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Corruptissima Re Publica Plurimae Leges

New laws for fighting
corruption

Abstract

The allocation of Next Generation EU funds and subsequent national recovery and resilience plans paves the way for criminal organisations to threaten the fair implementation of the funds via fraudulent operations. In this context, the issue of corruption is as urgent as ever, also considering the recent launch of the "Operation Sentinel" coordinated by the Europol. Bearing in mind these recent developments on the issue, the present policy brief presents an overview of the current status and standards of corruption in several European Union countries, based on the findings of the comparative study "Corruptissima Re Publica, Plurimae Leges", published by the European Liberal Forum in cooperation with the Fondazione Luigi Einaudi



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About European Liberal Forum (ELF)

The European Liberal Forum (ELF) is the official political foundation of the European Liberal Party, the ALDE Party. Together with 47 member organisations, we work all over Europe to bring new ideas into the political debate, to provide a platform for discussion, and to empower citizens to make their voices heard. ELF was founded in 2007 to strengthen the liberal and democrat movement in Europe. Our work is guided by liberal ideals and a belief in the principle of freedom. We stand for a future-oriented Europe that offers opportunities for every citizen. ELF is engaged on all political levels, from the local to the European. We bring together a diverse network of national foundations, think tanks and other experts. At the same time, we are also close to, but independent from, the ALDE Party and other Liberal actors in Europe. In this role, our forum serves as a space for an open and informed exchange of views between a wide range of different actors.

About Fondazione Luigi Einaudi Onlus

The Luigi Einaudi Foundation is a think tank promoting liberal ideas and liberal political thought. Founded in 1962 by Mr. Giovanni Malagodi, the Foundation promotes liberalism as an instrument to elaborate original responses to the complexity of the current issues related to globalisation and to the progressively increasing technological evolution, with the goal of fostering individual liberties and economic prosperity. The Foundation engages in guaranteeing to every citizen the conditions to grow as a human being, to live in wealth and thrive in peace, through the recognition of diversities, the safeguard of human liberties and freedoms, as well as through the promotion of constructive discussions on facts and ideas.

Chapter 1

The link between the Next Generation EU and Corruption an Actual Issue

On one hand, the economic recovery package Next Generation EU represents an enormous possibility for Member States' governments to invest fairly and transparently in crucial sectors such as research and innovation, climate and the environment, digitalisation, as well as to build a more cohesive and resilient EU¹; on the other hand, there is a high risk² that the amount of resources allocated could be attractive for criminals and criminal organisations, potentially attempting fraud, corruption, and practices of funds misuse maximising illegal profits.

To avoid such threat, Europol (with the joint support of the European Anti-Fraud Office (OLAF), Eurojust, the European Public Prosecutor's Office (EPPO)³ and 19 Member States) launched on October 15th 2021 the "Operation Sentinel", in order to "ensure that the funds made available under the Recovery and Resilience Facility (RRF) are spent in the interest of EU citizens and not lost to fraudsters"⁴. According to the words of Catherine de Bolle, Europol Executive

¹ https://ec.europa.eu/info/strategy/recovery-plan-europe_en

² Previous research on the impact of EU structural funds on institutionalised grand corruption has highlighted how in certain countries (Czech Republic, Hungary, Slovakia) the EU funds have contributed to weakening institutional quality in terms of wasteful public spending and increased 'legal' corruption conducted through public procurement (<https://www.againstcorruption.eu/reports/are-eu-funds-a-corruption-risk-the-impact-of-eu-funds-on-grand-corruption-in-central-and-eastern-europe/>). Also, in the field of EU cohesion policy there is a significant incidence of reported fraud compared to other spending areas (European Court of Auditors, Special Report n. 6/2019, <https://op.europa.eu/webpub/eca/special-reports/fraud-in-cohesion-6-2019/en/>)

³ Europol is the European Union's law enforcement agency, assisting Member States in fighting against serious international crime and terrorism (<https://www.europol.europa.eu/>); the European Anti-Fraud Office (OLAF) investigates fraud against the EU budget, corruption and serious misconduct within the European Institutions, and develops anti-fraud policy for the European Commission (https://ec.europa.eu/anti-fraud/home_en); Eurojust works with national authorities to combat a wide range of serious and complex cross-border crimes involving two or more countries (<https://www.eurojust.europa.eu/about-us/what-we-do>); finally, the European Public Prosecutor's Office (EPPO) is an independent and decentralised prosecution office of the European Union, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud (www.eppo.europa.eu)

