

FIGHT AGAINST CORRUPTION IN THE DANUBE REGION: A STUDY OF REGIONAL BEST PRACTICES

**A study by Leonie Hensgen
Max-Planck Foundation for
International Peace and the Rule of Law**

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The opinions expressed in this study are those of the author and do not necessarily reflect the views of the Konrad-Adenauer-Stiftung.

* The author thanks especially Prof. Dr. Dr. h.c. Rüdiger Wolfrum, Dr. Tilmann Röder and Johannes Krusemark-Camin for their valuable comments and suggestions to the study.

Special thanks to Michael Limanowski and Moritz Rudolf.

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1. INTRODUCTION

1.1. CORRUPTION

Corruption and the fight against it are by no means new topics, even though the attention they have received since the 1990s could have made us believe otherwise. Despite knowing about corruption for many years and despite the current heated debate on the subject, a consensus on the definition of the concept of 'corruption' has not been achieved yet.¹ Even the most comprehensive international instrument, the United Nations Convention Against Corruption - UNCAC², had to refrain from listing offences that fall within the scope of corruption, because of the lack of a unified vision of the states involved.³ The perception and classification of corrupt behaviour differ throughout the world depending on the cultural background. What is accepted and even expected as a gift in some countries is already an offence in other countries, and may lead to criminal prosecution. Both the complexity of the matter itself and the amount of different scientific approaches make it difficult to define corruption. Not only legal experts, but also political scientists, sociologists and economists deal with corruption, to give only a few examples, and their approach to and treatment of corruption differ to a great extent, depending on the context of research.

According to the relevant statement of the Council of Europe on the matter, "No precise definition can be found which applies to all forms, types and degrees of corruption, or which would be acceptable universally as covering all acts which are considered in every jurisdiction as constituting corruption".⁴

As a start, the origin of the word 'corruption', which is borrowed from the Latin verb 'corrumpere' (to abuse), provides a suitable clue for the definition. A broader definition of corruption is experiencing tensions, however, between a loose approach and a too restrictive one that overlook the marginal issues of corruption. This conflict is illustrated by a comparison between the definition of the German Federal Criminal Police Office and the definition of Senturia,⁵ which has been frequently quoted in the specialized literature.

¹ See <http://www.transparency.de/was-ist-korruption.2176.0.html>; accessed on 19.07.2013; Study on corruption in the public sector of EU Member States, p.3.

² The acronym UNCAC shall be used hereafter.

³ UNCAC Chapter III, art. 15 ff

⁴ Programme of action against corruption – GMC (96) 95, p. 14, available at: <http://www.coe.int/t/dghl/monitoring/greco/general/GMC96%20E95%20Actionprogr%20English.pdf> (accessed on 19.07.2013)

⁵ Senturia, a pioneer of modern research on corruption, came up with a definition as early as in 1931, serving ever since as a starting point in the debate for a generally acceptable definition.

The first identifies corruption in reference to criminological research as the "abuse of a public office, a position in the economic sector or a political mandate in favour of a third party, upon their instigation or one's own initiative, to obtain an advantage for oneself or a third party, with the occurrence or in the expectation of the occurrence of damage to or a disadvantage for the general public (in official or political functions) or for an enterprise (if the offender holds a pertinent position in the economic sector)".⁶

On the contrary, in order to prevent any loopholes and to encompass as many corrupt practices as possible, Senturia developed a comprehensive formula, which will be applied henceforth in the study. Corruption is, thus "the misuse of public power for private gains".⁷

Even though corruption today is considered to be a worldwide problem and the fight against it has top priority, the notion that corruption is to be accepted as 'collateral damage', as part of the modernisation process, having negligible economic consequences, persisted until the late 20th century.⁸ However, the realization that corruption, through false allocation of resources, not only leads to inefficiency and injustice, but constantly shatters the trust of people in public and private institutions, has increasingly gained acceptance. The enormous magnitude of the problem becomes apparent in estimates, according to which the worldwide costs of corruption amount to 5% of the gross domestic product.⁹ Earlier, the issue of corruption used to be limited to 'developing countries', but an urgent need for action is also evident in the Western states, where, according to an estimate by the EU Commissioner for Home Affairs Cecilia Malmström, the yearly loss due to corruption in the 27 member states would amount to approximately € 122 billion.

Since the 1990s corruption has also gained attention in the international sphere as a global problem and one of the obstacles to growth and development. Today it is agreed that an efficient fight against the frequent transnational causes and effects of corruption is only possible through close international cooperation.¹⁰ Besides multilateral conventions against corruption¹¹, the exchange of knowledge and experience constitutes an important basis for cooperation on regional and international levels. This study is also intended to contribute to the transfer of knowledge to regional levels.

1.2. BEST PRACTICES

As shown by the difficulties of defining the concept, corrupt practices occur in various multifaceted environments and forms. Today it is well-established that, contrary to the earlier belief that it was a 'victimless' phenomenon, corruption, with the economic, moral and political harm it entails, eventually turns the entire society into its victim. This does not change the fact that we are dealing with a crime, which, due to the agreement between the perpetrators and to the indirect effects on the victim, is very difficult to identify and fight against.¹²

⁶ Vahlenkamp, Werner/Knauß, Ina: Korruption: Ein unscharfes Phänomen als Gegenstand zielgerichteter Prävention, BKA-Forschungsreihe, Vol. 33, p. 20 et seq.; http://www.bka.de/DE/ThemenABisZ/Deliktsbereiche/Korruption/korruption__node.html?__nnn=true (accessed on 19.07.2013)

⁷ Joseph J. Senturia, Corruption, Political, in: Edwin R.A. Seligman (Ed.), Encyclopedia of the Social Sciences, New York 1031, pp. 448-452; A similar definition from Transparency International at: <http://www.transparency.de/was-ist-korruption.2176.0.html>. (accessed on 19.07.2013)

⁸ According to the study on corruption in the public sector of EU Member States, p.1.

⁹ <http://www.weforum.org/content/global-agenda-council-anti-corruption-2012-2013> (accessed on 19.07.2013).

¹⁰ See http://www.bmz.de/de/was_wir_machen/themen/goodgovernance/korruption/internatinitiativen/index.html (accessed on 19.07.2013).

¹¹ See especially the United Nations Convention against Corruption, available at: http://www.unodc.org/pdf/corruption/publications_unodc_convention-e.pdf (accessed on 19.07.2013).

¹² <http://www.transparency.de/was-ist-korruption.2176.0.html>. (accessed on 19.07.2013).

For these reasons, the traditional mechanisms of fighting crime have to be extensively adapted and new concepts must be developed. As fighting corruption is still a rather recent discipline due to its relatively late recognized significance, there is a range of different approaches and priorities. In order to be able to fight against this problem extensively and efficiently, the exchange of knowledge and the dissemination of success stories are of vital importance.

Thus, the so-called 'best practices' enjoy particular attention. Fundamentally, they represent outstanding methods and practices that have consistently shown results superior to those achieved by other means.¹³ Hence, the objective of this study is to investigate concrete measures against corruption, which have already been implemented at least to some extent in individual countries of the Danube Region, and to reveal the 'best practices'.

However, in order to do justice to the dynamical development in the region examined, particular measures had to be taken into account, measures that were implemented for the first time in the past years or even those that are still in the phase of implementation.

On one hand, these have the advantage of also including the most recent findings of the research on corruption and they facilitate a progressive adaptation to the constantly changing phenomenon of corruption.

On the other hand, the concept of 'best practices' needs to be relativised. Due to the fact that usually no reliable data about the success and sustainability of the measures are available, one cannot speak of 'long-lasting superior results'. Rather, the choice and representation of concepts are based on indicators and forecasts of the future (potential) success. Since the structural measures of prevention, in particular, often have long-term objectives and are not aimed at quickly combating the symptoms, an assessment as 'best practice' proper can only be made after a few years.

Bearing this in mind, the study is dedicated to presenting the relatively recent measures for fighting corruption in the Danube Region, which, from the point of view of the respective states, have been successful or promise to be so.

1.3. STRUCTURE OF THE STUDY

The study is divided into three important steps. Firstly, the projects presented at the conference "*Implementing a Comprehensive and Integrated Approach in Prevention and Fight against Corruption in the Danube Region*"¹⁴ were evaluated and the proposed concepts that might be developed into 'best practices' with dissemination effects in the region were explored.

The second step consisted in designing a questionnaire¹⁵ in order to highlight certain aspects concerning corruption in general and also specific to 'best practices'. To this end, the questions were accompanied by tips for answering, in order to facilitate a reliable evaluation. The aim was to enable the countries themselves to assess which of the measures – usually still very recent – they deem to be particularly promising and what are the areas where there is a higher need for action. With the help of the Bulgarian Ministry of Interior, the questionnaires were sent to the Ministries of the Interior in twelve countries.

¹³ See <http://wirtschaftslexikon.gabler.de/Definition/best-practice.html>; (accessed on 19.07.2013).
<http://www.businessdictionary.com/definition/best-practice.html>. (accessed on 19.07.2013).

¹⁴ Available at: https://www.mvr.bg/en/Danube_Region/Events/Conflict_of_interest.htm; https://www.mvr.bg/en/Danube_Region/Events/20120531_1.htm (accessed on 19.07.2013).

¹⁵ See the example in annex 1.

After the extended deadline, the questionnaires from Germany, Austria, the Czech Republic, Serbia, Hungary and also Bosnia and Herzegovina were submitted. Shortly before the end of the study, the questionnaire from Bulgaria and the annual report of the Romanian technical secretariat on the national anti-corruption strategy were included.

In a third stage, the answers to the questionnaires were evaluated and supplemented by information from the conference documents. Reports of the European Commission, evaluation reports from the *Group of States against Corruption (GRECO)*, and materials from the chapter on countries of *Transparency International* were then added. Furthermore, the websites of authorities and ministries, as well as relevant press releases were included.

Since the study is limited in scope, a final selection of the countries that were to be presented in detail had to be made. Considering the overall circumstances (complexity of the questionnaires and materials, innovative concepts, applicability as 'best practice' in the region and transferability, project assessment reliability and additional information, among others), the following countries were selected: Hungary, Romania, Bulgaria, Germany, the Czech Republic and Austria. The selection did not focus on countries with especially low corruption levels, but rather on very promising concepts, potentially influential for the other Danube states.

For these countries, besides an overview of the basic attributes of the states and the overall situation of corruption, the study mainly looks at specific projects and approaches rather than general anti-corruption efforts or national anti-corruption measures, which nonetheless are regarded as being part of the general framework.



2. ANALYSIS OF INDIVIDUAL COUNTRIES

2.1. HUNGARY

2.1.1. OVERVIEW

Before discussing the specific anti-corruption measures in Hungary, it is important to review certain key data describing the geographical, political and economic situation of the country in order to understand the circumstances that are essential to the development of anti-corruption measures. Even when working with “best practices,” it is crucial to consider the specific situation of the country and to adapt the measures accordingly.

The Central European parliamentary republic of Hungary has an area of 93,036 km² and a population of approximately 9.9 million. With a GDP of around € 106 billion, the country ranks 57th in the world.¹⁶ As early as in 1999, the country was one of the first countries in the former Eastern Bloc to join NATO. In 2004, the country joined the European Union in the wake of EU’s Eastward Enlargement, after a referendum showed 84 % approval.¹⁷ Despite a certain degree of Euroscepticism among the population in the beginning, Hungary was the first Member State to ratify the Treaty of Lisbon. A particularly positive aspect is the *Human Development Index* of 0.816, which places Hungary (on the 38th position) among the states with a “very high human development” – the top category of the world ranking.¹⁸

2.1.2. CORRUPTION

Corruption is widespread in Hungary and the fight against corruption is considered to be a major challenge. According to a Eurobarometer on corruption, 96% of respondents in Hungary see corruption as one of the main problems their country is faced with. This was the fourth worst result among the Member States.¹⁹ Respondents regarded public procurement, healthcare, politics, as well as the awarding of construction contracts, as the main areas affected by corruption. Significantly, less than one third of respondents considered corruption to be present in the private sector as well. However, 33% of

¹⁶ International Monetary Fund, World Economic Outlook Database (as of April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013).

¹⁷ However, there was only a low turnout of about 45.6% .

¹⁸ United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/HUN.html> (accessed on 19.07.2013).

¹⁹ Eurobarometer, Special Eurobarometer 374 “Corruption” 2012, S. 12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013), (EU average only 74%),

respondents stated they were personally affected by corruption, while 20% confessed to having been asked to pay a bribe in the past 12 months (EU average only 8%).²⁰

In the *Corruption Perceptions Index 2012* of *Transparency International*, Hungary ranks 46th, with 55 points, thus being in the upper mid-range of the direct neighbouring countries, but at the lower end of all Member States of the European Union.²¹

The high incidence of corruption is considered to be a result of the relatively low economic development, as well as of a certain social acceptance of corruption, as this would make everyday life easier.²² For example, 77% of respondents to a survey conducted by *Transparency International* stated that it was "common" to give something extra to a doctor, despite having the right to free healthcare services. At the same time, 39% of respondents said it was common to bribe law enforcement officers in order to avoid a fine for traffic offences.²³ This comes to show why many Hungarians accept corruption as a necessary evil of everyday life and, at the same time, highlights the urgent need to raise awareness among the population.

Despite these shortcomings, Hungary is relatively progressive compared to its immediate neighbours, while showing a high potential of development in comparison to other EU countries.²⁴ After the change of the political system, the areas of public procurement, as well as the internal control of authorities and political party funding became particularly prone to corruption during the 1990s. Thus, corruption occurred in the administration or at the boundary between politics and business.²⁵

On an international level, Hungary joined the most important conventions against corruption. These include the *Council of Europe Civil Law Convention on Corruption* (ratified in December 2003); the *Council of Europe Criminal Law Convention on Corruption* (ratified in November 2000); the *UN Convention against Corruption* (ratified in April 2005) and the *UN Convention against Transnational Organized Crime* (ratified in December 2006).

2.1.3. FIGHT AGAINST CORRUPTION IN HUNGARY

In response to the widespread corrupt practices, the Hungarian government has initiated in the last several year action programmes to reduce and fight of corruption, with the support of the European Union.

However, the anti-corruption strategies were often limited to repressive action against corruption in the administration, without dealing with issues such as prevention.²⁶ Even if progressive regulations such as the *Glass Pockets Act* were introduced, these have not been implemented sufficiently.²⁷ The initiative to set up several new institutions to coordinate and promote the fight against corruption proved to be short-lived. The institutions partly functioned for only one year.

²⁰ *ibid.*

²¹ Transparency International, *Corruption Perceptions Index 2012*; available at: <http://cpi.transparency.org/cpi2012/results/> (accessed on 19.07.2013).

²² Báger-Kovács, *Development and Finance 2005*. S. 41-42.

²³ Transparency International Hungary, "Corruption risks in Hungary", p. 24, available at: http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_NIS_2011.pdf (accessed on 19.07.2013).

²⁴ Netherlands Court of Audit and State Audit Office of Hungary: "Corruption Risk Mapping in Hungary", p. 7, available at: <http://www.asz.hu/twinning-light-project/final-study-report/final-study-report.pdf>. (accessed on 19.07.2013).

²⁵ *ibid.*, p. 9.

²⁶ *Ibid.* p. 9 et seq.

²⁷ The law should facilitate a reliable tracking of public procurement funds. See footnote 23, p. 27 et seq.

With *Government Decree 1037/2007 (VI. 18)*, the government embarked upon a new beginning by establishing the *Anti-Corruption Coordination Board (ACCB)*. Since it started its activity in 2007, it has taken the responsibility of developing and monitoring the national anti-corruption strategy, as well as short-term action plans. The *ACCB* reports to the Ministry of Justice and consists of six members of the government, members of other public institutions (especially supervisory authorities), as well as non-governmental entities (highly reputed NGOs or individuals).²⁸ Furthermore, the *ACCB* cooperates with other NGOs and the civil society.²⁹ The *ACCB* also coordinates the anti-corruption efforts of individual institutions that are presented in the following subsections.

2.1.3.1. State Audit Office

The *State Audit Office (SAO)* is the Supreme Audit Institution in Hungary and directly reports to the National Assembly. In the context of the personnel and legal reforms, the institution has been further optimized in 2011 and, according to its own statements, now meets all the requirements and recommendations of the United Nations on Supreme Audit Institutions.³⁰

The main task of the *SAO* is to ensure a fair, transparent and efficient use of public funds. In addition, it is intended to guarantee that public authorities are made responsible and must justify themselves in regards to financial issues.

The fight against corruption, which does not originally fall under *SAO's* main tasks, is seen as another priority and is therefore given important attention within the current strategy.³¹ Based on a joint declaration, *SAO* works together with the Ministry of Justice, the Supreme Court and the Attorney General in carrying out its activity and provides more opportunities for local authorities to participate as well.

