France under UNCAC as being possibly too narrow; indeed it is recommended in that report that more options for reporting should be offered.<sup>210</sup> In this regard, the aforementioned UK law sets out a three-step approach (43C ff) allowing for broader disclosure ‘implying an increasing level of evidence the further the whistle-blower goes outside the organisation.’<sup>211</sup>

- Protection

Whistle-blowers often face measures of reprisal or harassment (and even of physical violence in extreme cases) in response to their information disclosure. It is therefore important to protect their **identity** during the investigation process and possible judicial proceedings. According to the US law (5 U.S.C. § 1213(h)) the identity of the reporting person must not be revealed except in special circumstances.

Another important field of protective measures are **employment-related matters**. The reporting person has to be shielded against labour-related retaliations like dismissal, salary losses or involuntary relocation. In this regard, the Latvian law on public reporting states that in case a reporting person brings forth facts demonstrating that the disclosure of information has had harmful employment-related consequences, the burden of proof is placed upon the employer who then has to show that such treatment did not occur. The French law on the fight against corruption (Law n° 2007-1598) also entails broad employment protections. Generally provisions on unjustified dismissal exist in most countries’ whistle-blower legislations, including Georgia.

Finally, whistle-blowers also need to be protected from civil, criminal or administrative liability (caused by libel laws, etc.). The UK legislation therefore stipulates that **contractual duties of confidentiality** between an employee and the employer are void in so far as they prevent the employee from making a protected disclosure.

- Sanctions

Those applying retaliatory measures against whistle-blowers should be held **liable under criminal law**. In this sense most legislations, such as the Canadian Criminal Code, the Hungarian Criminal Code and the US Federal Criminal Code (as amended by the Sarbanes-Oxley Act) establish penalties for those imposing retaliatory measures on whistle-blowers.

#### IV.4.3. Implementation and enforcement

In practice, a considerable number of countries across the OSCE region still have no, or no comprehensive legislation in place to protect whistle-blowers. In addition, practice has demonstrated that the mere existence of a legal framework is not sufficient to ensure effective whistle-blower protection. Yet even where a legislative framework exists, implementation of these laws generally remains fragmented and weak<sup>212</sup>; consequently there is still considerable reluctance for people who become aware of an act of wrong doing to report such acts.

#### *The negative image of public reporting*

As a matter of fact whistleblowing has a negative connotation in many countries, a fact that is principally due to cultural and historical reasons.<sup>213</sup> This has recently been confirmed by an encompassing study carried out in seven CEE countries (Bosnia and Herzegovina, Croatia, Hungary, Moldova, Poland, Serbia and Slovenia) financed by the Open Society Foundations. In the great majority of countries assessed, there is no neutral term in the national language to refer to a whistle-

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<sup>210</sup> UNCAC Implementation Review Group (IRG), Executive summaries, CAC/COSP/IRG/I/1/1/Add.3, France.

<sup>211</sup> Transparency International, ‘Alternative To Silence – Whistleblower Protection In 10 European Countries’, 2009, p. 13.

<sup>212</sup> Transparency International, ‘Alternative To Silence’, p. 4.

<sup>213</sup> Transparency International, ‘Alternative To Silence’, p. 7.

blower who tends to be qualified as a ‘snitch’ or ‘denouncer’.<sup>214</sup> This socio-cultural aspect is an essential impediment for potential whistle-blowers. Moreover the absence of an appropriate understanding of the concept of whistleblowing might not enhance the introduction or development of public reporting mechanisms. To overcome this challenge, awareness-raising programmes are crucial. It is furthermore of great importance to properly disseminate the existing laws on whistle-blower protection to encourage public reporting and to render existing reporting channels effective.