⁴ "Europol will establish a dedicated internal mechanism to process operational data, steer information exchanges and support ongoing cases. The joint activities will target fraud, as well as tax evasion, excise fraud, corruption, embezzlement, misappropriation and money laundering [...] to ensure the recovery funds are directed towards strengthening our economies and the resilience of our communities", in <https://ec.europa.eu/anti-fraud/media-corner/news/15-10-2021/olaf-joins-eu-wide-operation-sentinel->

Director: “Operation Sentinel will strengthen our joint response to fraud and protect the reconstruction of our communities”.⁵

Amid the embezzlement of public funds practices, corruption is possibly the most dangerous – as well as the most widespread⁶ – form of misappropriation, normally associated with distorted public policies, affected free competition, wrongful allocation of the resources, not to speak about criminal organisations taking advantage from an overall corrupted system⁷. Contrarily, a less corrupted government is associated with the citizens’ major trust in institutions, consolidated institutions, as well as a high level of public compliance with the principles of transparency, fairness, and accessibility of the public administration.

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⁵ <https://www.europol.europa.eu/newsroom/news/new-operation-to-protect-next-generation-eu-recovery-funds>

⁶ <https://www.transparency.org/en/cpi/2020/index/nzl#>

⁷ A. Ales, R. Di Tella, Rents, competition, and corruption. *American economic review*, 89(4), pp. 982-993. 1999.

Chapter 2

A brief Assessment of Corruption in Several EU Areas

Tacitus wrote: “Corruptissima Re Publica, Plurimae Leges”: the higher the number of laws, the more corrupted a government⁸.

The homonymous book, published by the European Liberal Forum in cooperation with the Fondazione Luigi Einaudi, provides a comparative cross-national study on the different levels of corruption in several EU countries, representing different European macro-areas: Southern-Western Europe, Central-Northern Europe, and Central-Eastern Europe.

Italy

According to data, in Italy 109,914 laws are currently enforced (200,000 if we consider regional and local laws)⁹. And in fact:

- 88% of Italian citizens believe that corruption is a widespread phenomenon¹⁰;
- the CPI (Corruption Perception Index) 2020 survey ranks Italy as the 52nd country in the world (20th considering EU countries)¹¹;
- the CCI (Control of Corruption Index) 2020 survey gives Italy a 0.2 score (in a -2.5 to 2.5 range), below the 0.97 EU27 average, the 0.95 Eurozone average, and the 0.41 Southern European average¹².

There are several indicators grounding the reasons for the diffusion of corruption in Italy:

- the role of the government: as one form of corruption consists in public officials allocating resources to private individuals, a large size of the

⁸ *Corruptissima Republica, plurimae leges* (Tacito, *Annali*, III, 27, 3). Back then, this was associated to the numerous civil wars going on in the Roman times, with different leaders alternating at apical positions and enacting laws for their very own interests. <https://dizionari.simone.it/3/corruptissima-republica-plurimae-leges%3Cbr%3E>, last accessed on November 18th, 2021.

⁹ Data from Poligrafico dello Stato, Presidency of the Council of Ministers. See <https://www.ilsole24ore.com/art/nell-italia-110mila-leggi-ancora-validi-33mila-regi-decreti-AEEWNJj>

¹⁰ 2020 Special Barometer on Corruption

¹¹ The Corruption Perception Index ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople, uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean (<https://www.transparency.org/en/cpi/2020/index/nzl>)

¹² The control of corruption Index captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as «capture» of the state by elites and private interests (<https://info.worldbank.org/governance/wgi/pdf/cc.pdf>)

government allows for extraction of existing (or creation of) rents, since there are more resources that can be stolen. Higher government expenditure is associated with higher corruption;

- the role of economic, socio-demographic, and cultural factors – where by “cultural factor” is intended the trust in political institutions: higher levels of trust eventually lead to higher levels of the quality of the government, since trust makes it more likely for citizens to engage in socio-political issues, demanding improvements in the quality of the government.¹³

The implementation of merely repressive policies is not sufficient to tackle corruption. Rather, long-term policies capable of shaping the national legal culture and strengthening its weak social fabric are preferable. In this regard, the Next Generation EU fund represents an unmissable opportunity to fight corruption through the implementation of structural reforms – given, of course, an adequate set of controls in order to avoid that the funds are misappropriated and used in a fraudulent way.

