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- Exchange of views

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Corruption continues to be a challenge for the development of the Union, not the least as regards the efforts to strengthen mutual trust. The Presidency considers it appropriate to now address the issue from a horizontal perspective.

The text in the Annexes to this note briefly outlines the state of play in the area and gives an overview of existing EU anti-corruption tools. Three questions for ministers to discuss are included at the end of Annex 1. A first version of the text was discussed in CATS on 19 September 2019, after which a number of minor modifications have been introduced to it.

**The Council is invited to take note of the text in the Annexes and reflect upon the questions included in fine of Annex 1 to this note.**

**EU Action against corruption**

Corruption continues to be a challenge for the development of the EU. It affects all Member States. According to the Eurobarometer on corruption (2017), over two thirds of citizens and companies state that corruption is widespread in their country. Nearly four out of ten companies consider corruption to be a problem when doing business. Corruption constitutes a threat to security, and may lead to other types of criminality and human rights violations. It acts as a drag on economic growth too. Corruption undermines citizens' trust in democratic institutions and the rule of law in particular, as it negatively affects the principles of legality and legal certainty. Tackling corruption can contribute significantly to promoting growth, stimulating competition and investment, and enhancing the beneficial effects of the EU's internal market. Fighting against corruption is one way in which to enhance mutual trust between the Member States.

A strong anti-corruption effort helps to strengthen good governance and democracy and build transparent, effective and accountable institutions. At the same time, such an effort creates an environment which supports investment and boosts entrepreneurship. There is no room for complacency or inaction within the EU. All Member States, regardless of their levels of corruption, must play an active role in this work together with the European institutions. As emphasised by the European Parliament in its resolutions, there is also a need to ensure the accountability and integrity of the EU institutions.<sup>1</sup> The importance of joint efforts and responsibility in anti-corruption measures cannot be over-stated. The international community has recognised the damaging effects of corruption on economic and social development. In the United Nations 2030 Agenda for Sustainable Development, the aim is to reduce corruption and bribery substantially in all their forms (SDG 16.5).

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<sup>1</sup> See for instance the European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)) and European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration (2016/2610(RSP)).

The EU's new strategic agenda for 2019-2024 focuses on protecting citizens and freedoms; developing a strong and vibrant economic base; building a climate neutral, green, fair and social Europe; and promoting European interests and values on the global stage. Combating corruption supports the implementation of all these priorities. In particular, as stated in the strategic agenda, the EU is committed to ensuring fair competition within the EU and on the global stage and to promoting sustainable development and implementing the 2030 Agenda. There is an important link between fighting corruption and strengthening the rule of law. Corruption challenges principles of equality too.

### **The future of anti-corruption work in the EU**

The Union has a general right to act in the field of anti-corruption policies within the limits established by the Treaty on the Functioning of the European Union (TFEU). Article 67 of the TFEU sets out the Union's obligation to ensure a high level of security, including through the prevention and combating of crime and the approximation of criminal laws. Article 83 of the TFEU lists corruption as one of the particularly serious crimes with a cross-border dimension. Corruption may have adverse effects on the functioning of the internal market, on competition, and on the use of EU resources. It can also be used as a tool for organised crime.

The EU acquis in the area of anti-corruption consists of numerous instruments and may seem fragmented. It should therefore be considered whether the current acquis needs to be streamlined and modernised (See Annex II). In addition, the Commission should revisit the strategic outlook defined in the 2011 Commission Communication on Fighting Corruption in the EU so as to examine the current needs and challenges. In order to be effective, an anti-corruption strategy should focus on all relevant areas, including prevention and control, addressing corruption risks, as well as sanctioning both natural and legal persons on account of corruption.

As regards anti-corruption efforts in general, it is important to continue to work to ensure a high level of civil service ethics and to uphold the principles of good administration and transparency. A comprehensive preventative strategy is intrinsically linked to the principle of the rule of law and to enhancing open government and participation of civil society. The Member States and the EU institutions must increase and sustain citizens' trust in government and public institutions.

This is only possible if the structures of the EU, the governments, their functions, the services they provide and their reforms are understandable to citizens and if citizens are able to participate in policy-making, service planning and the development of the welfare society. Enhancing open and accountable government and good administration needs to be an integral part of the work of any public administration.