This cooperation frequently results in synergies and new findings. Based on this, the *SAO* organizes, among other things, a series of seminars entitled "Let Good Examples Be Infectious. Best practices in the use of public funds", which is mainly targeted at the employees of local authorities.³² In order to improve efficiency as much as possible, the acquired knowledge and the "best practices" are shared and disseminated, with *SAO* acting as a coordination and collection centre.

2.1.3.2. Twinning Light Project

As we have already pointed out, anti-corruption efforts in Hungary solely focused on repression measures over a long period of time, leaving the investigation of the reasons for corrupt behaviour and the prevention of corruption largely ignored.³³ The belief that knowing the reasons for corruption and the details of this phenomenon was essential for a successful anti-corruption work had become increasingly widespread.

Based on this new awareness, *SAO* developed a method to measure and locate integrity risks within the public administration system, in close cooperation with and supported by the European Union and the Dutch Court of Auditors. The resulting study, "*Twinning Light Project*" in Hungary, is based on the realization that different areas of the public service must be treated individually, taking their specific characteristics into account to allow for an effective fight against corruption. The aim was to conduct an institution-oriented evaluation, which would identify vulnerable sectors and provide clear recommendations for improvement for the authorities in question. In contrast to

²⁸ <http://www.unodc.org/documents/corruption/Best%20Practices/hungary.pdf> (accessed on 19.07.2013).

²⁹ See footnote 24, p. 11.

³⁰ <http://www.asz.hu/introduction/about-us/about-us.pdf> (accessed on 19.07.2013).

³¹ See footnote 24, p. 4.

³² See footnote 30.

³³ See footnote 25.

the *Corruption Perceptions Index* by *Transparency International*, the study was aimed less at measuring the extent of corruption as a whole and rather focused on identifying specific weaknesses of the public authorities.³⁴

For the purpose of the study, a questionnaire was sent out to over 5,000 public authorities at central or local level. Both the administration and the judiciary, and especially executive authorities took part in the survey. Integrity risks and weaknesses were identified based on the results. The first category describes the occurrence of undue abuse of power in the public service, which impairs the reputation of the authority and reduces public confidence in the institution. Weaknesses, however, point at the areas within a public authority which involve particularly high risks.³⁵

The risk analysis is supplemented by an assessment of the existing control and integrity mechanisms. These are divided into three categories: while "Hard controls", for example, can be implemented through laws and internal administration, "general control", for instance, relates to the selection process and the recruitment procedures. These mechanisms are complemented by "soft controls" such as imposed values and ethical standards of the authority.³⁶ The comparison of the identified weaknesses and control mechanisms results in a so-called "gap" that describes the deficiencies in monitoring within a given authority.

After the evaluation of data, a classification into three different indexes was made based on a scale of 0 to 100.

The "*Inherent Vulnerability Index*" (*IVI*) includes risks that are inherent to the legal framework and the range of tasks of the given authority.

The "*Enhanced Factors Index*" (*EFI*), on the other hand, refers to risks resulting from everyday life and the legal environment of the authority.

The "*Lack of Controls Index*" (*LoCI*) finally measures the shortcomings of the integrity control systems (e.g. the absence of audits conducted by the Audit Institutions, regulations on the prevention of conflicts of interest and clear ethical guidelines and conditions), which make the authority more vulnerable to integrity breaches.

The results partly showed significant variations between the different authorities and indexes. The local government institutions proved particularly vulnerable due to their wide range of tasks and great autonomy. Further on, public procurement and the allocation of EU funds in particular were classified as vulnerable.

The results are shown in the following charts.³⁷

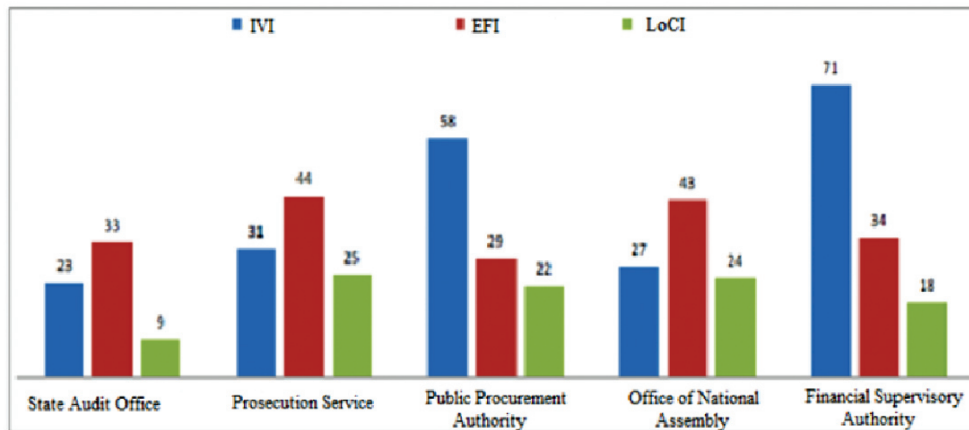
³⁴ Answers to the Questionnaire Hungary, p. 2.

³⁵ See footnote 24, p. 18.

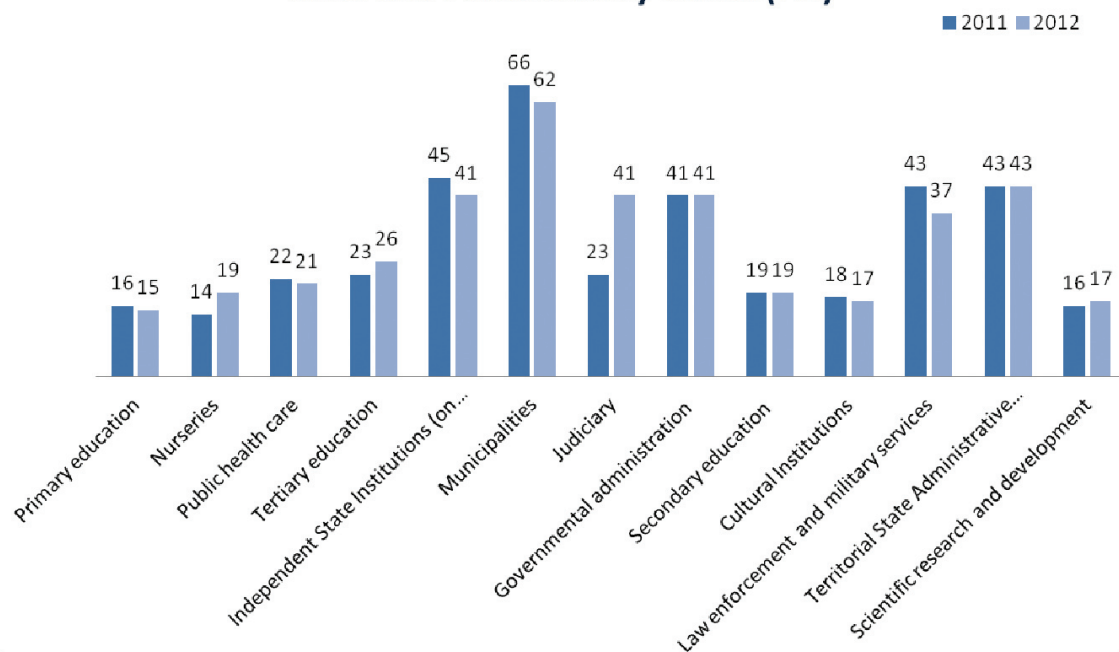
³⁶ See footnote 24, p. 28.

³⁷ See footnote 34, p. 2 et seq.

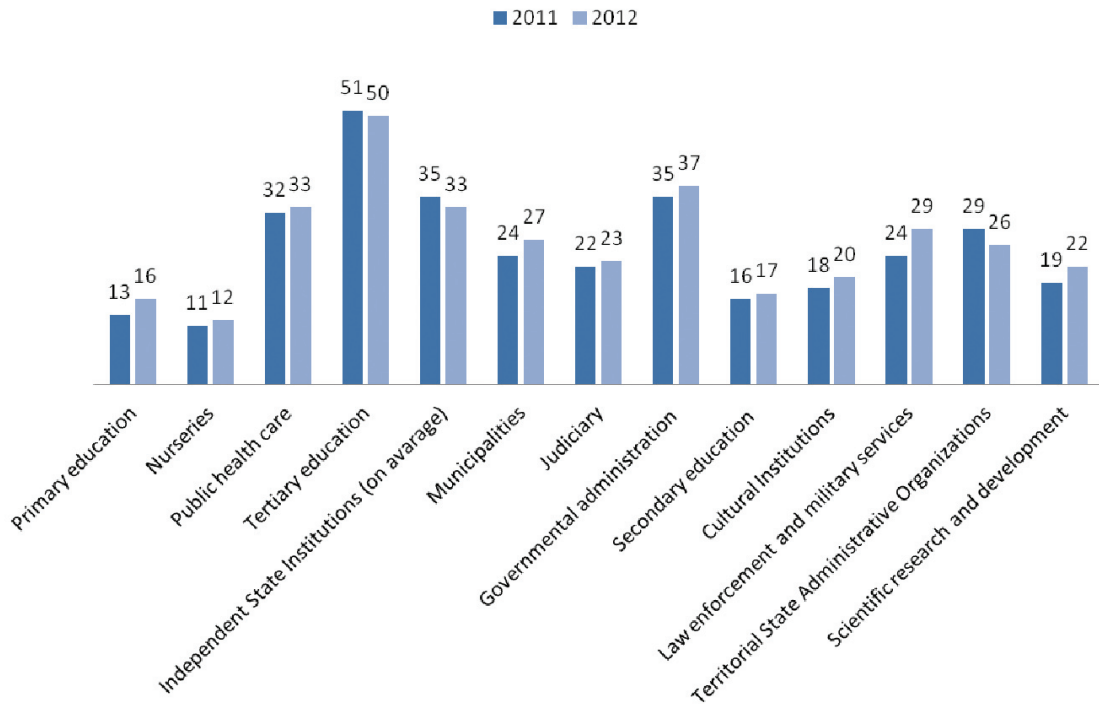
Risk factors of independent state institutions



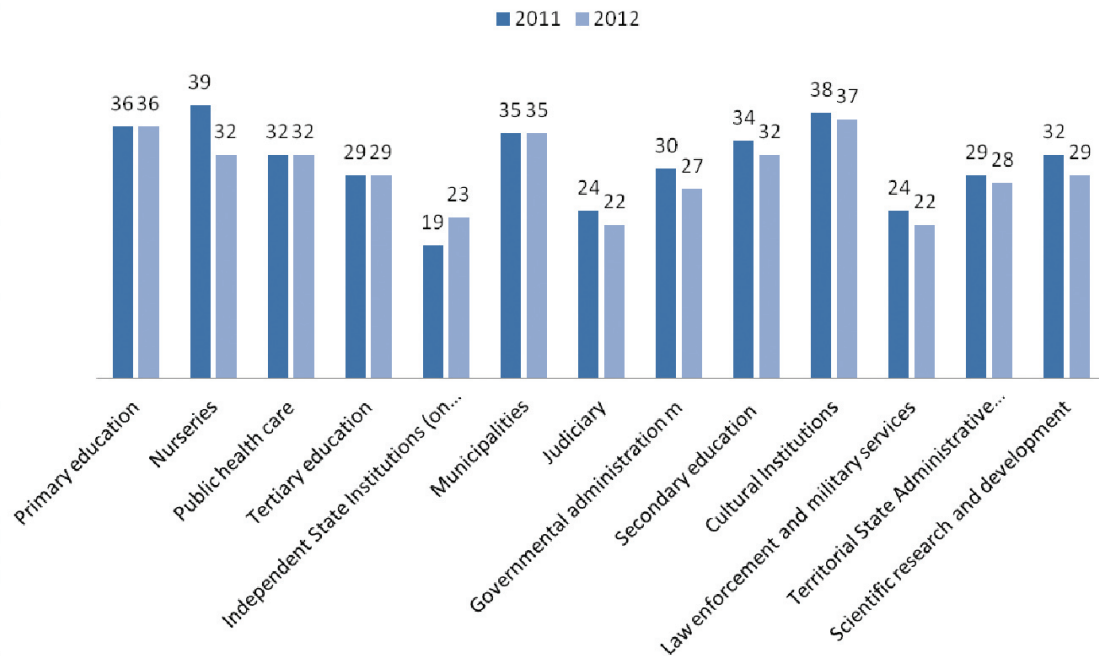
Inherent Vulnerability Index (IVI)



Enhanced Factors Index (EFI)



Lack of Controls Index (LoCI)



Source: Answers to the Questionnaire

The great advantage of this evaluation is the ability to effectively implement control mechanisms and to focus on risks and weaknesses.

Individual public institutions are grouped together in so-called "clusters", which form distinct categories. (e.g. "cultural institutions"). Based on these, "risk maps" that offer a systematic overview of the situation could be drawn.³⁸ Thus, the limited resources can be used better to significantly increase the overall efficiency of the anti-corruption measures.³⁹ Moreover, the progress of the fight against corruption can be better measured and evaluated.⁴⁰

However, the efficiency of such a concept strongly depends on how results are processed, since these can only provide a basis for a further strategy. Therefore, a request for the 'risk maps' to be used as part of the action plan of the ACCB was put forward in the context of the *Twinning Light Projects*. Furthermore, greater value must be placed on integrity trainings for civil servants. A platform where information could be collected, evaluated and exchanged should also be made available. Finally, a further key issue is to make participation in drawing up a 'risk map' attractive to authorities.

What is important is not to make this cooperation mandatory, but rewarding - e.g. by issuing a certificate for participating organizations.⁴¹

Based on preliminary findings, recommendations of SOA have been partially followed up. Hungary's current anti-corruption strategy largely relies on the *Twinning Light Project*, thereby including both preventive and repressive elements.

As part of the action plan, criminal laws were sharpened and the existing legislative gaps were eliminated in 2011, so that active, not solely passive corruption is now incriminated. At the same time, the legislator imposed higher obligations on both civil servants and members of Parliament in regards to the disclosure of assets and conflict of interest.⁴² However, no significant improvement in the affected areas could be recorded in the following year at least.⁴³

2.1.3.3. Hungarian National Protection Service (NPS)

A major change in terms of the results of the *Twinning Light Projects* was, however, the establishment of NPS in 2010. The NPS is subordinate to the Minister of Interior and its main tasks include the prevention and detection of corruption within the 'protected' organisations assigned to him/her.⁴⁴

These include law enforcement agencies such as the police, the customs and tax authorities, as well as security agencies and the law enforcement authorities. Not covered by the internal control mechanism of the NPS are, among others, the Public Prosecutor's Office and the remaining judicial authorities.⁴⁵ Nonetheless the authority, with its approximately 500 employees, 'protects' more than 100,000 civil servants from their 'dishonest colleagues'.⁴⁶

³⁸ Ibid., p. 35 et seq.

³⁹ Ibid., p. 19 et seq.

⁴⁰ Ibid., p. 37.

⁴¹ See *ibid.*, p. 55.

⁴² See footnote 34, p. 4 et seq.

⁴³ Transparency International Hungary, "Corruption risks in Hungary" – Executive Summary, p.6, available at: http://www.transparency.hu/uploads/docs/Corruption_Risks_in_Hungary_2011_-_NIS_Executive_Summary.pdf (accessed on 19.07.2013).

⁴⁴ See footnote 23, p. 75; Acts LXXXIV and CXLII of 2010

⁴⁵ See footnote 23, p. 122.

⁴⁶ *ibid.*, p. 174.

NPS's authority covers the prevention of internal criminal offences, as well as the detection, but not the prosecution of such offences itself.

Following an enquiry, the authority has in fact two possibilities: it either closes the case or refers it to the competent Public Prosecutor's Office.⁴⁷

In order to ensure the detection of offences, the *NPS* collects and evaluates – possibly confidential – information. Moreover, it determines whether the verified persons maintain a lifestyle, which is compatible with the duties performed in particular.⁴⁸ For this purpose, family and social, as well as financial aspects are considered.⁴⁹

An important part of the activity of *NPS* consists of tests, which refer to the screening of so-called 'protected' employees in order to evaluate their integrity, as well as confidentiality. Integrity is tested by having undercover employees of the *NPS* place the person examined in a classic corruption situation. This can happen, for example, by offering the person a bribe or by promising other benefits in return for certain associated services. The result of the test mainly depends on the civil servant's reaction.