Furthermore, it is essential to stress how national strategies on prevention of corruption have been internationally acknowledged as successful, as in less than ten years “Italy has recovered 20 positions and 11 points (+ 25% approximately) in the Corruption Perception Index (CPI) [...] passing from position No. 72 (42 points) in the ranking in 2012 to position No. 52 (53 points) in 2020”. The establishment of the Italian National Anti-Corruption Authority in 2012¹⁴ represented a turning point in the prevention of corruption policies, through the implementation of measures (among others) such as:

- strong independent anti-corruption authority;
- central role of transparency at all level, with a mix of pro-active and re-active policies;
- corruption risk analysis within each public administration, as well as ineligibility and incompatibility rules;
- protection of the employee who reports abuse (whistleblowing);
- promotion of citizens and stakeholders’ participation.

Summing up, the constant implementation of preventive policies, as well as set of controls ensuring a fair allocation of the national Recovery and Resilience Plan, is crucial to fight corruption and funds misappropriation.

¹³ B. Rothstein, E.M. Uslaner, All for all: Equality, corruption, and social trust. *World Politics*, 58(1), pp. 41-72, 2005

¹⁴ The process of fighting corruption via preventive policies (including the establishment of the mentioned ad hoc Authority) has started at the end of 2012, with the enactment of Law n. 190/2012 (so-called “Law Severino”, after the Italian Minister of Justice at that time). The main tasks of the Authority are: to approve the National Anti-Corruption Plan; to analyse the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and effectiveness of public administrations’ Anti-Corruption plans and the compliance to transparency rule.

Portugal

Portugal has a widespread perception of corruption¹⁵. Specifically, one of the most acute concerns is the risk of undue political interference in the management of the Portugal National Recovery and Resilience Plan (in the context of the Next Generation EU funds).

The existing Portuguese legal framework and historical observations suggest that – as in Italy – a merely repressive system (that is, either enforcing new laws or amending existing laws) is unable to ensure an effective and consequential enforcement of anti-corruption strategies. In this regard, the Portuguese government approved in September 2020 the first National Anti-Corruption Strategy, setting out several priorities among which:

- improving knowledge, training and institutional practices in the area of transparency;
- preventing and detecting corruption risks in the public sector and strengthening collaboration with the private sector.

Nevertheless, the Strategy lacks a clear “roadmap for success”, not focusing enough of preventive strategies, but rather merely pointing out a number of perhaps too generic objectives. On top of this, the EU funds received via the National Recovery and Resilience Plan carry the risk that in allocating the funds, politicised managing authorities might not privilege the socio-economic development of the country, but rather political (and private-connected) interests. In this regard, the role of the European Institutions is essential to control that the misuse of the funds is avoided, ensuring the respect of the rule of law and the enactment of effective anti-corruption measures.

Ukraine, Moldova, and Georgia

Thirty years after the dismantlement of the Soviet Union, these three Eastern European countries share a common post-Soviet transition, including institutional frameworks tackling corruption.

It is highly remarkable how Georgia, Moldova and Ukraine have made progresses in fighting against their “inner enemies”, with a significant success in reducing petty corruption as well as making administrative and tender processes more transparent. These countries’ commitment on the issue can serve as an inspiring example for anti-corruption solutions not only to other developing countries, but also Western societies.

And in fact, data from the CPI show how Georgia is, amongst the considered countries, the most virtuous example of anti-corruption practices (56/100

¹⁵ According to the Global Corruption Barometer, 41% of the Portuguese feel that corruption has increased over last year, and according to the Eurobarometer on Corruption, 94% of the Portuguese citizens believe that corruption is a widespread phenomenon in the country.

points); moreover, although Ukraine and Moldova are still ranked low (respectively 33/100 points and 34/100 points), a uniform positive trend in the performance score is observed in the last 10 years. Thus, this suggests that in keeping on the tracks, Ukraine and Moldova might easily reach a successful threshold in the following years. This was made possible through:

- the establishment of anti-corruption agencies;
- the de-regulation and de-bureaucratisation of public processes;
- the prevention of corruption through digitalisation of public process and open government initiatives;
- the fighting of grand-corruption through E-procurement.

Still, international development aid assistance, as well as the sharing of best international practices, exchange initiatives and preparing the networks of national judges-trainers, and ensuring the independence of judiciary are needed. Overall, the need of a “de-oligarchising” process – crucial for counteraction of grand corruption – is still perceived.