### *Oversight institutions*

At the minimum to bolster implementation and enforcement, the legal provisions as illustrated above need to be complemented by institutional structures allowing for the actual implementation of protective measures. In this regard, the existence of an **independent external body** in charge of monitoring the proper implementation of pertinent legislative texts has been seen to have a positive effect. The Canadian Public Servants Disclosure Protection Act (2005), for instance, provides for an external oversight institution, the Office of the Public Sector Integrity Commissioner. The Commissioner can receive complaints on wrongdoings and has the power to investigate these complaints as well as allegations on reprisals. The Commissioner directly reports to the Parliament and can issue recommendations to heads of public authorities. In case a violation of the reporting person’s right is found, the Public Servants Disclosure Protection Tribunal is in charge of allocating remedies and pronouncing sanctions. Similar measures have been taken in other countries, including outside the OSCE region, where notably Australia has established a number of such institutions at state and federal level.

Overall, it must be said that the protection of whistle-blowers both in terms of existence of legislation as well as in terms of actual enforcement of such legal framework is an area that is still insufficiently covered in a large number of countries across the OSCE region (as well as worldwide). As the corresponding article (33) of UNCAC is only voluntary, it must be feared that this situation is unlikely to be improved soon without additional efforts.

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<sup>214</sup><http://www.whistleblowing-cee.org/summing-study/>.

### Section 3: Conclusions and recommendations on corruption prevention in the OSCE-region with a focus on the OSCE's future role in this regard

As the preceding report has shown, corruption prevention has become an issue of significant political concern in the OSCE region. But despite the efforts taken at national and regional level, corruption still represents a considerable challenge to the region's political stability, social welfare and economic prosperity. As a consequence further efforts by OSCE participating States as well as international organisations, including the OSCE, are required to build on the existing institutions and initiatives and secure their effective implementation and long-term sustainability. In this regard, the future role of the OSCE in these efforts should be tailored to the needs of its participating States, the existing institutional and co-operation structures and initiatives in the region, and finally the organisation's *savoir faire*.

Based on an understanding of weaknesses and strengths in the fight against corruption in the region, this **final part of the paper will address both measures to be taken at the national level and general strategic questions of possible ways of intervention for the OSCE**. Therefore in the following, **concluding findings combined with brief recommendations** will be presented for five thematic areas, namely (i) general issues related to corruption prevention; (ii) corruption prevention strategies and institutions; (iii) public sector integrity; (iv) public sector management; and (v) transparency, accountability and civic participation. The recommendations will outline a range of general measures and concrete activities that the OSCE participating States and the OSCE might wish to consider for their engagement in curbing corruption

#### I. General remarks about corruption prevention efforts

- ***Political will and commitment are the sine qua non condition for successful anti-corruption efforts.*** Curbing corruption is a difficult and long-term issue which needs true political will and commitment to overcome the numerous obstacles. It is therefore important that OSCE participating States continue backing essential reforms and initiatives by making the fight against corruption a top political priority, by allocating sufficient financial and human resources to anti-corruption actors and by strengthening overview and control mechanisms, including the judiciary. Whilst in the past in some OSCE countries much of this political will has been generated by the prospect of joining the EU or by other international incentives, the region must increasingly generate this political will from within.
- ***Closing the implementation gap and ensuring enforcement has to be a key political priority.*** Corruption is a complex phenomenon with potentially devastating socio-political and economic effects. Setting up a pertinent legal and institution framework to curb the problem is an important prerequisite of an effective and comprehensive fight against corruption. Yet assessments have clearly shown that the main problem regarding the fight against corruption lies in lacking implementation and enforcement of existing laws and in the ineffectiveness of pertinent institutions. Hence, the OSCE participating States need to express their true political will by going beyond the mere establishment of laws and the creation of new institutions; instead, they also should genuinely promote the practical implementation and enforcement of laws and provide the concerned institutions with adequate resources and independence to honour their international commitments, demonstrate real political will and bring about practical change.
- ***A genuine overall governance framework and the rule of law are a fundamental prerequisite for successful anti-corruption measures.*** Targeted anti-corruption reforms, legislation and institutions alone are not enough to bring about fundamental change in a country's corruption landscape. Any such measure or mix of measures can only be effective if they are placed in the wider context of overall efforts to improve a country's governance framework, and if they can rely on the rule of law and a well-functioning judiciary. The existence of a solid governance structure is indeed a prerequisite for ensuring that all



concerned public and private institutions can play their direct or indirect role in preventing and combating corruption. A certain disconnect across the OSCE region of anti-corruption efforts and overall governance reforms results in limited effectiveness and efficiency and risks to water down anti-corruption efforts. OSCE participating States are therefore recommended to support overall governance reforms and programmes, constituting a fertile ground for anti-corruption measures.