The person examined does not receive any information about the beginning of the investigation, is however informed about the conclusion of the investigation. Should the investigation affect the dignity of the person concerned, he/she may make use of the possibility to submit a complaint. Although the Public Prosecutor's Office is in charge of supervising such tests, trade unions and NGOs in particular have raised concerns as to whether such measures are constitutional.⁵⁰ This is especially the case, considering that all civil servants can be tested on a regular basis, since they are required to sign a consent form at the time of recruitment. In addition, such tests result in intrusions in the private and professional life of the person examined, as well as relatively weak control mechanisms.⁵¹

A clear final assessment of this institution is not possible yet due to its short existence. Integrity tests in particular are, however, pursuant to the experience of *NPS*, relatively reliable means of detecting and countering corruption in an effective manner.⁵²

Moreover, the results of the *Twinning Light Projects* are a good indicator of an efficient anti-corruption strategy that specifically tackles the previously identified weaknesses.

2.1.3.4. Corruption Prevention Program

A further innovation is the *Corruption Prevention Programme* in Public Administration, launched in 2012, which can also be traced back to the integrity project of *SAO*.⁵³ This initiative, which is supported and co-financed by the European Union, has a budget of €1.66 million. The first targets were set until 2014 and should be completely implemented by 2015.⁵⁴

⁴⁷ See footnote 34, p. 5.

⁴⁸ See footnote 23, p. 172.

⁴⁹ Answers to the Questionnaire Hungary no.2, p.1.

⁵⁰ See footnote 23, p. 100; Art. 7/A of Act 34 of 1994 on the Police.

⁵¹ See footnote 23, p. 100.

⁵² Answers to the Questionnaire Hungary no.2, p.2.

⁵³ Presentation on the Rule of Law in Hungary, p. 4; available at: https://www.mvr.bg/NR/rdonlyres/63E2F6A6-527B-4E3E-BD4F-8EC9B5CB47A4/0/4_Rule_of_Law_Presentation_Hungary.pps (accessed on 19.07.2013).

⁵⁴ See footnote 34, p. 5.

The strategy is based on the fundamental principles of credibility, 'gradualness' (step-by-step), cooperation with NGOs, prevention and a simultaneous fight against corruption in the private and public sector.⁵⁵ The first steps in achieving these objectives are the planned establishment of an integrity management system, a "Code of Conduct" for public officials and the establishment of a whistleblowing system.⁵⁶

The integrity management system shall be introduced in government agencies, giving the staff the possibility to pass on information and complaints to an 'Integrity Official'. This official has the necessary legal authority to start an investigation and to inform the head of the relevant authority or, where appropriate, the Public Prosecutor's Office.⁵⁷

Moreover, training and e-learning courses are to be offered to public service executives in particular. Furthermore, a campaign for raising awareness regarding the threats posed by corruption is planned in universities, as well as in schools.⁵⁸ In 2014, an information campaign is to be launched to raise further public awareness on corruption.⁵⁹

2.1.4. ASSESSMENT

Although an assessment of the follow-up actions cannot be carried out yet due to their timeliness, the *Twinning Light Project* indicates that a targeted analysis of corruption can act as an effective starting point for a comprehensive anti-corruption strategy. However, the success of such measures depends on the political will to enforce these measures. What can be positively emphasized in the case of Hungary are the recently implemented or planned steps, which refer to the major sources of criticism put forward by organizations such as *Transparency International* or *GRECO*, as part of their evaluations and recommendations. At the same time, the examination of international 'best practices' that has taken place in Hungary served as an inspiration for national projects. These were complemented by the findings of the *Twinning Light* study and, as far as necessary, adapted to the country-specific situation.⁶⁰

Despite these promising forecasts, a final assessment would only be possible after the projects presented would have started their activity and would be evaluated. At the same time, it should be noted that corruption prevention measures as such regularly need a certain amount of time to ensure their effectiveness.

To sum up, Hungary's anti-corruption strategy, based on the *Twinning Light Project*, offers a promising approach, which could be of interest for neighbouring countries as well.

⁵⁵ See footnote 53, p. 4

⁵⁶ *ibid.*, p. 5.

⁵⁷ See footnote 34, p. 5.

⁵⁸ See footnote 54, p. 6

⁵⁹ See footnote 344, p. 6.

⁶⁰ *ibid.*



2.2. ROMANIA

2.2.1. INTRODUCTION

Romania, a semi-presidential republic with an area of 238,391 km² and a population of 19 million people, is the ninth largest and the seventh most populous country in the European Union, which it joined on January 1, 2007.

The gross domestic product sums up to about € 145 billion, as a result of an economic development since the late 1990s (50th place in the world).⁶¹ The country thus ranks 56th in the *Human Development Index*.⁶² Since the state crisis in 2012, there have been significant political tensions and challenges to the rule of law, leading to strong criticism from the EU.⁶³

2.2.2. CORRUPTION

Corruption is a widespread phenomenon in Romania both in the private and the public sector. The EU corruption barometer indicated that about 9 out of 10 Romanians considered corruption to be major problem.⁶⁴ In addition, 67% of respondents believed that the level of corruption has further increased in recent years.⁶⁵ Furthermore, the overall perception is that corruption primarily occurs across the public sector, and not as often in the private sector.⁶⁶ 61% of the interviewed Romanians think that the main reason for the high level of corruption is the fact that politicians are not taking sufficient action against this phenomenon.⁶⁷ This confirmed the view of 79% of respondents, who think the government's fight against corruption is inefficient.⁶⁸ Finally, corruption is spread in everyday life, as noticed by 31% of respondents (the highest value within the European Union), who stated they had been directly requested to pay a bribe in the past year.⁶⁹

In the *Corruption Perceptions Index 2012* of *Transparency International*, Romania ranked 66th, with 44 points, at the lower end within the European Union, along with Greece, Bulgaria and Italy.⁷⁰

⁶¹ International Monetary Fund, World Economic Outlook Database (as of April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013).

⁶² United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/ROU.html> (accessed on 19.07.2013).

⁶³ See also: <http://www.handelsblatt.com/politik/international/staatskrise-eu-haelt-an-kritik-an-rumaenien-fest/6893788.html> (accessed on 19.07.2013).; http://www.n-TV.de/Politik/politik_kommentare/Politischer-Krieg-in-Rumaenien-article6696041.html (accessed on 19.07.2013).

⁶⁴ Eurobarometer, Special Eurobarometer 374 "Corruption" 2012, p. 12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013).

⁶⁵ *ibid.*, p. 7.

⁶⁶ *ibid.*, p. 55.

⁶⁷ *ibid.*, p. 66.

⁶⁸ *ibid.*, p. 80.

⁶⁹ *ibid.*, p. 61.

⁷⁰ Transparency International, Corruption Perceptions Index 2012; available at: <http://cpi.transparency.org/cpi2012/results/> (accessed on 19.07.2013).

The main reason for the widespread corruption is often considered to be the huge inequality between rich and poor. Moreover, the relatively low public sector pay and a deeply rooted acceptance of corruption as a problem-solving strategy can also be traced back as incentives for corruption.⁷¹

Given these problems, Romania's accession was conditioned by the EU, in that the European Commission preserved the right to monitor the area of judicial reform and the fight against corruption.⁷² The annual Commission reports observed certain progress, which can however be regarded as insufficient to a large extent. Based on these evaluations, Member States raised objections to the planned accession to the Schengen zone⁷³, and subsidies were cut back.⁷⁴

2.2.3. FIGHT AGAINST CORRUPTION IN ROMANIA

On an international level, Romania joined the most important conventions against corruption. These include the *Council of Europe Civil Law Convention on Corruption* (ratified in April 2002); the *Council of Europe Criminal Law Convention on Corruption* (ratified in July 2002); the *UN Convention against Corruption* (ratified in November 2004) and the *UN Convention against Transnational Organized Crime* (ratified in December 2002).

The fight against corruption is characterized by the cooperation of various institutions at national level, each playing a different role in the implementation of the anti-corruption strategy.

The Ministry of Internal Affairs and the Ministry Justice is responsible for the monitoring of the implementation and development of appropriate legislative proposals. In addition to the *Court of Audit* – the Court of Auditors – and the *People's Advocate* – the Ombudsman –, the fight against corruption constitutes, however, in the broad sense, the main area of concern for three separate institutions, which are presented in the following.⁷⁵

The *National Integrity Agency (ANI)* is the administrative authority for the examination of conflicts of interest and incompatibilities, while the *National Anticorruption Directorate (DNA)* is a specialized department within the General Public Prosecutor's Office. Further internal anti-corruption authorities exist within ministries, the most important of which is the *Anticorruption General Directorate (AGD)* within the Ministry of Interior Affairs.⁷⁶

2.2.3.1. National Integrity Agency (ANI)

The National Integrity Agency was established in response to the second benchmark set by the Commission, in accordance with the *Law no. 144 from 2007*, namely in 2007, effectively starting its activity in mid-2008.⁷⁷

The authority, designed as an independent agency, has its own legal personality and is active at national level in Romania. The authority has no jurisdiction over the law enforcement itself, but over verifying assets and potential

⁷¹ Alide, „Rumänien auf dem Weg in die Europäische Union“ (Romania on its way to the European Union), p.40.

⁷² Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption. (2006/6569/EC), OJ L 354, 56 et. seq

⁷³ <http://www.n-tv.de/politik/Dutzende-Beamte-festgenommen-article2577686.html> (accessed on 19.07.2013).

⁷⁴ <http://deutsche-wirtschafts-nachrichten.de/2012/10/27/korruption-in-rumaenien-eu-friert-subventionen-ein/> (accessed on 19.07.2013).

⁷⁵ Concerning the institutions, see: Rule of Law: implementing a comprehensive and integrated approach in prevention and fight against corruption in the Danube region, available at: https://www.mvr.bg/NR/rdonlyres/0FF6A1FA-A9A7-4CFD-AD74-49286AE5D02C/0/5_Rule_of_Law_Presentation_Romania.pps (accessed on 19.07.2013).

⁷⁶ Transparency International Romania, National Integrity System Assessment Romania, 2012, p.111; available at: http://www.transparency.org/whatwedo/nisarticle/romania_2012 (accessed on 19.07.2013).

⁷⁷ Interim report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM(2008) 62 final from 04.02.2008, p. 4; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0062:FIN:DE:PDF> (accessed on 19.07.2013).

conflicts of interest. Thereupon, decisions, which serve as the basis for further - if necessary, legal - action, may be adopted.

Moreover, *ANI* should contribute to increased awareness and vigilance against corruption among citizens.⁷⁸ Finally, *ANI* has the task to collect, verify and publish information of all public institutions concerning employees' assets and interests. Should the authorities neglect this obligation, *ANI* can impose appropriate sanctions.⁷⁹

Since its tasks have a largely preventive nature, *ANI* mainly relies on information regarding assets, activities and interests. These refer to information provided by private and public bodies, the media and own observations. The gathered information is used to identify areas of conflict and to prevent cases of corruption in advance.

Should any suspicion arise from the analysis of the information, *integrity inspectors* are assigned to the case on a random basis in order to exclude any possible liability. After the person has been notified, the *ANI* is granted access, for the purpose of its investigation, to all relevant documents of public authorities and private individuals about the person in question. This power of access also covers data relating to the family, in particular the spouse and dependent children of the suspected person.⁸⁰ Should a response to the inquiry fail to be submitted within 30 days, a fine of about € 45 per day can be imposed.⁸¹

According to the Criminal Code, a conflict of interest exists when a person in public office has major personal interests that could hinder the person from exercising its duty in an objective manner.

The actual investigation is carried out by the *integrity inspectors* of *ANI* during the exercise of duty by the suspected person and up to three years after. If the *ANI* determines a conflict of interest based on the documents available, it informs the person in question and invites him/her to clarify the situation and to make statements. Any deliberate misrepresentation pertaining to revenues and interests constitutes a criminal offence according to Article 28 of the Criminal Code (*Law no. 176 from 2010*).

Should the suspicion not be removed, the *integrity inspector* writes an evaluation report within 15 days, which is then forwarded within five days to the person in question and – if applicable – to the competent tax, criminal prosecution and disciplinary authorities. The affected party may dispute the reports before a competent court of law within another 15 days.⁸²

Should he/she fail to do so or should the appeal be dismissed, *ANI* will ask the authorities concerned within 15 days to take appropriate action, as described in the following.

Following sanctions can be imposed in the case of a conflict of interest: all illegal legislative or executive, direct or indirect actions of the person in question may be declared null and void. In addition, the person can be dismissed from office, disciplinary proceedings can be initiated and an interdiction to carry out public functions can be imposed.

⁷⁸ https://www.mvr.bg/NR/rdonlyres/5AAD9903-4C98-4024-8B2B-9AE6D2C4B96C/0/11_presentation_Romania.pps (accessed on 19.07.2013), p. 2

⁷⁹ See footnote 76, p. 121.

⁸⁰ Administrative Procedures on Fight Against Corruption, National Integrity Agency, p. 4, 14; available at: https://www.mvr.bg/NR/rdonlyres/5AAD9903-4C98-4024-8B2B-9AE6D2C4B96C/0/11_presentation_Romania.pps (accessed on 19.07.2013).

⁸¹ *ibid.*, p. 4.

⁸² *ibid.* p. 8 et seq.

Potential gains may be seized. The measures are however not imposed by *ANI*, which only makes recommendations, but by the competent agencies.⁸³

The fact that *ANI* constantly faces a lack of support from politicians and the Parliament in particular is, however, problematic. An escalation of the conflict was seen in July 2010 when the Romanian Parliament issued a legislative amendment, despite the recommendation of the president, thus making *ANI*'s activity almost impossible. The procedures for investigation, application of penalties and seizing of illegally obtained assets were made more difficult, while the transparency obligations were reduced and dissuasive penalties were eliminated to a large extent.⁸⁴ This legislative amendment was based on a ruling of the Constitutional Court, which declared the *ANI* Law in its original version as unconstitutional. What is particularly sensitive in this regard is the fact that, according to media reports, 7 out of 9 judges had been already investigated by the *ANI* at the time of the ruling.⁸⁵

The amendments do not only violate the requirements of the European Commission, but can be labelled as a "mini-coup d'état"⁸⁶. Shortly afterwards, the President managed to prevail following a comprehensive reform in 2010, especially due to the pressure of the European Union. Obvious weaknesses were thus largely eliminated and further improvement measures were implemented.⁸⁷

In the evaluation programme of the European Commission, the *ANI* has been evaluated in different manners. Initially, its efficiency could hardly be assessed, since the authority was understaffed and had insufficient financial resources. Although some high ranking officials had been examined, there was also cause for criticism and doubts. In particular, it was not clear whether the *ANI* was able, on one hand, to run investigations independently, without any external influence, and, on the other hand, to receive full support from other national authorities. In addition, it was uncertain whether the judiciary had implemented the recommended measures.⁸⁸ Moreover, the credibility of the *ANI* suffered from the fact that it rarely initiated investigations against those currently in power.⁸⁹

Thanks to a significant increase in the budget and the allocation of EU funds, *ANI* managed to improve its information system and procedures starting with 2009. It was positively pointed out that numerous cooperation agreements had been concluded with other institutions and that risk analyses and controls with regards to conflicts of interest in the public procurement at local and regional level had been carried out based on the new legislation.

Since 2010, *ANI*'s balance has seen an upward trend. Thus, 18 cases of potentially unjust enrichment, amounting to a total of € 5 million, as well as 118 instances of incompatibility were investigated between 2010 and 2012. Legal and administrative follow-up measures of the investigation results are however fraught with problems, since they often lack consistency and legal certainty. The sporadically little efficient and very lengthy legal proceedings are detrimental to the deterrent effect.

⁸³ *ibid.*, p. 8.

⁸⁴ Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM (2010) 401 final from 20.07.2010, p. 3, available at: http://ec.europa.eu/cvm/docs/com_2010_401_de.pdf (accessed on 19.07.2013).

⁸⁵ <http://www.euractiv.com/enlargement/romanian-anti-corruption-watchdo-news-473572> (accessed on 19.07.2013).

⁸⁶ *ibid.*

⁸⁷ See footnote 76, p. 23; Interim report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM(2011) 80 final from 18.02.2011, p. 6 et seq.; available at: http://ec.europa.eu/cvm/docs/com_2011_80_de.pdf (accessed on 19.07.2013).

⁸⁸ Interim report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM(2009) 70 final from 12.02.2009, p. 4 et seq.; available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0070:FIN:DE:PDF> (accessed on 19.07.2013)

⁸⁹ See footnote 76, p. 122.

The problem has newly been aggravated by the committees set up at the level of the Courts of Appeal for the investigation of financial issues. These acted as 'intermediaries' between the ANI and the courts, and had the de facto power of decision over the admissibility of the cases submitted. Therefore, the procedure is not only unnecessarily delayed, but a new conflict of competence arises. It is not clear yet whether ANI can act against the decision of these intermediary committees.

Guidelines for the harmonisation of procedures and legal practices are therefore all the more necessary. The independence and integrity of the authority still raise concerns. At the same time, its credibility suffers from the lack of support from the judiciary and the intermediary committees.⁹⁰ Many of ANI's decisions are questioned and do not receive the necessary backing. Even if the ANI frequently wins on appeal, it must continue to struggle for its prestige and credibility. The frequent attacks in politics and in the media represent a further obstacle.