There is an abundance of anti-corruption laws and policies both at EU and at Member State level, and the focus should be on their effective enforcement. The large number of instruments may sometimes add value in making it possible to tackle the issues from different angles and at different levels. However, the current approach appears to be uncoordinated, fragmented and lacks a proper monitoring of implementation. As regards the possible monitoring mechanism, there is a need to harness synergies with the existing evaluations of the international anti-corruption organisations. The enforcement and monitoring of EU-level legislation and Member States policies need to be discussed and assessed.

All EU Member States are subject to monitoring and evaluation at the international level by the Council of Europe Group of States against Corruption (GRECO) and in the context of the UN Convention Against Corruption (UNCAC). A majority of the Member States are also monitored by the OECD (Anti-Bribery Convention). In 2011, the Commission introduced a specific EU reporting mechanism, on the basis of which one EU Anti-Corruption Report was presented in 2014. The EU anti-corruption reporting mechanism was discontinued by the Commission in 2017. As a result, the only EU framework for assessing the effectiveness of anti-corruption efforts in the Member States is currently the European Semester of economic governance. This does not, however, cover this issue in all Country reports. In addition, it does not have a horizontal EU-wide element of assessment.

In the future, one option proposed by the Commission in July 2019 is to incorporate the monitoring of the effectiveness of anti-corruption measures into the suggested rule-of-law evaluation, on the condition that anti-corruption measures are effectively and equally monitored in all Member States. It may be expected that the evaluation cycle will be developed further during the next mandate period of the Commission.

The EU should actively support anti-corruption efforts and play a leading role in the fight against corruption at international level. In July 2019 the EU finally joined GRECO with observer status. Among the Member States, it is broadly considered that this is the first step towards full GRECO membership. The Presidency considers that the EU should aim to become a full member of GRECO in the near future. Another aim should be for the EU institutions to be subjected to the UNCAC implementation review. The UN General Assembly Special Session on Corruption scheduled for 2021 is also a possible forum in which the EU and its Member States could set out important key messages in the field of anti-corruption.

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### Questions for ministers

- **Is there a need for an EU strategy or action plan to ensure a coordinated, comprehensive and coherent approach to prevent and fight corruption in the EU institutions and Member States, including upholding the principles of good administration?**
- **How could the EU use more effectively the information collected by the international anti-corruption mechanisms? What added value could an EU-wide element of assessment bring, for instance in terms of increasing mutual trust and cooperation?**
- **How could the EU strengthen its role in the global fight against corruption? Should the EU become a full member of GRECO?**

## Non-exhaustive overview of existing EU anti-corruption tools

### EU acquis

In its Article 83, the Treaty on the functioning of the European Union recognises corruption as a 'euro-crime'. Accordingly, the EU holds legislating powers to regulate this area and establish the minimum rules in respect of criminal offences and sanctions.

The Union has endorsed some specific anti-corruption legislation, in particular the Convention on the Protection of the European Communities' Financial Interests and its protocols (1995), the Convention on the Fight against Corruption involving Officials of the European Communities or officials of the EU Member States (1997), the 2003 Framework Decision, aiming to ensure the criminalisation of corruption in the private sector in the EU Member States, and the Protection of the Union's financial interests ('PIF') Directive (2017). The most recent evaluation report on the existing EU acquis was published by the Commission in July: the Commission delivered a report assessing the extent to which the Member States have taken the necessary measures to comply with the 2003 Council Framework Decision on combating corruption in the private sector.<sup>2</sup>

During the Romanian Presidency, the future of EU substantive criminal law was debated. A Presidency report summarising the discussions was presented to the June 2019 JHA Council. The Presidency concluded that at this stage, the emphasis should be on ensuring the effectiveness and quality of the implementation of existing EU legislation, and that more efforts should be deployed to that effect. It is, however, important to evaluate the existing legislative framework on a constant basis.

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<sup>2</sup> COM(2019) 355 final (2.8.2019): Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

Examples of sector-specific legislation entailing measures targeted at fighting corruption are the legislation on anti-money laundering and the new whistle blowers directive, which aims to guarantee a high level of protection for persons reporting breaches of EU law.