Hungary

The Hungarian transition to democracy (so-called “Third Republic”, starting from 1989) carried along the absence of strong democratic institutions as well as the lack of an adequate “checks and balance” based State system. Accordingly, the country’s process of democratisation was grounded on a weak civil society, a low level of political awareness, and the lack of proper governmental accountability. On top of this, Hungarian practices on transparency are deemed as problematic and incomplete.

The trend of the citizens’ lack of trust in public institutions is apparently unsolved, considered that the CPI reports how 69% of Hungarian citizens consider corruption as a serious problem. On top of this, the recent management of the COVID-19 pandemic showed how the impact of the pandemic has been further severed by:

- a more widespread political corruption, where prevailing governments and state institutions are less able to make rational and effective decisions best serving public interests;
- undermining the external trust in a state with a high rank of corruption;
- the citizens’ lack of trust in authorities, healthcare and politics, resulting in less compliance.

In order to fight corruption, the priority of the Hungarian government should be rebuilding citizens’ trust in the public institutions, as well as ensuring a more thorough investigation on corruption cases by the prosecuting bodies.

Finland

With its 85/100 points score (CPI), Finland is the 3rd least corrupt country in the world as of 2021 – and such trend is ongoing since decades. Despite the outstanding numbers, the Finnish Government recently approved the first national anti-corruption strategy to “intensify the fight against corruption in the short term, and in the long term to build a society where corruption has no chance of success”¹⁶. The measures enacted in the plan include, among others:

- increased transparency (underway of preparation is a lobbyist register focused on the central government level);
- awareness raising and facilitation of whistleblowing activities;
- improvements to the legislation on bribery offences;
- promotion of research on corruption.

Although international recognition of the Finnish nearly corruption-free public institutions, this does not imply that corruption could not represent a potential issue. Moreover, some scholars¹⁷ argue that there exists what is called “a special Nordic flavor” of corruption, taking more discreet forms characterised by (often perfectly legal, but unethical) violations of the norm of impartiality. In short, anti-corruption strategies – both preventive and repressive – should not be excluded by the political agenda.

In light of this consideration, in order to avoid corruption and distorted public policies it is crucial that the government adopts new and constantly renovated tools in the form of ethical codes and training, extended participation, improved transparency and openness, as well as more effective monitoring systems.

¹⁶ Ministry of Justice, Comprehensive and long-term approach to combat corruption [press release], 27 May 2021, <https://oikeusministerio.fi/en/-/comprehensive-and-long-term-approach-to-combat-corruption>

¹⁷ G.Ó. Erlingsson and G. Kristinsson, ‘All that glitters... a closer look at the Nordic ‘exception’’, in A. Mungiu-Pippidi and P.M. Heywood (eds.) *A Research Agenda for Studies of Corruption*, Edward Elgar Publishing, 2020, p. 92

Chapter 3

Conclusions and Recommendations

The brief assessment shown in this paper highlights some common aspects of corruption in several EU member states:

- Corruption is still perceived as a widespread issue, both among the populations and under an objective assessment according to data and survey;
- While repressive measures against corruption are enforced (i.e., criminal and administrative laws and sanctions) in most States, what is apparently uniformly missing is a set of efficient preventive policies to avoid the rise of corruption;
- Member States should enact a set of controls preventing possible frauds, corruption, and misappropriation of funds related to National recovery and resilience plans.
- It is therefore essential that the governments (not only in the countries considered in this paper, but EU-wide) adopt tailored and targeted strategies to tackle corruption – and do it in the most efficient and pro-active way. It is crucial to:
- In line with the recent launch of the Europol’s “Operation Sentinel”, give absolute priority to the creation of national sets of controls and legal/policy frameworks ensuring that the NEGU funds allocated via national plans do not fall prey of criminal organisations aiming to maximise their illegal profits. The NGEU funds must represent an opportunity for recovery, not a threat for member states;
- Adopt strategic frameworks providing tools capable of preventing corruption rather than repressing its consequences, i.e., through the:
 - establishment of independent anti-corruption authorities/agencies;
 - protection and facilitations for the whistle-blowers;
 - promotion of civic participation and raising public awareness;
- Enact mixed pro-active and re-active policies focusing on transparency of the public administration/institutions as well as of public/private political and economic relationships, including:
 - digitalisation of public process;
 - open government initiatives;

-improving knowledge, training and institutional practices both of the institutions and of the citizens, fostering general people's trust in the institutions.

A liberal future in a united Europe

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