The fact that even the Parliament failed to act on an ANI report that was backed by a ruling of the Supreme Court of Justice raises particular concerns. None of the four Ministers who were prosecuted because of incompatibility resigned.⁹¹

Altogether, the assessment paints a mixed picture. Although bearing a high potential for a sustained fight against corruption, ANI suffers from the lack of political support, as well as lack of independence from a relatively sluggish justice system.

2.2.3.2. National Anticorruption Directorate (DNA)

The DNA was founded in 2002 and is attached to the Public Prosecutor's Office, as part of the High Court of Cassation and Justice.

Inspired by the Spanish, Norwegian and Belgian models, DNA's competence covers 'medium and high level' corruption.⁹² This includes, among others, the acceptance of benefits and conflict of interest, but also criminal offences linked to this phenomenon. The dividing line between 'low level' corruption and more serious offences is set by the value of the bribe (at € 10,200), or by the position held by the person in question.⁹³

The staff of the authority are recruited from among prosecutors, police officers and anti-corruption experts and are appointed by the chief public prosecutor of the DNA. In addition, police officers can be assigned to the DNA for a period of 6 years. During this period, which may be extended by mutual consent, the appointed police officers cannot receive orders or instructions from their respective police department. In principle, occupying an office within the DNA excludes any other public or private activity – with the exception of teaching activities in higher education institutions.⁹⁴ While experts usually only offer support,⁹⁵ police officers may conduct an investigations on behalf of the DNA, with prior authorization by the chief public prosecutor.⁹⁶

⁹⁰ Interim report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM(2012) 56 final from 08.02.2012, p. 2 et seq.; available at: http://ec.europa.eu/cvm/docs/com_2012_56_de.pdf (accessed on 19.07.2013).

⁹¹ Interim report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism, COM(2013) 43 final from 31.01.2013, p. 10.; available at: http://ec.europa.eu/cvm/docs/com_2013_47_de.pdf (accessed on 19.07.2013).

⁹² http://www.pna.ro/faces/about_us.xhtml (accessed on 19.07.2013).

⁹³ http://www.pna.ro/faces/cu_ce_se_ocupa.xhtml (accessed on 19.07.2013).

⁹⁴ http://www.pna.ro/faces/of_pol_judiciara.xhtml (accessed on 19.07.2013).

⁹⁵ <http://www.pna.ro/faces/specialistii.xhtml> (accessed on 19.07.2013).

⁹⁶ http://www.pna.ro/faces/of_pol_judiciara.xhtml (accessed on 19.07.2013).

The *DNA* receives information on potential corruption cases from private and public, natural and legal persons. These may file a complaint or even provide self-incriminatory information. In addition, information on corruption often arise as a result of *DNA*'s own investigative work or from the media.⁹⁷

Generally speaking, the activity of the *DNA* can be positively evaluated. Particularly the recent reports of the Commission present an increasingly better evaluation of the authority. In fact, the number of final convictions based on investigations conducted by the *DNA* doubled in 2012. High-ranking politicians from all major parties, as well as members of the government in particular, have been affected by this, which speaks in favour of the broad impartiality of the authority.⁹⁸ The courts acted, however, as a limiting and worrying factor in this regard. Many court proceedings against high-ranking individuals lasted for more than three years and were at risk of exceeding the limitation period, thus considerably jeopardizing their effectiveness.⁹⁹ Nevertheless, the activity of the *DNA* is a stable and important pillar in the fight against corruption in Romania.

2.2.3.3. Anti-Corruption General Directorate (AGD)

AGD is the anti-corruption authority within the Ministry of Internal Affairs (*MAI*), dating back to *Law. no. 161 from 2005*. Inspired by the criticism of the EU Commission report from 2002, Romania decided to establish an internal authority within the ministry, having been supported in this endeavour by the EU, as well as by Spanish and British experts. The resulting *AGD* is responsible for more than 160,000 employees of the *MAI*, including the police, the border police and the gendarmerie. Although its primary task consists of countering corruption 'within the ministry', it is also active outside the *MAI*. On an administrative level, the *AGD* is subordinated to the Minister of Internal Affairs, but from an operational point of view it is coordinated by the public prosecutor in charge. This 'dual subordination' should guarantee a special independence of the institution.¹⁰⁰ In addition, close cooperation with various public and private institutions is maintained to enhance the fight against corruption.¹⁰¹

The authority is divided into four main departments with different tasks, which are outlined in the following: investigation (*Directia Investigatii* and *Directia Anchete*), prevention (*Directia Prevenire*) and support (*Directia Suport*).

Directia Anchete is entrusted with criminal investigations of corruption other related offences committed by members of the *MAI*, as well as with the Integrity Testing. For this purpose, it investigates information and complaints from citizens regarding offences committed by employees of the *MAI* and takes specific operative measures.

The department works in close cooperation with the Public Prosecutor's Office and coordinates the anti-corruption activities of its regional branches.¹⁰²

An intensive cooperation takes place with the *Directia Investigatii* which performs the preliminary examination to uncover corruption felonies of *MAI* staff and collect the necessary information for a prosecution. Thereby different statistical data are analysed and evaluated to identify dangers at an early stage. A distinctive feature is represented by the *Special Service* which performs undercover investigations in accordance with the regulatory framework to obtain relevant evidence and information.¹⁰³

⁹⁷ http://www.pna.ro/faces/cu_ce_se_ocupa.xhtml (accessed on 19.07.2013).

⁹⁸ See footnote 91.

⁹⁹ Interim report from the Commission to the European Parliament and the Council on the progress in Romania under the cooperation and verification mechanism, COM(2011) 460 final of 20.07.2011, p. 6; available at: http://ec.europa.eu/cvm/docs/com_2011_460_de.pdf (accessed on 19.07.2013).

¹⁰⁰ See footnote 75, p. 6

¹⁰¹ <http://www.mai-dga.ro/index.php?l=en&t=34> (accessed on 19.07.2013).

¹⁰² <http://www.mai-dga.ro/index.php?l=en&t=72> (accessed on 19.07.2013).

¹⁰³ http://www.mai-dga.ro/downloads/ROF_DGA.doc (accessed on 19.07.2013).

Direcția Prevenire is entrusted with all preventive tasks. These include the training of *MAI employees* , awareness-building among the population, the development and evaluation of studies on corruption, and, finally, public relations and contact with the civil society.

Direcția Suport has mainly supporting and administrative functions. Another important task is reporting to the European Union.

A separate body, the Strategic Committee, is engaged in evaluating the *GAD's* activity and in making suggestions for improvement. Under the chairmanship of the *Secretary of State Head of Department for Safety and Public Order* , directors of central departments within the *MAI* and representatives of NGOs work together on annual reports regarding the activity and achievements of *AGD* .¹⁰⁴

Especially in comparison to other anti-corruption authorities working within ministries, the activity of the *AGD* has been positively evaluated.¹⁰⁵ Due to its specialization and well-trained staff, major results have been achieved in the fight against corruption, especially within the Romanian police. The authority worked closely with the *DNA* , referring numerous cases to the latter.¹⁰⁶

There are, however, concerns about operations conducted by *AGD employees* outside the ministry, since the authority's competence is formally restricted to officials of the *MAI* . The findings of the institution are, therefore, basically not admissible and cannot serve as evidence in court.¹⁰⁷ However, the *AGD* is as a leading example in Romania and can act as a model for other ministerial agencies.

2.2.4. ASSESSMENT

Although the *ANI* , *DNA* and *AGD* have different duties and abilities, they are all involved in the national anti-corruption strategy and cooperate with each other.

Challenges and problems of the three authorities in regards to credibility are however structurally very similar, and can thus be jointly analysed in the following.

Each of the three authorities mentioned before can make suggestions regarding its own budget. However, the final decision does not lie within their power. As in the case of similar institutions in the neighbouring countries, a standardized budget guarantee, which would be measured based on the number of cases, is missing. This can hinder dynamic growth to some extent. Moreover, authorities are forbidden to absorb profits in order to increase their budget, since seizure orders may only be made by courts.¹⁰⁸ In practice, the authorities have been significantly affected by cutbacks during the economic crisis, as in the case of other government institutions. For example, only 36% of *ANI's* requested budget was approved by the Parliament.¹⁰⁹ However, sufficient resources are a necessary condition for successful anti-corruption work, which relies on resource-intensive investigations to a large extent.¹¹⁰ It is however to be expected that, by overcoming financial constraints, sufficient funding will be made available.

¹⁰⁴ <http://www.mai-dga.ro/index.php?l=en&t=39> (accessed on 19.07.2013).

¹⁰⁵ See footnote 76, p.73.

¹⁰⁶ Ghinea/Stefan, „EU Approach to Justice Reform in Southeastern and Eastern Europe”, p. 79.

¹⁰⁷ See footnote 76, p. 122.

¹⁰⁸ *ibid.* , p. 114.

¹⁰⁹ *ibid.*

¹¹⁰ See footnote 99, p. 7

However, an alarming fact is that staff members of the three authorities are not required to undergo special training, as well as the fact that the same standards as for any other authority are applied in personnel selection. As a consequence, there is no special 'ethical screening', or a similar procedure.¹¹¹

Only ANI has a separate, binding Code of Conduct for staff members, which attaches utmost importance to integrity. The general rules of conduct, which cover main areas such as disclosure requirements, regulations on conflicts of interest and incompatibilities, also apply to the DNA and AGD. However, regulations on similar restrictions following the termination of activity as a staff member are not in place, although similar conflict situations may occur.¹¹² The fact that two whistleblowers who denounced the irregularities within the ANI were dismissed from office, even though accusations proved to be true, raises particular concerns as well.¹¹³

In general, anti-corruption authorities meet their obligations in regards to transparency by issuing annual reports.¹¹⁴

Every term, the ANI has to submit a report on its independence and activities to the National Integrity Council, which analyses the report, makes recommendations for improvement and submits the final document to the Senate.¹¹⁵ The DNA then sends the reports to the Ministry of Justice, without any external or civil society monitoring.¹¹⁶ The AGD is subordinated to the Minister of Internal Affairs and is strictly monitored by the *Strategic Committee*, which issues evaluation reports.

Despite this criticism, Romanian anti-corruption authorities have largely been positively assessed.¹¹⁷ It is however problematic that the firm approach of the investigations and the equal treatment of low-ranking and high-ranking officials are not present in the judiciary, too. While proceedings against ordinary members of an authority are usually completed within an acceptable period of time, lawsuits against key officials usually extend over a very long period of time.¹¹⁸ Thus, the public perception of authorities is negatively influenced also because of attacks from politicians and judges.¹¹⁹

In order to improve the effectiveness of the authorities, it is therefore advisable to further strengthen cooperation with the civil society, as well as to ensure distinct accountability mechanisms for building confidence.¹²⁰ At the same time, the political elite must pay attention to certain worrying evolutions, such as the weakening of the ANI due to the committees for investigation of financial issues, budget cuts and a lack of support from the judiciary. In order to ensure a successful development, continuous improvement measures must be taken and adapted to the changing environment. Therefore, the success of anti-corruption efforts still depends on a determined political will, as well as on support from the general public.

¹¹¹ See footnote 76, p. 115

¹¹² *ibid.*, p. 120.

¹¹³ *ibid.*, p. 120.

¹¹⁴ *ibid.*, p. 117 et seq.

¹¹⁵ *ibid.*, p. 118.

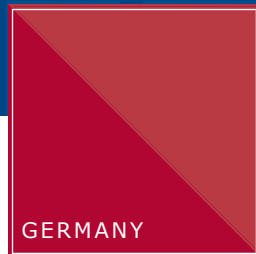
¹¹⁶ *ibid.*, p. 118 et seq.

¹¹⁷ See footnote 106, p. 76 et seq.

¹¹⁸ *ibid.*, p. 75.

¹¹⁹ *ibid.*, p. 116 with further references.

¹²⁰ *ibid.*, p. 111.



2.3. GERMANY

2.3.1. OVERVIEW

The Federal Republic of Germany, with an area of 357,121 km² and a population of about 82 million, is the fourth largest and the most populous country in the European Union.

In 2011, Germany's nominal GDP amounted to € 2,732 billion. Germany thus ranks fourth in the world.¹²¹ In the *Human Development Index*, the Federal Republic of Germany ranks fifth.¹²²

2.3.2. CORRUPTION

According to *Transparency International* (2012), Germany ranks 13th in the world (from 176 countries), with 79 points, in the *Corruption Perceptions Index*.¹²³ In the anti-corruption report of the European Union (2012), 57% of respondents viewed corruption (weighted average from a total of 1,537 interviews of EU nationals over the age of 15, residing in Germany) to be a serious problem in Germany. In comparison to the previous report from 2009, there is a decline of 18%.¹²⁴ This value is below the EU average, which is indicated in the report at 74% (2009: 78%).

The annually published corruption report of the German Federal Police Office (Federal Report 2011) shows an upward trend of corruption offences registered by the police in Germany for the period 2007-2011.¹²⁵ The strong increase in 2011 is mainly attributed to reports in North Rhine-Westphalia. More than 25,800 single corruption offences and bribery in the course of trade were registered in two large investigations alone, namely against employees of an automaker and against civilian employees of the British Army of the Rhine, as well as against their respective contractors.

These recurrent, extensive investigations, paired with their tremendous impact on the total number of cases, make it difficult to determine a reliable trend in regards to the evolution of national corruption in a multi-year comparison.¹²⁶

¹²¹ International Monetary Fund, World Economic Outlook Database (as of April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013).

¹²² United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/ROU.html> (accessed on 19.07.2013).

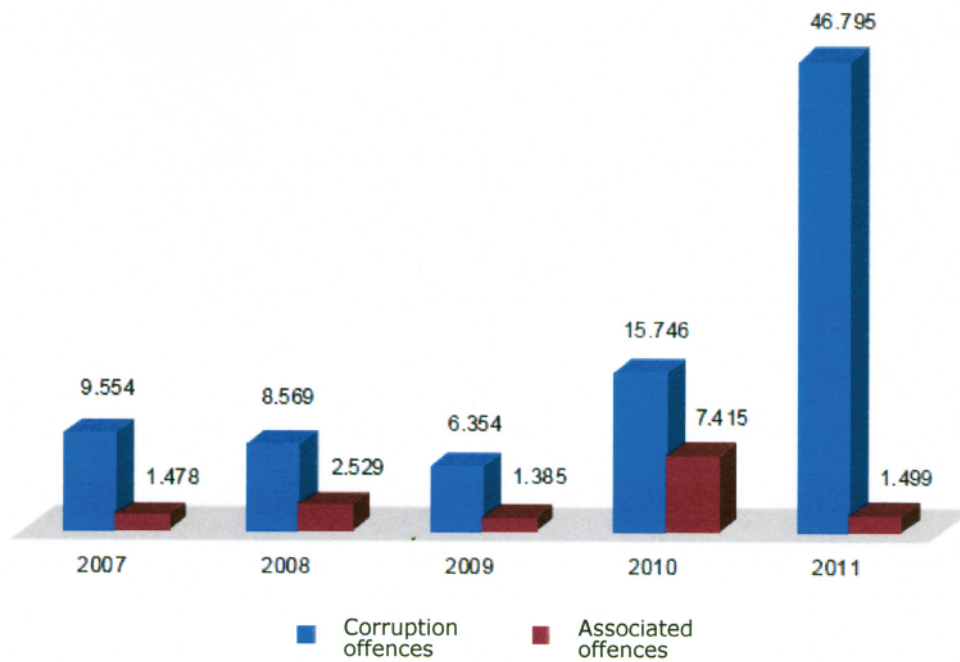
¹²³ Transparency International, Corruption Perceptions Index 2012; available at: <http://cpi.transparency.org/cpi2012/results/> (accessed on 19.07.2013).

¹²⁴ Eurobarometer, Special Eurobarometer 374 "Corruption" 2012, p. 12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013).

¹²⁵ BKA, Bundeslagebild Korruption (Federal Situation Survey on Corruption), available at: http://www.bka.de/DE/Publikationen/JahresberichteUndLagebilder/Korruption/korruption__node.html?__nnn=true (accessed on 19.07.2013), p. 8.