In addition to the important role of Eurojust and Europol in fighting corruption, the European Public Prosecutor's Office (EPPO) intends to play a key role in fighting fraudulent action targeting the EU's budget, including corruption. Work is ongoing to ensure that the EPPO will become operational by the end of 2020. Anti-corruption work is also ongoing in such networks as European Partners Against Corruption (EPAC) and European contact-point network against corruption (EACN). There are several measures and instruments targeting the prevention and investigation of fraud – with a link to corruption. These include the PIF Directive adopted in 2017, the Anti-Fraud Programme under the 2021-2027 Multiannual Financial Framework, and the European Commission's Anti-Fraud Office (OLAF). In addition, the Commission's public procurement strategy and public procurement directives aim to improve transparency and integrity.

### **Anti-corruption monitoring work in the EU**

In 2011, the Commission set up a reporting mechanism for the periodic assessment of anti-corruption efforts in the EU (the EU Anti-Corruption Report) to support the implementation of the EU's anti-corruption policy. In 2017, the Commission announced that it would not continue the EU Anti-Corruption Reporting Mechanism. Instead, the Commission has decided to continue monitoring corruption levels in the framework of the European Semester. Instead of systematic EU-wide reporting, now only some of the country reports include specific analyses of corruption risks and associated challenges. In relevant cases, these issues are reflected in country-specific recommendations. In addition, the fight against corruption in two Member States is monitored through a specific Cooperation and Verification Mechanism.

The Commission communications of April and July 2019 on strengthening the rule of law within the Union emphasise the link between the rule of law and anti-corruption action/efforts. The suggested blueprint for action contains a commitment by the Commission to develop its monitoring of rule-of-law-related developments in the Member States, which will take the form of a Rule of Law Review Cycle. A key element of the cycle would be an Annual Rule of Law Report summarising the situation in the Member States drawn up on the basis of existing information. The review would also examine the capacity of Member States to fight corruption. A network of national contact points is planned. At the informal JHA ministerial meeting in July 2019, justice ministers discussed the issue of strengthening the rule of law.

### **Financial and technical assistance for anti-corruption measures in Member States**

The current EU anti-corruption framework consists of a set of differing preventive, sanctioning and monitoring measures. Since 2015, the EU has had an anti-corruption experience-sharing programme which exchanges best practices on anti-corruption policies between the Member States. The Commission has provided means for monitoring the level of corruption in the EU.

The EU also provides funding for specific measures on the fight against corruption in Member States. In this regard, specific instruments are available, including the European Structural and Investment Funds (ESIF), the Internal Security Fund - Police (ISF), Horizon 2020, and the Structural Reform Support Programme (SRSP).

### **International dimension**

In its anti-corruption efforts the EU also relies on other international instruments, in particular the UN Convention against Corruption (UNCAC), to which it is a signatory, and the Council of Europe Civil Law Convention on Corruption (ETS 174) and the Criminal Law Convention (ETS 173).

In 2008, the EU has joined the UNCAC. This is the most comprehensive instrument in the global fight against corruption and comprises 186 signatories. The UNCAC Conference of the States Parties in 2019 will also prepare for the UNGASS 2021 high-level conference on corruption, to be held in New York. As regards UNCAC, the EU institutions have not yet been subject to the implementation review as set out by it.



The EU participates in the work of the OECD, where the Anti-Bribery Convention establishes legally binding standards to criminalise bribery of foreign public officials in international business transaction. The majority of the EU Member States have ratified the convention. The implementation of the convention is regularly peer-reviewed.

The year 2019 marks the 20th anniversary of GRECO, the Group of States Against Corruption, working within the Council of Europe's framework. As GRECO's objective is to improve the capacity of its members to fight corruption by monitoring their compliance with Council of Europe anti-corruption standards through a process of mutual evaluation and peer pressure, the Commission has for a long time investigated the possibility of the EU joining GRECO; in July 2019 the EU joined as an observer.

Moreover, as stated in the Commission Communication of 3 April 2019 on the rule of law, strengthening work to combat corruption has become a key part of the EU's efforts to promote reform towards meeting the Copenhagen criteria for accession. Anti-corruption and good governance is an important priority in the EU's cooperation agreements and partnerships with 3rd countries.