#### **The OSCE's future stance on corruption prevention matters in general**

- ***The OSCE's general approach to preventing corruption should be built upon the organisation's role as a co-operation platform and its expertise on the ground.*** As we have seen (cf. Section 1), an array of regional and international co-operation programmes already exist in the OSCE region. These initiatives, which cover a wide range of anti-corruption related matters, build their work on several years of institutional and technical knowledge and experience and pursue their work thanks to well-established structures and mechanisms. The OSCE as a forum for political exchange and co-operation with an impressive track record in these regards has an important role to play in fostering co-operation as well as supporting existing projects and international standards through its network and field operations. The OSCE has already pursued this approach through strategy and policy commitments (such as the 2003 Maastricht strategy) as well as by taking a partnership approach (with other international organisations or national governments) in many of the projects carried out by its field operations, as has been illustrated previously (cf. Section 1).
- ***The OSCE should help strengthen political will and consensus across its participating States as regards the importance of corruption prevention.*** A major role of the OSCE could be to help build the necessary political consensus regarding the importance of corruption prevention across the region, both at the central and national level. Whilst the responsibility for this lies with the political elite, an informed citizenry, including an active civil society, are important elements on this path; participating States as well as the OSCE should therefore endeavour to strengthen such complementary structures.
- ***The OSCE should foster the understanding across the region about the importance of good governance for the fight against corruption.*** In this context the OSCE should notably assist in raising the awareness that broad governance reforms and programmes are a critical condition for successful anti-corruption efforts, and support the implementation of such governance reforms across all sectors and technical assistance and reform programmes.
- ***The OSCE should assist participating States in ensuring that policies and laws are and can be implemented and enforced in practice.*** The OSCE can do so by supporting participating States with capacity building. Furthermore generating political commitment at regional level to the importance of the independence from political influence of anti-corruption and accountability institutions would also help raise awareness in this important matter.
- ***The OSCE should continue to build on synergies with other key stakeholders,*** notably the UNODC, the Council of Europe, the OECD and the Anti-Corruption Network for Eastern Europe and Central Asia, as well as other key players from across the region.

## **II. Corruption prevention strategies and institutions**

- ***Policies and institutions need to fit the respective national context.*** The existing national laws and institutions are the result of (long-standing) legal and administrative traditions and norms. Anti-corruption policies and structures in OSCE participating States therefore ought to be developed taking this historically grown national context into account and be tailored to it if they are to produce the desired effect. In the same vein, currently anti-corruptions strategies tend to merely reflect international instruments; they often are not based on in-depth evidence-based analysis of corruption vulnerabilities and often neglect the need to consider national priorities in preventing corruption as well as capacities for implementing reforms.

- ***Civic participation is a key factor for the sustainability of anti-corruption efforts.*** As recent studies have illustrated<sup>215</sup>, civic participation is a very crucial element regarding the long-term success of any anti-corruption effort. As noted earlier, civic participation is also an important component to generate and maintain political will for reform. It is thus desirable that processes are owned nationally or locally and that all key stakeholders, i.e. state *and* on-state actors, are involved in the development and implementation of programmes and reforms. In OSCE participating States a support for and ownership of reforms could be ensured beyond the existence of internationally triggered and financed programmes by anchoring national reform efforts in the local and national society and institutions.