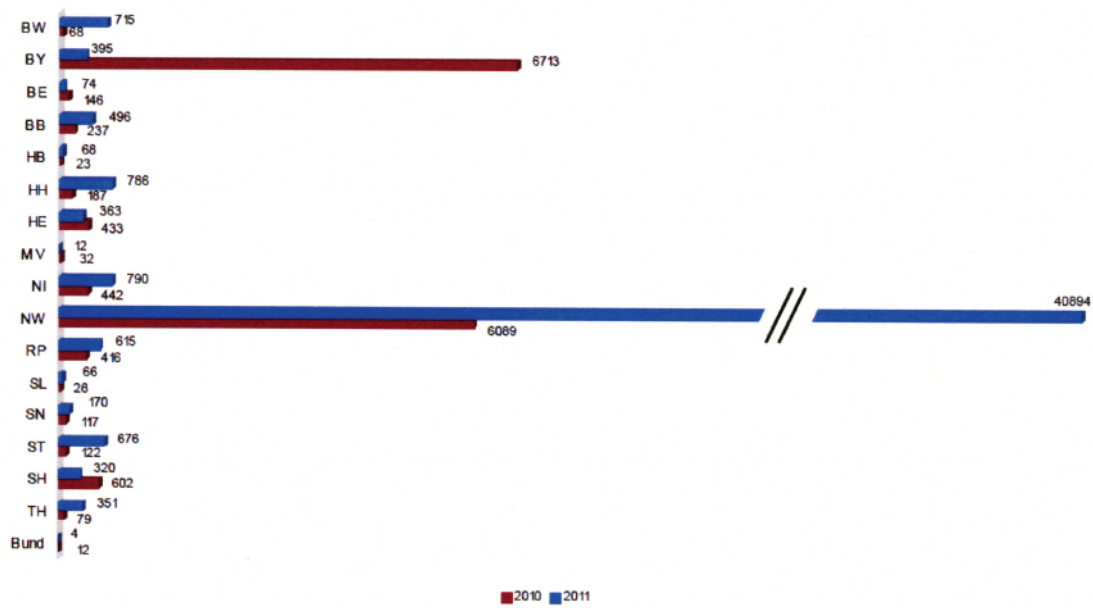
¹²⁶ *ibid.*

Development of corruption offences 2007 – 2011:



Source: Federal Situation Survey on Corruption 2011

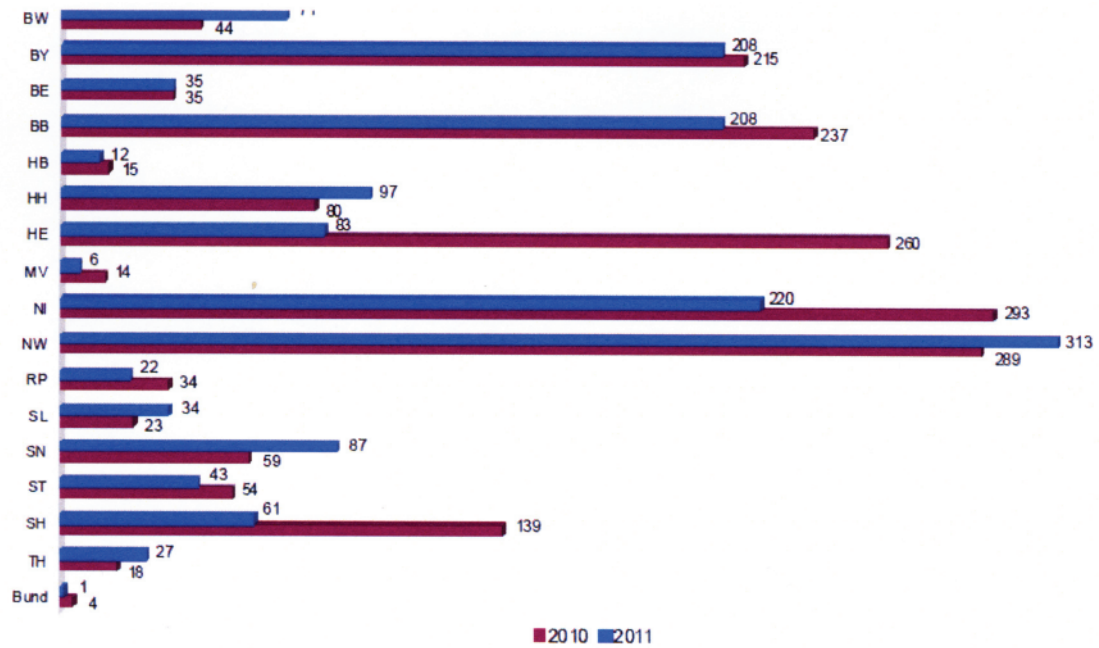
Corruption offences in the German lands 2010/2011



Source: Federal Situation Survey on Corruption 2011

Most corruption lawsuits took place between 2010 and 2011 in Bavaria, Brandenburg, Hesse, Lower Saxony and North Rhine-Westphalia.

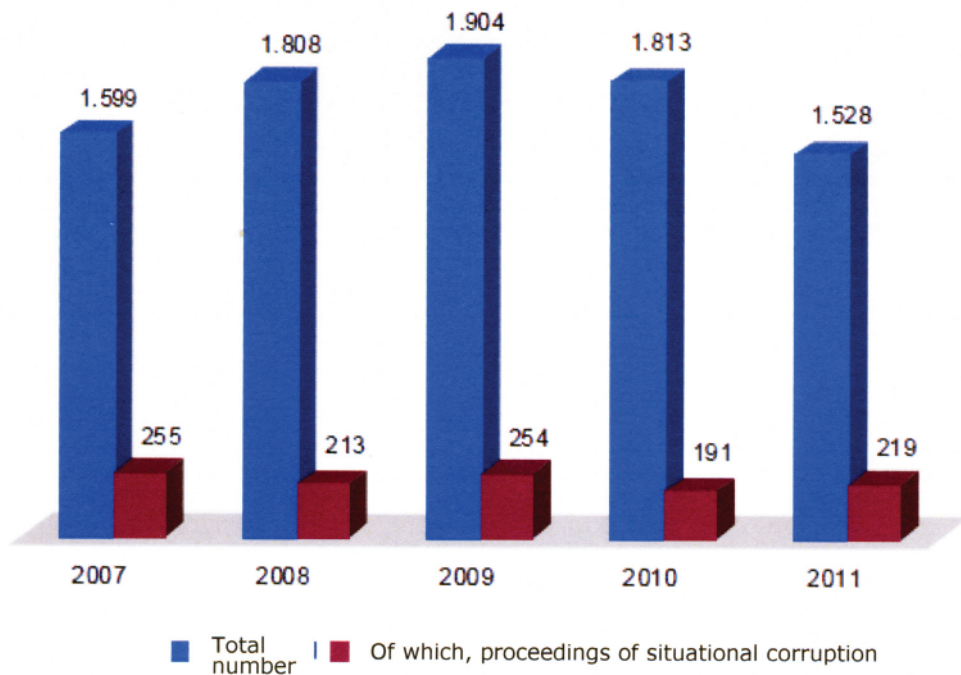
Corruption lawsuits in the German lands 2010/2011



Source: Federal Situation Survey on Corruption 2011

A slight decline in the number of corruption lawsuits can be seen over the past three years. Procedural and economic factors in particular have an influence on the individual values. For example, complex investigation files are divided into several individual cases for procedural reasons, because new circumstances between givers and receivers frequently come up in the course of the investigation, or, on the contrary, several individual investigations are merged into a single investigation due to their similar content. These separations or mergers are the main reason for the statistical fluctuations.¹²⁷

Development of corruption offences 2007 – 2011:

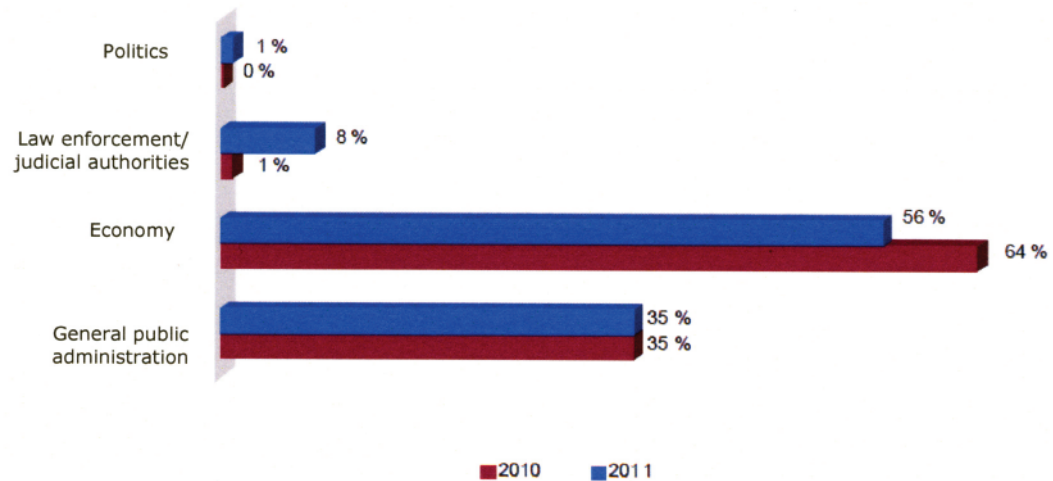


Source: Federal Situation Survey on Corruption 2011

¹²⁷ *ibid.*, p. 7.

According to the report, corruption is mainly present in the economy (2011: 56%) and in the general public administration (2011: 35%), whereas a relatively low level of corruption can be observed in politics and among law enforcement/judicial authorities.¹²⁸

Fields affected by corruption



Source: Federal Situation Survey on Corruption 2011

Source: Federal Situation Survey on Corruption 2011

2.3.3. FIGHT AGAINST CORRUPTION IN GERMANY

Germany has joined several international conventions against corruption, being thus bound under international law. It bears mentioning that Germany has signed several conventions, which it has not ratified yet. This is particularly due to missing regulations on bribery in the case of Members of Parliament, an act that has not been regulated yet. This means that Germany fails to meet the requirements of international treaties at the moment.

Germany signed the *Council of Europe Civil Law Convention on Corruption* on 04.11.1999, but has not ratified it so far (as in the case of: Andorra, Denmark, Iceland, Ireland, Italy, Luxembourg and the United Kingdom). The same applies to the *Council of Europe Criminal Law Convention on Corruption* (signed on 27.01.1999) and the *Additional Protocol to the Criminal Law Convention on Corruption of the Council of Europe* (signed on 15.05.2003). Apart from the Czech Republic, Germany is the only EU country that has not ratified these documents yet. The ratification of the *UN Convention against Transnational Organized Crime* by the Federal Republic of Germany dates back to June 14, 2006.

In Germany, a clear distinction is made between situational and structural corruption. Situational corruption refers to acts of corruption which are based on a spontaneous act of will, i.e. the actual commission of the act is not subject to any specific planning or preparation. Structural corruption comprises cases in which the corruptive action was consciously planned prior to the commission of the crime on the basis of long-term corrupt relations.

Therefore, certain specific or mental preparatory acts, which exclude a spontaneous action, can be identified.¹²⁹ In 2010, about 86% of the lawsuits in Germany referred to structural corruption.¹³⁰

¹²⁸ *ibid.*, p. 11.

¹²⁹ http://www.bka.de/DE/ThemenABisZ/Deliktsbereiche/Korruption/korruption__node.html?__nnn=true. (accessed on 19.07.2013).

¹³⁰ See footnote 125, p. 6.

Acts of corruption are defined in the following articles of the German substantive criminal law:

Art. 108b, Art. 108e of the Criminal Code (bribery of voters/members of parliament)

Art. 299 et seq. of the Criminal Code (corruption and bribery in business transactions)

Art. 331 et seq. of the Criminal Code (acceptance of a benefits/bribe and granting of a benefits/bribery)

The International Bribery Act and the EU Bribery Act are also relevant for the counterring of corruption at international level.

Contrary to international agreements, in accordance with Article 46 Paragraph 2-4 GG, there is only a limited criminal liability in the case of Members of Parliament at national level. This is justified by the fact that the Members of Parliament, unlike other officials, according to Article 38 Paragraph 1 GG, are not bound to orders or instructions and, therefore, act entirely based on their own judgement. As representatives of the people, they are stakeholders and must thus be allowed to act, within reasonable limits, in support of certain groups of people. Hence, the principle of free mandate draws a distinction between the work of Members of Parliament, on the one hand, and civil servants' performance of duties, on the other hand. While civil servants must follow instructions, having no room for subjective interpretations in the performance of their duties, the Members of Parliament are not subject to such limitations. In contrast to this, parliamentary customs that would basically be regarded as an acceptance of a benefit are not subject to criminal prosecution, since there is a consensus about the fact that the incrimination of such acts would unnecessarily restrict the leeway Members of Parliament benefit from. To date, the different approaches in what regards the culpability of civil servants and Members of Parliament in the case of corruption offences have hindered the ratification of international conventions against corruption.

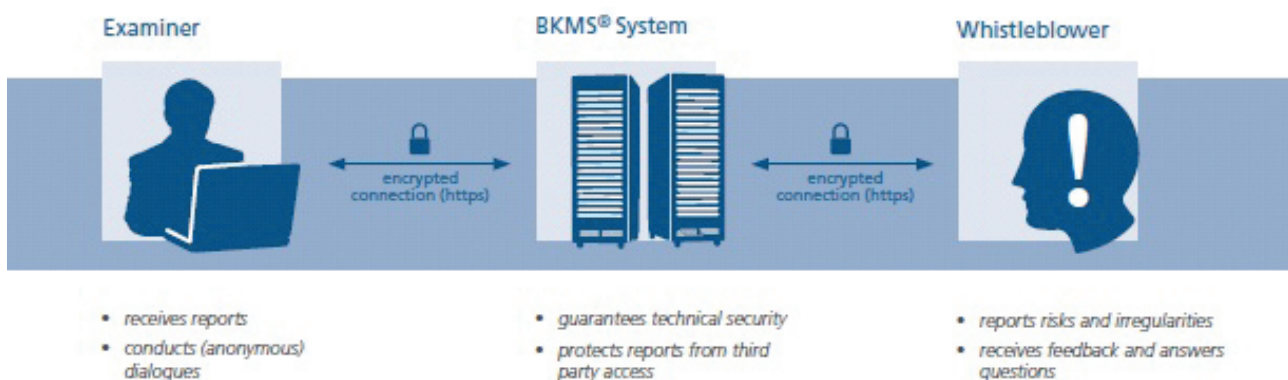
Two anti-corruption models, which have been implemented in very different fields, are presented in the following.

The Business Keeper Monitoring System (hereinafter: BKMS) is used in the operational sector and is a special tool for acquiring close information. Less focused on a specific aspect of the fight against corruption, but designed in view of a general prevention and counterring of corruption, is the anti-corruption strategy of the police, which is illustrated based on the example of the Federal Police and the Bavarian State Office of Criminal Investigation (LKA Bayern).

2.3.3.1. Business Keeper Monitoring System: BKMS System

The Business Keeper Monitoring System is a whistleblowing system based on a web portal software, which is used for the structured processing of anonymous reports. The *BKMS system*, developed by Business Keeper AG, aims at using the existing internal information against corruption based on anonymous disclosures. The system is used by police authorities in North Rhine-Westphalia and Baden-Württemberg.

Especially in high-level corruption cases, whistleblowers represent the most effective method of investigation (before internal controls or internal and external audits). Because of the lack of legal protection for whistleblowers in many countries, ensuring absolute anonymity aims at offering protection against negative personal consequences.¹³¹



Source: www.business-keeper.com

¹³¹ <http://www.business-keeper.com/grundprinzip.html> (accessed on 19.07.2013).

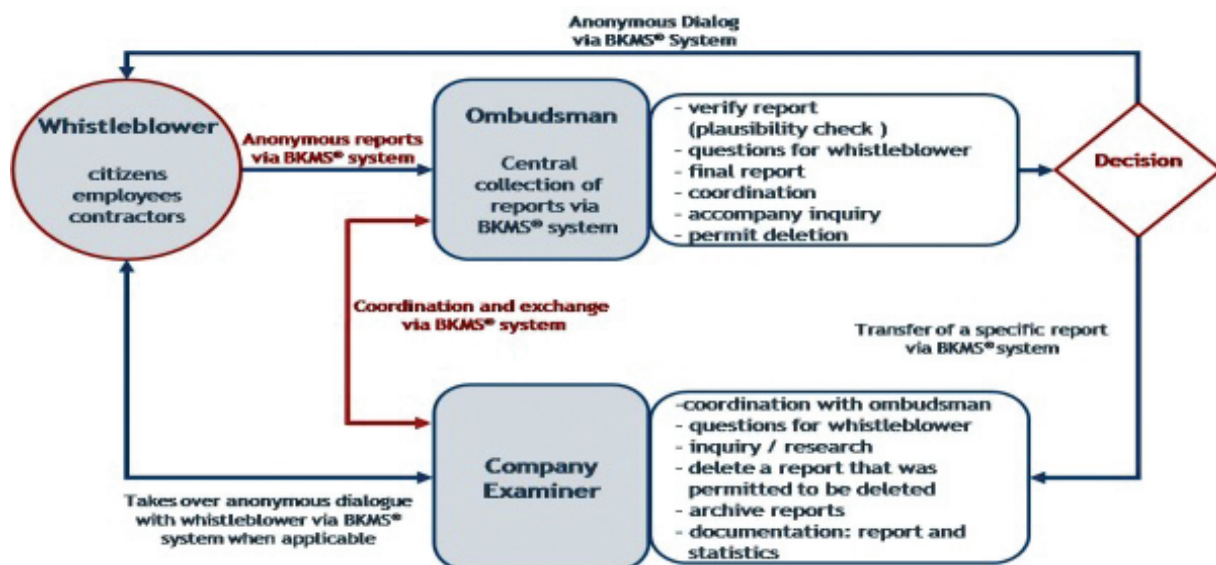
Whistleblowers generally take risks when denouncing cases of corruption; e.g. repressive measures taken by supervisors, discrediting by other co-workers or threats to their physical integrity. By using the *BKMS System*, the perceived contradiction between communication and anonymity is eliminated, since they are interconnected.¹³² The internet-based *BKMS System* can receive information from employees around the clock. Through an individual encryption, each lead is secured with respect to the content and channel and can only be decoded by the recipient of the information. Even Business Keeper AG has no access here.

The external *BKMS Server* is located in a high-security centre like those used by banks, such as the European Central Bank, to secure their data and servers.¹³³

The innovation of the certified *BKMS System* lies in the anonymous dialogue between whistleblowers and an examiner directly at the customer's site (anti-corruption officers, ombudsmen, audits and examinations within the company or administration), so that whistleblowers can be notified about the processing status or can further be questioned about the matter of facts. In order to avoid the problem of unidirectional communication, the whistleblower can leave a message in a self-created, anonymous mailbox.¹³⁴

By using the *BKMS System*, insider knowledge provided by a whistleblower can be continuously put to use to guide and accelerate the investigation. The critical potential of the whistleblower becomes an important operational resource, a sort of early warning system to expose misconduct in its early stages.¹³⁵

Users of the *BKMS System* are asked to designate categories when implementing the model, as well as to systematically arrange their workflow and the relevance of individual leads. Only then can the full potential of the *BKMS model* unfold.¹³⁶



Source: www.business-keeper.com

¹³² *ibid.*

¹³³ <http://www.business-keeper.com/docs/attachments/2dcfcc0b-b65f-4212-8c39-01729e87fc88/Grundprinzip.pdf> (accessed on 19.07.2013).

¹³⁴ *ibid.*

¹³⁵ *ibid.*

¹³⁶ From a telephone interview with Mr. Kenan Tur, Director of Business Keeper AG

The *BKMS system* was originally developed for the private sector. It has however experienced a rapid expansion to public structures as well.¹³⁷ The first customer in this area was the *State Office of Criminal Investigation* in Lower Saxony (LKA Niedersachsen). In 2005, the Federal Government also became interested in the possibility to implement the *BKMS* at national level, as part of the development cooperation with Kenya.

There are little requirements for the development and implementation of the system in developing countries. Only a competent authority, which receives information, and internet access for the population are required. Thanks to the expansion of Internet access in developing countries, the system can be relatively easily implemented in resource-poor countries. The system has already been introduced in Indonesia and Morocco.¹³⁸

For most countries, the introduction of such a system is stimulated by the tremendous pressure on whistleblowers, should their anonymity not be protected.

A further reason is the fact that authorities are usually overburdened, as the reports are not filtered. Therefore, the primary mission of the authorities used to be to pass on information to a competent agency. However, the capacities for processing information relevant to an anti-corruption authority often failed.

Based on a selection of substantive priorities, the *BKMS* can only be used for specific reports, which also lie within the competence of the authority - priorities are thereby chosen by the respective user. The setting of priorities is an essential prerequisite for the proper functioning of the *BKMS* model. A balanced priority setting can generate efficiency gains in the fight against corruption.¹³⁹

The user of the model can raise awareness among the population especially with the help of new media. Achievements in this respect can also be communicated. This results in the possibility to actively influence the civil society.

The percentage of cases reported in the *BKMS model* officially amounts to 1.5-2%.¹⁴⁰ The low rate of cases of abuse can mainly be attributed to the incentive structure of the system, which is based on precise and extensive search engine for queries. Filling out the query is relatively time consuming. Therefore, the system is generally used only by people with a genuine concern. Comparatively, the reporting rate for misconduct is significantly higher (14%) in the case of telephone hotlines etc., which is mainly attributed to the fact that it is easier to make false accusations.¹⁴¹

Due to historical circumstances (internal intelligence activities), a rather reserved attitude towards a whistleblowing model can be seen in some countries (e.g. in Eastern Europe). In many countries, reporting suspicious cases – especially anonymously – is very frowned upon and will not be accepted by the society.¹⁴²

Information must not, however, necessarily be provided anonymously. According to the Managing Director of BKM AG, Kenan Tur, statistics show that in 30% of cases, anonymous whistleblowers reveal their identity after the beginning of communication, because this creates confidence and people do not feel the need to hide their identity from the examiner any longer.¹⁴³

¹³⁷ <http://www.kriminalpolizei.de/weitere-rubriken/wirtschaftskriminalitaet-Korruption/detailansicht-wirtschaftskriminalitaet-Korruption/Artikel/das-business-keeper-monitoring-system.html> (accessed on 19.07.2013).

¹³⁸ <http://www.business-keeper.com/hinweisgeber.html>.

¹³⁹ <http://www.business-keeper.com/grundprinzip.html>.

¹⁴⁰ From a telephone interview with Mr. Kenan Tur, Director of Business Keeper AG

¹⁴¹ From a telephone interview with Mr. Kenan Tur, Director of Business Keeper AG

¹⁴² From a telephone interview with Mr. Kenan Tur, Director of Business Keeper AG

¹⁴³ From a telephone interview with Mr. Kenan Tur, Director of Business Keeper AG

A certain degree of uncertainty exists, as well as fear of too many reports that would result in undesirable disclosures. A lack of political will to actively fight against corruption could explain the reluctance to introduce such a model.

In addition, a fear of increased workload has a hindering effect on the introduction of the *BKMS system*. On the other hand, a correct priority setting and implementation of the system can generate efficiency gains that could prevent an increase in the workload.

Leads can be collected by an internal centre (within the authority, company, etc.) or an external one. Information about corruption cases is often recorded externally (especially in the area of private business, in order to assure credibility and transparency).

The *BKMS system* can therefore act as an efficient way to fight corruption if the system is properly implemented.

2.3.3.2. Fight against corruption within the Federal Police

Each of the 16 federal states has its own police force. At federal level, there are only police forces with specialized tasks, as for example the Federal Police,¹⁴⁴ the Federal Criminal Police Office (BKA)¹⁴⁵ or the Federal Customs Police.¹⁴⁶ Of all relevant legal regulations, 13.5% are concerned with the Federal Police. The strategies and selected procedures for the fight against corruption within the authority are presented in the following.

2.3.3.2.1. Workflows and the four eyes principle

In its anti-corruption measures, the German Federal Police places great emphasis on a combination of transparency and the principle of thorough controls. Processes that are especially prone to corruption, like budgeting, are run on the four eyes principle by at least two officials. Mutual control can thus be ensured. Likewise, documents must be countersigned. In addition, computer processes function in such a way that fulfilling certain criteria is necessary for continuing to the next step.

2.3.3.2.2. Activity analysis:

Each field of activity of the German Federal Police is evaluated in terms of vulnerability to corruption. The head of the authority decides if and how the degree of susceptibility to corruption can be ascertained. The classification of a certain field of activity as not vulnerable to corruption, prone to corruption or particularly vulnerable to corruption is made based on the responsibilities of individuals, as well as on the competences attached to the given field of activity. For example, all persons authorized to sign documents are classified as prone to corruption because they can authorize payments. In case of involvement in procurement procedures, the field of activity is classified as particularly vulnerable to corruption. Fields of activity that are classified as particularly vulnerable to corruption are analysed considering the existing anti-corruption measures. Should these are not sufficient, other measures such as the rotation of positions or fields of activity, for example, are implemented.

2.3.3.2.3. Acceptance of gifts

The acceptance of rewards, gifts, or other donations by civil servants is forbidden in accordance with Article 71 of the German Law on Federal Public Servants. In exceptional cases, it is possible to receive permission for the acceptance of gifts. The acceptance of money is strictly forbidden.

¹⁴⁴ Tasks: The Federal Police has emerged from the Federal Border Police and the Railway Police and is subordinate to Federal Ministry of Interior. An important task is the monitoring of land, water and air borders. It is also responsible for security in trains and railway facilities and is intended to protect civil air traffic against attacks.

¹⁴⁵ Tasks: BKA coordinates the information and intelligence of the Land police forces and the Federal Police. Article 1 BKA Law.

¹⁴⁶ Tasks: Control over the movement of goods and passengers at the borders and search for counterfeit branded products, fight against illegal employment. Founded in 1992, it is mainly active in the fight against organized smuggling of weapons, narcotics and cigarettes.

2.3.3.2.4. Raising awareness among civil servants and training

The prevention of corruption is part of the basic training of the German Federal Police. Officials in particularly corruption-prone positions, executives, contact persons and internal auditors are regularly trained through project days and specific advanced courses.

2.3.3.2.5. Annual reports

The German Federal Police submits annual status reports on the fight against corruption to the Ministry of Interior Affairs. These include a summary of suspicious cases, the implementation of awareness-raising and training measures targeted at civil servants, results of work area analyses, of the activity based on work area analyses, as well as a listing of "whistleblowing" cases.

2.3.3.3. Bavarian State Office of Criminal Investigation Field 625

In the Free State of Bavaria, each police district has a special department that is exclusively focused on the fight against corruption. Over 100 police officers specialize in corruption crimes.

The fight against corruption is carried out on the basis of analyses, "wire tapping", covert investigation, searches, data analysis, interviews, observation of financial flows, as well as cooperation with the 'Compliance department'.

Field 625 includes a subgroup on corruption and consists of a director and four investigators.

Apart from regular police officers and police officers holding a university degree, the *Bavarian State Office of Criminal Investigations* also recruits experts with a university degree (civilians).

In its fight against corruption, the *Bavarian State Office of Criminal Investigations* relies on a heterogeneous mix of regular police officers without a university degree, police officers with university degree, as well as civilians with a university degree. At the moment, depending on the police authority, 10% to 30% of employees are from outside the system. An attempt is being made to increase the number of employees who are not police officers over time, but strictly up to the limit of 50 %. It is very important to ensure, within a heterogeneous team, that neither police officers, nor externally recruited individuals form a majority. Ultimately, well-trained police officers cannot be replaced in police activities, especially with regard to the use of evidence in court, which is considered admissible only if produced by police officers.

The particularity of the *Bavarian State Office of Criminal Investigations* lies in the inclusion of civilian officials with university degrees in the fight against corruption. Civilian officials usually have a university degree in economics and finance. Civilian officials do not undergo special training at a Police Academy.

Police officers take a three-year training programme at the Police Academy. In addition, they attend training seminars (at least 2 seminars) on the topic of investigation of corruption offences. Police officers with a university degree (in economics, finance or IT) go through a one-year training at a Police Academy and usually have at least three years of professional experience.

The recruitment of police officers is carried out on a voluntary basis and is subject to strict requirements. Staff members are frequently recruited internally. A majority of the police officers will shift from the Economic Crime Unit or the Analysis Department.

Recruitment takes place based on a qualification ranking, a preliminary selection, a background check, a security screening, interviews with the candidates, (optional) interviews with former employers, as well as the verification of qualification records.

A separate selection procedure, as well as a separate unit exists in the area of covert investigation.

2.3.4. ASSESSMENT

Even if the Federal Republic of Germany has not joined several important international conventions, thus having to catch up especially in the field related to the bribery of Members of Parliament and financing of political parties, anti-corruption measures presented in this study have been positively evaluated.

The *BKMS system* in particular is an innovative tool in the fight against corruption. It protects users and extends the scope of anti-corruption measures at low costs/risks for all those involved. The potential impact is enormous, provided that priorities are correctly set. However, it has not been implemented on a large scale in the administration yet.

The various corruption prevention measures within the authorities are also welcome. The strategies used to eliminate opportunities for corrupt behaviour differ from land to land. The heterogeneous mix of police officers and civilian officials is a measure that generates low costs, but high benefits. The bundling of various skills within an authority is an approach that could also be applied in other areas, not only in the police.



2.4. BULGARIA

2.4.1. INTRODUCTION

The South-East European parliamentary Republic of Bulgaria has an area of 110,994 km² and a population of approximately 7.3 million. With a GDP around € 41 billion, it ranks 73rd in the world.¹⁴⁷ In the *Human Development Index*, Bulgaria is on an equal footing with its direct neighbouring countries, ranking 57th.¹⁴⁸

Thus, it belongs to the smaller and economically weaker Member States of the European Union, which it joined in 2007 as a result of EU's enlargement.

2.4.2. CORRUPTION

Corruption has been a major problem in Bulgaria and has been given considerable political and public attention particularly since the late 1990s, as one of the government's main targets for action.

Despite these efforts and the significant internal and international pressure on the government to tackle the problem of corruption, a slightly negative trend can be noted. This is all the more surprising since several important anti-corruption measures have been implemented since the EU accession.¹⁴⁹

However, the *Corruption Perceptions Index 2012* by *Transparency International* sheds light upon the same evolution, with Bulgaria coming in last, with 41 points, as compared to the other EU Member States (75th place in the world).¹⁵⁰

A similar picture was painted by the Eurobarometer on Corruption, which saw 95% of all respondents considering corruption as a major problem in their country.¹⁵¹ The judiciary, the customs authorities and the police are particularly seen as prone to corruption.¹⁵²

According to official information, corruption mainly occurs in the management of public resources; the allocation of EU funds, as well as the construction sector and the field of public procurement have been strongly affected by corruption.¹⁵³

¹⁴⁷ International Monetary Fund, World Economic Outlook Database (as of April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013)

¹⁴⁸ United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/BGR.html> (accessed on 19.07.2013)

¹⁴⁹ Transparency International Bulgaria, National Integrity System Assessment Bulgaria, 2011, p.6; available at: http://www.transparency.org/whatwedo/nisarticle/bulgaria_2011 (accessed on 19.07.2013)

¹⁵⁰ 75th place in the world, see Transparency International, Corruption Perceptions Index 2012; available at: <http://cpi.transparency.org/cpi2012/results/>(accessed on 19.07.2013)

¹⁵¹ Eurobarometer, Special Eurobarometer 374 "Corruption" 2012, p. 12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013)

¹⁵² *ibid.*, p. 43.

¹⁵³ Answers to the Questionnaire Bulgaria, p. 1 et seq.

Bribery is particularly widespread, as 25% of respondents stated they had been requested to pay a bribe in the past 12 months.¹⁵⁴ Responsible for the high levels of corruption are considered to be the poor social and economic conditions, as well as the lack of stricter penalties.¹⁵⁵

In addition, a study by *Transparency International* identified the reasons for the widespread corruption in the particularities of Bulgaria's anti-corruption strategy. The discrepancy between the legal framework, on one hand, and the actual practice, as well as the results, on the other hand, is striking. This arises from the fact that some institutions are in theory independent, but in fact are suspected of being under strong external influences.¹⁵⁶

The huge pressure put by the opposition and the general public on the government for positive results led to the adoption of diverse, often short-term measures to tackle corruption.¹⁵⁷ This results in the existence of multiple authorities with overlapping competencies, with insufficient resources and improper coordination, which – although originally intended to counter corruption – partly carry out completely different tasks. Hence, it is very difficult to win back the much needed trust of the population.¹⁵⁸

Due to the high level of corruption, Bulgaria's accession was conditioned by the EU (as in the case of Romania) based on a mechanism of cooperation and verification in the areas of judicial reform, fight against corruption and organized crime. Based on existing doubts in regards to compliance with the established criteria (particularly in the area of the fight against corruption), Bulgaria's proposed accession to the Schengen Area in 2011 was postponed, and a decision on the accession is only planned to be taken in 2013.¹⁵⁹

It should be pointed out, however, that Bulgaria's population still sees the role of the EU in the fight against corruption as the most positive in the world.¹⁶⁰

2.4.3. FIGHT AGAINST CORRUPTION IN BULGARIA

Since the 1990s, Bulgaria has been making sustained efforts in the fight against corruption, which has strongly been influenced and developed based on the benchmarks of the European Commission, since the EU accession in 2007. In particular, the independence and accountability of the judiciary, its transparency and efficiency, as well as a clear standardization of competencies in the fight against high-level corruption and corruption in the public sector, were listed as benchmarks, in order to strengthen the rule of law in Bulgaria.¹⁶¹

In order to meet these targets, numerous anti-corruption strategies with the participation of various state institutions were designed and implemented. Anti-corruption measures are coordinated by the *Commission for the Prevention and*

¹⁵⁴ EU average only 8%, see footnote 151., p. 61;

¹⁵⁵ *ibid.*, p. 66 et seq.