#### **The OSCE's future role regarding corruption prevention strategies and institutions**

- ***Based on its long-standing country experience deep understanding of the respective national situations, the OSCE should promote context based solutions.*** As outlined above, anti-corruption policies and bodies need to fit the given legal and institutional framework. Thanks to its extensive and long-standing expertise in the region, the OSCE could advice governments regarding priorities to be set in the fight against corruption. The OSCE may also wish to work jointly with Governments of OSCE participating States and other key international stakeholders on the design of tailor-made anti-corruption activities and capacity-building programmes based on corruption surveys, similarly to the approach developed and followed by UNODC, for example. In this regard, the Organization may also consider building capacity to conduct in-depth corruption vulnerabilities studies and surveys with a view to informing more tailor-made anti-corruption policies and strategies. In the same vein, the organisation is very well placed to manage (unrealistic) expectations which might lead to frustration and reform *fatigue*.
- ***Civic participation should also be fostered through specifically designed programmes.*** Field missions could, for instance, conduct or support awareness raising measures as will be illustrated below (Section 3, V.).

### **III. Integrity in the public sector**

- ***Public sector integrity has to be part of broader societal and legal norms to be or become effective.*** The actual compliance of public officials with behavioural standards and rules greatly depends on the broader framework, which is to say societal and legal norms. Integrity will more likely be achieved if it is part of the normative and procedural framework. It is therefore of utmost importance in OSCE participating States to broadly raise awareness about integrity issues in order to encourage public officials to adopt the appropriate approach on the one hand, and the citizenry to ask for public institutions, especially those vested with integrity functions such as the judiciary, on the other hand. Similarly it is suggested to involve mid- and low-level public officials when designing or revising behavioural standards for public officials, such as codes of conduct, so as to increase the acceptance of and compliance with such rules.
- ***Raising awareness and training public officials is essential to foster integrity.*** Behavioural standards need time to be assimilated and to become part of daily bureaucratic routine. Increasing the awareness of public officials regarding the importance of their integrity not only for adequate public service delivery, but above all for enhancing citizens' trust in public institutions is therefore crucial. In this context continuous training and a climate of openness in which integrity challenges can be addressed constructively is needed in OSCE participating States to ensure that behavioural standards are known to and followed by public officials.
- ***Control and monitoring mechanisms of public sector integrity need to be strengthened.*** This is particularly true for conflict of interest and asset declaration regimes: public officials are generally required in OSCE countries to file declarations, but unless they are monitored or

<sup>215</sup>Alina Mungiu-Pippidi (editor and main author), 'Contextual choices in fighting corruption: lessons learned'.

otherwise followed up, both their deterring impact and their potential for corruption detection will be hampered. This is particularly important in the case of high-ranking and elected public officials. The control and monitor mechanisms as well as the degree of disclosure therefore need to be strengthened in many OSCE participating States to render proceedings more transparent to the public.

- ***The transparency of political party financing must be increased.*** Political parties play a crucial role in the democracies of the OSCE-region. Yet, political funding remains one of the murkiest, and therefore highest risks of corruption across the OSCE-region. The party financing regulations currently in place are incomplete in almost all countries and thus have to be broadened, strengthened and more effectively enforced.

#### **OSCE's future role in strengthening integrity in the public sector**

- ***Here, too, the OSCE should help build a political consensus regarding the importance of public sector integrity.*** Yet, changing the legal framework with regard to the integrity of public officials will not be sufficient to bring about change; behavioural standards need to be based on solidly grounded and shared values.
- ***The OSCE could continue help develop and update (targeted) Codes of conduct for public officials.*** The organisation's field operations in Armenia and Serbia have already been involved in developing and strengthening the codes of ethics for public officials. In addition, the emphasis of the organisation's activities was placed on Codes of conduct for Members of Parliament in Georgia and on public procurement in Serbia. In doing so, the OSCE should seek to promote a participatory approach to developing such behavioural codes, as the lack of such involvement has been found as seriously impeding their effectiveness (see Section 2, II.2.2).
- ***The OSCE could continue offering staff training on integrity issues.*** Integrity and anti-corruption trainings have for instance been carried out in Albania, Tajikistan (border police), Serbia (Anti-corruption Agency) as well as in Moldova and Ukraine (justice sector), and pertinent expert seminars were organised regionally, including in co-operation with the OECD Anti-Corruption Network (ACN) for Eastern Europe and Central Asia. In providing such training to partner countries and regionally, attention should be paid to making them practice relevant and context specific.