¹⁵⁶ See footnote 149, p. 6

¹⁵⁷ The short-term nature of the measures is indicated by the fact that, for example, the number of legal proceedings against corruption rose in 2009 / 2010, but clearly decreased again in 2011. See Interim report from the Commission to the European Parliament and the Council on the progress in Bulgaria under the cooperation and verification mechanism, COM(2012) 411 final of 18.07.2012, p. 18; available at: http://ec.europa.eu/cvm/docs/com_2012_411_de.pdf (accessed on 19.07.2013).

¹⁵⁸ *ibid.*, p. 7.

¹⁵⁹ <http://www.adz.ro/artikel/artikel/schengen-beitritt-soll-auf-maerz-verschoben-werden/> (accessed on 19.07.2013).

¹⁶⁰ See footnote 151, p. 9

¹⁶¹ Benchmarks set under the Cooperation and Verification Mechanism based on the Commission Decision 2006/929/EC (13.12.2006). The mechanism focused on the cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organized crime See Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism, COM(2012) 411 final, p. 2

Countering of Corruption (CPCC), which also publishes annual progress reports. Although there is little reliable data on the success of these efforts, the European Commission has positively evaluated anti-corruption measures.¹⁶²

On an international level, Bulgaria joined the most important conventions against corruption. These include the *Council of Europe Civil Law Convention on Corruption* (ratified in June 2000); the *Council of Europe Criminal Law Convention on Corruption* (ratified in November 2001); the *UN Convention against Corruption* (ratified in September 2006) and the *UN Convention against Transnational Organized Crime* (ratified in December 2001).

The main pillars of the current strategy include a well-developed *Corruption Risk Assessment System*, the development of internal control mechanisms and local anti-corruption councils with preventive and repressive functions.¹⁶³

In the following, we present a concept that has been developed to tackle problems based on the Commission's requirements. This concept relies on the results of a root-cause analysis that included the current framework of Bulgaria. The methods and techniques used have either been developed or specifically adapted. This is to prevent the adoption of anti-corruption measures that do not meet the targets, therefore being both ineffective and uneconomic.

2.4.3.1. BORKOR

2.4.3.1.1. Background

BORKOR is a complex cybernetic model of central planning and development for the methodical and efficient implementation of the governmental strategy to prevent and combat corruption and organised crime. It is conceived as a system of coordinated measures against corruption and is based on a holistic approach, including legal, organizational and procedural aspects. In order to achieve this objective, all activities are implemented based on the standards of the German Federal Government for the implementation of projects (V-Model XT).

The V-Model XT is a standard for project and quality management. Complex tasks or problems can be solved using this model based either on a project- or a matrix-based approach. The standard is extremely flexible and can be adapted to any project area. Therefore a special model was developed for BORKOR – the V-Model XT BORKOR. In Germany, the use of these standards is compulsory for all institutions when they are faced with complex tasks.

This study basically refers, as already pointed out in the title, to concrete anti-corruption measures of individual countries in the Danube Region. The *BORKOR* model cannot be described, however, as a 'measure' that refers to a certain act or regulation leading to the achievement of a given objective. As the term 'model' would suggest, *BORKOR* can be defined as a strategy concept that is generally used for the prevention and countering of corruption and organised crime at all levels.

Taking the *BORKOR* model into consideration in the present study, despite its lack of measures, is based on the objective of the study. The *BORKOR* model is, at the moment, a key element of the fight against corruption and the prevention thereof in Bulgaria, thus being of interest for the study at hand. The importance of the model for the neighbouring countries lies in its universal applicability. With slight modifications, it is possible to use the structure of the model in each country.

Due to a lack of concrete, already implemented measures on the basis of the *BORKOR* system, the study only illustrates the underlying operating principles of the system. The description focuses on key aspects, since a

¹⁶² See for both cases: Commission Staff Working Document Bulgaria: Technical Report Accompanying the document Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Co-operation and Verification mechanism, (SWD/2012/0232) final from 18.07.2012, p. 22. available at: http://ec.europa.eu/cvm/docs/swd_2012_232_en.pdf (accessed on 19.07.2013)

¹⁶³ *ibid.*, p. 22 et seq.

comprehensive analysis and presentation of the system would extend beyond the scope of the study.¹⁶⁴ The development of the model is now in its fourth year. While preparatory steps for the implementation of the first measures have already been taken, the completion of the set-up phase is scheduled only for the end of 2013.

2.4.3.1.2. Introduction

BORba KORuptia – means ‘fight against corruption’. The model has been coined by combining the initial letters of the concept.¹⁶⁵ While the term *BORKOR* refers to the model itself and its underlying structure, *ZPBKOK* is used to describe the ‘Centre for Prevention and Countering Corruption and Organised Crime’, which was entrusted with the implementation and development of *BORKOR*.¹⁶⁶ The legal basis for the establishment of the *ZPBKOK* and the implementation of the national anti-corruption strategy through *BORKOR* is a decision of the Council of Ministers from 2009.¹⁶⁷

The activity of the *ZPBKOK* is characterised by the guiding principle of refraining from operative tasks, and acting in a purely preventive manner. While most anti-corruption authorities have operative tasks, the *ZPBKOK* aims to develop comprehensive, long-term, measurable, effective and sustainable preventive measures.¹⁶⁸ Summing up the underlying idea of the model, the model aims at identifying weaknesses, based on comprehensive analyses that could act as gateways for corruption. By uncovering weaknesses, targeted solutions can be developed and implemented at national level after a testing phase. The primary focus is on weaknesses that allow corrupt individuals to undermine the activity of public authorities and to inflict high damage.

The purely preventive approach of the institution should also counter a politicisation of the corruption countering system which was developed through the *BORKOR* model to some extent. Since the *ZPBKOK* does not process reports relevant to the investigation of corruption cases, and does not rely on classified, not verified, or personal data as part of its analysis¹⁶⁹, it is possible to prevent the use of the fight against corruption as a means of putting political pressure in order to eliminate unwanted opponents based on accusations of corruption. A repressive intervention in the political process based on the arresting of corrupt politicians has been intentionally ruled out.

Each of the four phases is based on a standard set through the V-Model XT, an internationally acclaimed development standard for IT systems¹⁷⁰. The standard of the *V-Model XT* has been specifically adjusted for the *BORKOR* model¹⁷¹ and is used for the control and coordination of all work processes, by regulating and describing all project processes.

The active involvement of all involved parties, both from the public and the private sector, whose responsibilities are affected, who contribute to the implementation or who are interested in the results of the project, should ensure a broad acceptance of this approach by the government, ministries and authorities, as well as by the population.¹⁷²

¹⁶⁴ The Center for Prevention and Countering Corruption can provide more detailed information, should you be interested in the model.

¹⁶⁵ The following information on *BORKOR* and the *ZPBKOK* is primarily based on the *BORKOR* report, Technical concept for the prevention and countering of corruption and organized crime in Bulgaria, Technical concept 3 “Development” (version 1.1.), 01.04.2012, R. Schlotterer/ Ministry of Interior Affairs (hereinafter: technical concept 3). Further information resulted from a comprehensive interview with Mr. R. Schlotterer, who developed the *BORKOR* concept in collaboration with the *ZPBKOK* team, and from the filled out questionnaire.

¹⁶⁶ Answers to the Questionnaire Bulgaria, p. 2

¹⁶⁷ 27.07.2010 – Decree Nr. 158 of the Council of Ministers confirmed the establishment of the Centre as an independent structure of the Council of Ministers. See: <http://borkor.government.bg/de/page/20>.

¹⁶⁸ <http://borkor.government.bg/de/page/11>.

¹⁶⁹ First report of the *ZPBKOK* to the project “Solution Model for Public Procurement”, Executive summary V 1.52, 29.01.2013, R. Schlotterer, p. 8.

¹⁷⁰ It was developed in Germany and it is mandatory for the implementation of complex projects at government level. See: <http://www.v-modell.iabg.de> (accessed on 19.07.2013).

¹⁷¹ Hence the name “V-Model XT *BORKOR*”.

¹⁷² *ibid.*, p. 1.

In addition to national project partners, foreign institutions of certain partner countries, diplomatic missions and international organisations are also encouraged to participate.

2.4.3.1.3. Project design based on the BORKOR model

2.4.3.1.3.1. Course of action for the project design phase

The project design based on the *BORKOR* model runs in four phases that are framed by an input at the beginning and an output at the end.¹⁷³ While the first stage deals with the initiation, the second stage refers to the planning of the system. The two last steps are described as 'development' and 'completion'. A precondition for the beginning of the initiation phase is the necessary input. This is primarily done through the already mentioned national anti-corruption strategy, which forms the basis for the implementation of the *BORKOR* model. In addition, information based on media reports, leads, findings of various public and non-public institutions, case analyses, risk analyses and the evaluation of measures already implemented are also taken into consideration. The allocation of information based on a specially designed index makes it possible for the information to be classified and used in the analysis in a targeted manner.

Using software-based precise project planning and a coordinated reporting system, it is possible to coordinate all activities in a logical manner and to optimally synchronize them. Hundreds of activities running at the same time can be monitored, controlled, and linked to one another.

Deviations from the planned work flow inevitably trigger warning messages of the systems and allow for targeted adjustments of the project plan. Risks can thus be detected at an early stage and can be taken into account in the following procedure.

None of the steps of the project analysis affect the responsibilities and competences of the respective ministries. This stems from the fact that the staff of *ZPBKOK* is not authorized to enforce governmental measures. A further task of the Centre, in addition to the identification of weaknesses and developing concrete solutions, refers to the mobilization and coordination of the relevant parties.

2.4.3.1.3.2. Vulnerability analysis

The detection of weaknesses is a key aspect of the *BORKOR* model.¹⁷⁴ Depending on the objective, different methods of analysis are used.¹⁷⁵ There are three types of weaknesses, which are briefly presented in the following.

In the analysis of task-related weaknesses, all fields of activity that are relevant for the respective vulnerability are analysed. This includes administrative procedures, as well as legal and organisational conditions. The comparison of countries with significantly different frameworks shows that task-related weaknesses more frequently occur in countries affected by corruption, despite the comparability of the action and decision-making processes. Many often unnecessary inspection, certification and permit requirements and conditions, either intentional, or unintentional can be also identified. The higher the administrative costs for citizens, the more opportunities for corrupt behaviour present themselves in the case of civil servants. This idea is transferable; the complexity and lack of transparency of a system makes it possible for individuals to abuse their power, since control processes are difficult to implement, rarely covering all actions.

System-related weaknesses can be found in the system that was designed for specific tasks. In contrast to task-related weaknesses, system-related weaknesses are more difficult to detect. The analysis of task-related weaknesses covers the fields of activity with existing opportunities for corrupt behaviour, as well as benefits from offenders' point

¹⁷³ For a detailed description of the project, see Technical concept 3, p. 4.

¹⁷⁴ A detailed description of the vulnerability analysis can be found in the Technical concept 3 p. 25 et seq.

¹⁷⁵ The legal analysis, organizational analysis, process analysis, vulnerability analysis, 'B' risk analysis, and the case analysis are used to identify weaknesses. For a detailed description of the individual analyses see Technical concept 3, p. 28 et seq.

of view, due to the very nature of these activities. The identification of system-related weaknesses requires, however, not only profound specialized knowledge of legal, organisational and administrative conditions and processes, but also knowledge about the instruments used to prevent and fight of corruption.¹⁷⁶

The third category of potential weaknesses arises, in view of the technical and organisational procedures, from the personnel selection and the filling of positions. The aim of all effective measures in the field of staff-related weaknesses is to fill positions prone to corruption with persons of integrity as much as possible.

2.4.3.1.3.3. Intervention system as a result of the project design process

The result of the project design process is a complete intervention system that describes a preferably comprehensive system to prevent, detect and counter corruption in vulnerable areas. The intervention system can have the following outputs: preventive measures, draft bills and instructions, technical solutions, investigation techniques, concept strategies and standards for the analysis/assessment and revision of administrative processes.¹⁷⁷ A complete system of intervention is not made up of a single solution considered to be proper, but of all possible measures or action management systems. Individual measures within the closed system are synchronized to one another, complementing and strengthening each other at the same time.¹⁷⁸ The preference for a comprehensive solution differentiates the *BORKOR* model from most current anti-corruption approaches, which are often limited to a special sector or a specific measure.

The measures developed in each case are documented, visualized and marked in a special manner. This makes it possible for already developed measures to become part of a collection of solution modules that can be used for other similarly supported tasks. Thus, a platform with professionally compiled, coordinated and applicable solutions is developed – regardless of the existing areas of responsibility and departments. The updating of the obtained results based on findings and solutions that have already been developed ensures a dynamic system that can make it possible to develop in time adequate measures at shorter intervals, to complete the intervention system and to update it, if necessary.

Ultimately, the Council of Ministers (the executive) has the power to decide in what respect solutions are implemented. Since the success of the measures largely depends on the implementation, monitoring, and quality of the evaluation measures, *ZPBKOK* is also responsible for developing an implementation plan and control procedures, provided that the implementation of the intervention model has been given the green light. The persons responsible for implementing the system at local level are also involved in the development of measures and trained by the *ZPBKOK*, according to their tasks. This ensures a better identification with the system that will be used later on.

2.4.3.1.4. Project personnel

The project personnel of the *ZPBKOK* primarily consist of people who are already employed in public structures; in many cases in the area of public administration.¹⁷⁹ However, it is important to involve persons with expertise in all sectors. Lawyers, as well as investigators, administrative specialists, experts from different ministries and selected special areas are recruited. While some of the staff members are directly recruited by the *ZPBKOK*, it is common for analysts, in particular, to be provided by an authority for a limited period. The length of the period is regulated by law.

Each project member who is employed in the area of analysis goes through a special and detailed training, which is a prerequisite for the competent application of the standards and the operation of the software¹⁸⁰. Staff members

¹⁷⁶ See Technical concept 3, pp. 21, 24

¹⁷⁷ See Technical concept 3, chart, p. 4.

¹⁷⁸ First report of the *ZPBKOK* to the project "Solution Model for Public Procurement", Executive summary V 1.52, R. Schlotterer, 29.01.2013, pp. 1,6.

¹⁷⁹ The presented information regarding the project staff was mainly collected through talks with the staff of the *ZPBKOK* on site.

¹⁸⁰ The basic training is set over a period of 16 weeks.

learn to consistently and systematically use analysis methods especially designed for the prevention and countering of corruption, as well as to link these to development processes. The important thing is to raise awareness, which can be particularly noted during the training. While employees of public authorities usually tend to orient themselves to the existing legal and statutory framework, a process of reorientation takes place. The staff members of the project learn to scrutinize laws in a critical manner if these set the ground for potential acts of corruption. The activity of the ZPBKOK is supported by foreign experts.

2.4.3.2. Development of a solution model for public procurement

Despite the fact that the necessary structures for the operation of the *BORKOR* model have not been completed yet, a solution model for public procurement has already been developed in 2012.¹⁸¹ The management of the ZPBKOK was entrusted with the development of the model on February 21, 2012 by the Consultative Council¹⁸². Especially due to the large financial volume and based on the statements of the Court of Auditors that up to 69% of the public contracts awarded would entail errors or vulnerabilities, this seems to be a suitable field for a 'test run' of the *BORKOR system*. In addition to an estimated risk of corruption of 20%, significantly high administrative costs were identified.¹⁸³

The solution model is based on the proposal of establishing an e-procurement process, which should ensure a higher efficiency and prevent corruption. The relevant EU benchmarks should not only be considered, but rather exceeded in many areas.

The solution model consists of 4 columns.¹⁸⁴

First, there are six platforms that are connected to each other, recording all phases of the process both before and after the award of contracts. The first of these is 'eRegistry', which collects all data and documents in the procurement phase prior to the award of a contract. Especially for open procurement procedures in the field of services and professional consulting, an 'eAuctioning' platform has been developed to conduct electronic auctions and to provide all necessary information. This is particularly suitable if the desired service is subject to a certain standard and can accurately be described, but strong price fluctuations occur. Alternatively, it can be used if an authority has something to offer or to auction. Products that are eligible for public procurement are offered or acquired in an 'eCatalogue', in accordance with the basic principles of European public procurement law. 'eTendering' is designed as a procurement platform for procurement operations that cannot be carried out on the other platforms due to their complexity or the communication needs. Of particular importance, however, are the last two platforms: 'eMonitoring' and 'eAuditing'. The former provides online access to all contracts, annexes and negotiation minutes that were completed by the public institution and should serve as a means of control, monitoring and analysis.