#### **IV. Public sector management**

- ***Transparency is of utmost importance for the efficiency and effectiveness of public institutions.*** Introducing a high degree of transparency in public sector procedures reduces the individual's margin of discretion and reduces the risk of undue influence and should consequently be fostered by OSCE participating States. This holds true across all public services, and is of particular relevance in such high risk areas as the budgeting process, public contracting or the hiring of public officials. Open government measures are therefore a core component of corruption prevention to be envisaged by countries of the OSCE-region.
- ***Public sector management processes need to be adapted to the respective context.*** Fostering basic capacities related to public sector management (e.g. producing reliable statistics) is a prerequisite for successfully implementing more complex processes, such as medium-term budgeting. This holds true for public financial management as well as for public procurement procedures, which still pose a major corruption risk in the OSCE-region. As such, whilst it may be tempting to implement complex reform processes in line with international standards, the local capacities of OSCE participating States have to be assessed, possibly leading to further development prior to a country being able to absorb certain complex reform endeavours.
- ***Merit-based human resources management is also a key element in preventing corruption.*** To prevent the undue influence of the public sector human resources management processes,

selection and promotion criteria and procedures need to be fair, predefined and clearly documented in OSCE participating States so that the margin of discretion and arbitration is limited. Appeals structures and mechanisms do also need to be in place to ensure effective means of remedy to candidates.

#### **The OSCE's possible role in the field of public sector management**

- ***In this field, the OSCE should try to tie links with other institutional partners (such as SIGMA, the OECD or UNODC) and support existing programmes.*** In this way, the organisation could demonstrate its interest and engagement in the matter without compromising established and well-functioning structures of technical assistance.

### **V. Transparency, accountability and civic participation**

- ***Access to information legislation and transparency provisions need to be enhanced.*** Laws regulating the access to public information are often incomplete and not enforced. Yet the transparency achieved through public disclosure is one of the key elements of corruption prevention. Legislation in OSCE participating States therefore needs to be strengthened and existing regulations need to be effectively applied – while limiting the invocation of possible exceptions by public authorities.
- ***Media and civil society organisation play a crucial role in ensuring the long-term success of anti-corruption efforts.*** Media have an essential watchdog function: they can report about ongoing anti-corruption efforts and unveil cases of corruption. Ensuring their independence (through legislation and ownership structures likewise) and the protection of their sources is important to their work and should be ensured by OSCE participating States. Civil society organisations do also need to enjoy independence and freedom to engage in their activities across the OSCE-region.
- ***Whistle-blower protection needs to be introduced or enhanced.*** As studies have shown, frauds in the private sector in 25-43% are detected thanks to the information provided by individuals, and we can expect that they could play a similarly important role in the public sector.<sup>216</sup> An adequately regulated protection of whistle-blowers in OSCE participating States would constitute an encouragement of public servants and private individuals alike to report suspected wrongdoing which, of course, is not only a tool to detect corruption but also an effective deterrent.

#### **The OSCE's future role in promoting transparency, accountability and civic participation**

- ***The OSCE could strengthen the access to information, including e-government, and the media in their watchdog function.*** Activities in this regard have been undertaken at the central level, including the OCEEA roundtable held in July 2011 dealing, amongst others, with matters pertaining to (i) access to information so as to build a well-informed civil society in the fight against corruption; and (ii) media freedom, allowing journalists to uncover public and private sector corruption<sup>217</sup>. Through field missions, educational and training programmes focussing on the fight against corruption have been carried out in Armenia, while in Serbia a training programme and publication for investigative journalists was supported.
- ***The OSCE could foster civil society empowerment and support civil society organisations in their awareness raising, public education and training efforts.*** Activities aimed at strengthening the role of civil society in the fight against corruption and at awareness raising have to date been conducted in Albania, Kazakhstan and Tajikistan. Other initiatives dealing with public-private dialogue were initiated and supported in Ukraine and Georgia.

<sup>216</sup> Please see KPMG Forensic, 'Profile of a Fraudster'; and Price Waterhouse Coopers, 'Economic crime: people, culture and control'.