Access to the 'eAuditing' platform is only granted to audit authorities or appellate bodies. The platform includes the data of all other platforms for analytical purposes. Therefore, this platform in particular is of great importance for the ZPBKOK, being an integral part of the continuous development of the *BORKOR system*.

In order to ensure an effective detection of corruption, the analysis does not solely include procurement data, but rather additional documents and information that are factually and economically related to procurement, however not covered by public procurement law. Another pillar is the active participation of control and supervisory bodies in audit and monitoring processes.

¹⁸¹ The description of the solution model was taken from the First report of the ZPBKOK to the project "Solution Model for Public Procurement". Executive summary V 1.52, R.Schlotterer, 29.01.2013.

¹⁸² The Consultative Council systematically runs the activity of the centre. The head of the Consultative Council is the Deputy Prime Minister and the Minister of Interior, Tsvetan Tsvetanov. See. <http://borkor.government.bg/de/page/24> (accessed on 19.07.2013).

¹⁸³ *ibid.*, p. 6.

¹⁸⁴ *ibid.*, p. 10 et seq.

The concept is complemented by measures that existed prior to the actual technical solution. What is important in this respect is the preselection of companies by independent private and technically competent bodies prior to the procurement procedure. This refers to the assessment of branch-specific qualifications based on adequate, standardized criteria, independent of the order. The result is a lower workload for the administration, since companies must only be ranked once and then are permanently listed in an 'eRegister'. This is especially beneficial for central contracting authorities, since the procedure can thus be significantly accelerated and institutions are less prone to corruption.

2.4.4. ASSESSMENT

It is difficult to assess the success of the model, since fully developed results are still missing. The platforms for public procurement are in place, but they are just proposed solutions. Although preparatory measures, such as the establishment of preselection bodies, have been implemented so far, measurable results are still missing.

As already pointed out in the presentation of the model, the idea is to create a system, whose operational sequences are synchronized to one another, are subject to strict controls and can always be measured based on established standards. The fact that the development of the *BORKOR* system has been planned for a period of four years, speaks of the complexity of the model. Despite this complexity, the guiding principles of a preventive approach are very convincing. A repressive approach could easily face a broad political opposition, since individuals would fear prosecution, while the credibility of the measures would only be ensured if all acts of corruption at the highest political level were identified and punished. This is very difficult to achieve in a country where the state structures, in particular the judiciary, are struggling with corruption. It is therefore easier to gain the necessary political support, which is essential for the implementation of the measures, by adopting a preventive approach.

By developing an anti-corruption formula, the staff of the *ZPBKOK* can analyse the connections between factors that affect the conduct of offenders. The development of the intervention systems primarily aims at altering the factors that have a direct impact on the offender (*CTi - Corruption Term Index*). Their interaction is expressed in the following formula:¹⁸⁵

$$CTi = \frac{O * B}{R1 * R2} * I$$

O = opportunity¹⁸⁶

B = benefit

I = integrity

R1 = risk of detection

R2 = risk of consequences

What is special about the analysis of the factors directly related to the offender is the fact that they do not differ on a global level, which ensures a broad applicability of the system.¹⁸⁷ How this can actually be achieved remains to be seen, however.

¹⁸⁵ First report of the ZPBKOK to the project "Solution Model for Public Procurement", Executive summary V 1.52, R. Schlotterer, 29.01.2013, p. 3.

¹⁸⁶ No further explanations can be given at this moment in regards to the measurement of individual factors and the interdependence thereof. However, ZBKOK approached these problems in the development of the formula and created a newsletter on them, which can be requested by any interested person. See BORKOR Technical concept 3, Annex 2.2. An overview can also be gained based on the following information: BORKOR Technical concept for the prevention and countering of corruption and organized crime in Bulgaria, Technical concept 1 "Information" (07.11.2011), R. Schlotterer, p. 40 et seq.

¹⁸⁷ Further information regarding the anti-corruption formula can be found here: First report of the ZPBKOK to the project "Solution Model for Public Procurement", Executive summary V 1.52, R. Schlotterer, 29.01.2013, p. 3 et seq.

A quite promising aspect is the development of intervention models that include multiple measures. The in-depth analysis of weaknesses makes it possible for directly linked structures and institutions to be worked out, but also for indirect factors that more often than not remain unnoticed to be taken into account. The development of a comprehensive approach is certainly more promising than targeted measures that are only limited to the analysis of weaknesses within the affected institution.

Due to the complexity of the process that connects the various steps to one another based on a combination of over 50 analytical methods with 20 techniques, an abuse of the system can almost be excluded. None of the analysts or other staff members of the *ZPBKOK* can influence the work procedures or the end result, since no one knows in advance what measures the system will suggest.

The final decision with regard to the implementation of the proposed measures is not made by the *ZPBKOK*. By assigning the *ZPBKOK* to develop intervention models, the government has indeed expressed its confidence in the institution. This does not mean, however, that all measures proposed will be authorized. This is also an aspect that remains to be evaluated in the near future.

For the project to succeed, it is not sufficient to gain the trust of politicians. The approval of the population is also important to ensure a smooth operation. It is therefore important, to maintain cooperation with non-governmental partners even when criticism is expressed.

Finally, the dynamic development of the model, which allows for a permanent extension of the system, should be pointed out. The more solutions are generated, the broader the available database. Cases, insights and experiences on all levels, even on an international level, can be entered into the system. Is it suitable to reject static structures, since constant changes of the relevant circumstances, factors and aspects can thus be taken into account. Particularly in the area of the fight against corruption, it is important to have on-going vulnerability analyses.

The Commission's report to the European Parliament and the Council on progress in Bulgaria under the cooperation and verification mechanism, which was mentioned at the beginning, does not go any further into the concept due to *BORKOR* not being operational yet at the time when the report was drafted. At the beginning of the evaluation of Bulgaria's situation, a certain lack of independent institutions, authorized and responsible for submitting relevant proposals in order to counter corruption, as well as for promoting adequate measures, was noted however.¹⁸⁸ It is questionable whether the *ZPBKOK* meets these requirements. The *ZPBKOK* is based in the Ministry of Interior and can only operate with the authorization and support of the government.¹⁸⁹ The competence and authority of the *ZPBKOK* fill however exactly the structural gap that was addressed in the report. The vulnerability assessment makes it possible for concrete proposals to be submitted and for action plans to be developed.

The coordination of measures of different public bodies in particular is facilitated by the *ZPBKOK*. The cooperation of various institutions and the exchange of relevant information is an essential step towards a comprehensive anti-corruption strategy. At least one central deficiency that was mentioned by the Commission can therefore be eliminated due to the structure of the *ZPBKOK* and the activity based on the *BORKOR* concept.

¹⁸⁸ Interim report from the Commission to the European Parliament and the Council on the progress in Bulgaria under the cooperation and verification mechanism, COM(2012) 411 final of 18.07.2012, available at: http://ec.europa.eu/cvm/docs/com_2012_411_de.pdf (accessed on 19.07.2013), p. 16.

¹⁸⁹ The monitoring of activities within the project is ensured by the Consultative Council, which consists of representatives of the Parliament, the government, the judiciary, state agencies and the Director of the Centre, and which makes sure that the political will is followed exactly.



2.5. THE CZECH REPUBLIC

2.5.1. OVERVIEW

This parliamentary republic of about 10.5 million inhabitants and an area of approximately 78,864 km² lies in Central Europe.¹⁹⁰ Its GDP amounts to more than € 164 billion, whereby the country ranks 46th in the world.¹⁹¹

After the division of Czechoslovakia in 1993, the Czech Republic acceded to NATO as early as in 1999 and was included in the European Union in 2004 as part of the latter's enlargement towards the east. More than 77% of the votes cast in the referendum were supportive of this. With a value of 0.865 (27th place) in the *Human Development Index*, this country is placed in the highest category, that of "very high human development".¹⁹²

2.5.2. CORRUPTION

Corruption in the Czech Republic is a very widespread and deeply rooted problem, according to the population. This is especially noticeable in the poll numbers of the corruption barometer. Compared to the average of 67% in the European Union, more than 90% of the Czechs think that corruption is part of the business culture of the country¹⁹³ and that it is often connected with organised crime (82%).¹⁹⁴ Moreover, 70% of the respondents stated that corruption had actually increased and in fact 38% said it had recently increased significantly.¹⁹⁵

At the same time, 9 out of 10 respondents do not believe that the anti-corruption efforts of their government are efficient¹⁹⁶ and consider the penalties for corrupt behaviour as too lenient.¹⁹⁷ Although the Czech Republic scored highest on these questions in Europe, at the same time it was paradoxically the only country in which the majority of respondents (51%) did not believe that corruption had always existed and that it was unavoidable.¹⁹⁸ This shows an increased support for the fight against corruption at least among the population.

The *Corruption Perceptions Index 2012* from *Transparency International* places the Czech Republic on the 54th position, with 49 points, which is average compared to the eastern neighbour countries, but considerably lower compared to the peer group of the EU states.¹⁹⁹

¹⁹⁰ http://www.czso.cz/csu/redakce.nsf/i/obyvatelstvo_lide (accessed on 19.07.2013).

¹⁹¹ International Monetary Fund, World Economic Outlook Database (Ranking: April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013).

¹⁹² United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/ROU.html> (accessed on 19.07.2013).

¹⁹³ Euro barometer, Special Euro barometer 374 "Corruption" 2012, p.12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013).

¹⁹⁴ *ibid.*, p. 8.

¹⁹⁵ *ibid.*, p. 39.

¹⁹⁶ *ibid.*, p. 80.

¹⁹⁷ *ibid.*, p. 98.

¹⁹⁸ *ibid.*, p.76.

¹⁹⁹ Transparency International, Corruption Perceptions Index 2012; available at: <http://cpi.transparency.org/cpi2012/results/> (accessed on 19.07.2013).

The most affected by corruption are the political parties, the ministries and public administration, especially in the field of public procurement and use of EU funds. At the same time, companies partially owned by the state or by the local administrations are severely threatened. Due to the weak control mechanisms, evasive transactions and concealment often occur.²⁰⁰

The reasons for the susceptibility to corruption in these areas are to be found more often than not in an imbalance between independence and accountability. As in other neighbouring countries, some positions in the Czech Republic enjoy great independence, but individuals in these positions can only be held accountable with great difficulty.²⁰¹ On the other hand, too strict control measures or too little independence from control institutions like the courts or the public prosecutor's office can favour the occurrence of corruption as well.²⁰² This is especially the case when their practical and legal possibilities of exerting influence are limited. An example thereof is the institution of the Public Defender of Rights or ombudsman. Admittedly, the ombudsman does have a strong factual and personal authority and is widely independent in his/her activity. However, the implementation of his/her non-legally-binding proposals depends on the cooperation of other authorities and, therefore, is often little effective.²⁰³

In general, a need for urgent measures regarding on-going corruption mechanisms is visible in the Czech Republic, particularly measures oriented towards the structural weaknesses favouring corruption.

2.5.3. FIGHT AGAINST CORRUPTION IN THE CZECH REPUBLIC

At international level, the Czech Republic has joined the important anti-corruption conventions. These include the *Council of Europe Civil Law Convention on Corruption* (ratified in September 2003); the *Council of Europe Criminal Law Convention on Corruption* (ratified in September 2000); the *UN Convention against Corruption* (signed April 2005, pending for ratification) and the *UN Convention against Transnational Organized Crime* (signed December 2002, pending for ratification).

Because of the negative consequences of corruption on the economy and on the public reputation of the executive power, the government set as its highest priority a national Anti-Corruption Strategy 2011-2012, which was replaced and amended in 2013.²⁰⁴ The strategy focuses mainly on prevention, as it is centred on far reaching and measurable change rather than short-term fight against the problem.²⁰⁵ The objectives defined by the government are designed as long-term goals, e.g. aspects concerning solutions, promoting transparency and also a closer involvement of the civil society. As a holistic concept, the strategy includes many areas of public procurement, the law enforcement authorities up to the development and establishment of an anti-corruption agency.²⁰⁶

Since the strategy contains many sections, we shall continue by focusing on individual measures, which either have already proven successful or are very promising.

²⁰⁰ Answers to the Questionnaire Czech Republic, p.1 et seq.

²⁰¹ This is especially the case of the president and the ministers.

²⁰² Transparency International Czech Republic, National Integrity System Assessment Czech Republic, 2011, pp.4ff; available at: http://www.transparency.org/whatwedo/nisarticle/czech_republic_2011(accessed on 19.07.2013).

²⁰³ *ibid.*, p. 6 et seq.

²⁰⁴ Office of the Government of the Czech Republic – The Government Anti-Corruption Committee: From Corruption to Integrity – The Government Anti-Corruption Strategy for the Years 2013 and 2014, available at: http://www.vlada.cz/assets/ppov/boj-s-korupci/Strategy-2013-a-2014_FINAL_1.pdf (accessed on 19.07.2013).

²⁰⁵ The Rule of Law in the Czech Republic, p. 8 et seq., available at: https://www.mvr.bg/NR/rdonlyres/ECA061F4-85B0-44D5-99BB-E0CE413F1A11/0/11_Rule_of_Law_Presentation_Chech_Republic.pps (accessed on 19.07.2013).

²⁰⁶ See footnote 204, p. 3 et seq.

2.5.3.1. Corruption Impact Assessment (CIA)

The *Corruption Impact Assessment (CIA)* in the Czech Republic dates back to the first Anti-Corruption Strategy 2011-2012 and especially to the *Government Resolution No. 837*.²⁰⁷ It builds on the already implemented *Regulatory Impact Assessment*, but it mainly addresses the corruption-related effects of laws.

The concept is inspired by the homonymous South-Korean project, but it significantly differs from the latter in its implementation process.²⁰⁸ Even if the full implementation of the *CIA* in the Czech Republic is scheduled to be completed in 2014, the basic operating procedures and the principles of interests already exist.²⁰⁹

The idea behind the concept consists in eliminating corruption factors from laws and regulations through an ex-ante analytical assessment. The targeted analysis of the legislative procedure is therefore particularly important, since it is subject to many influences due to its broad ramifications, hence corruption can often remain undiscovered. Risk analyses – which usually originate in economy – should be applied for corruption in a systematic context. The procedure should lead to a greater success than sheer repression, since the circumstances for corruption can be eradicated and efficient countermeasures can be formulated at the same time.²¹⁰

Such *Impact Assessments* have mainly been acknowledged in the area of environmental law and in the social and economic field. Especially within the EU, Member States are obliged, in certain situations, to analyze the effects of the planned measures on the environment.²¹¹

The *CIA* is regarded as an “analytical framework for the identification and eradication of certain factors in laws and regulations which favor the occurrence of corruption”.²¹² It can therefore act as an ex ante prevention mechanism in the legislative process, as well as an ex post analysis method for existing regulations.²¹³

The Czech concept is based on the five principles of proportionality, accountability, consistency, transparency and participation.

The principle of proportionality refers to the fact that the depth of the analysis is measured based on the meaning of the law and the expected impact on the risk of corruption.²¹⁴

Based on the principle of responsibility, ministries are in charge of conducting the *CIA*, having to adjust the draft bill to the final report of the *CIA* accordingly. The *Government Anti-Corruption Committee* runs a quality control, thus ensuring a continuous monitoring of the draft bill and the legislative process. Members of Parliament are, however, still at liberty to deviate from the revised drafts at their discretion.²¹⁵

²⁰⁷ See footnote 205, p. 10.

²⁰⁸ *ibid.*, p. 12.

²⁰⁹ *ibid.*, p. 14.

²¹⁰ Chvalkovska; Jansky; Mejstrik, *World Academy of Science, Engineering and Technology*, 63, 2012, p. 26.

²¹¹ See Wood, *Environmental Impact Assessment*, p. 399.

²¹² See Anti-Corruption & Civil Rights Commission Republic of Korea, “Corruption Impact Assessment”, Working group document UNODC, 22 – 24 Aug. 2011.

²¹³ See footnote 211, p. 27.

²¹⁴ See footnote 205/205

²¹⁵ *ibid.*, p. 17.

A further objective refers to maximum consistency. For this, both positive and negative examples are published, in order to standardize the procedure as much as possible. Furthermore, the same analytical methods and procedures should apply as far as possible.²¹⁶

Ensuring utmost transparency is a further underlying principle. All relevant data should be published and made available for further use. The activities during the *CIA* are to be publicly recorded. In addition, the results of the examinations should be published in a non-technical and understandable manner for non-experts as well.²¹⁷

The concept is rounded off by the inclusion of the public. The principle of participation should guarantee that, in addition to the publication of the investigation result, the draft proposals on the risk of corruption allow for proposals from the public during the *CIA* process as well.²¹⁸

The body in charge with conducting the *CIA* is the *Government Anti-Corruption Committee*, as stipulated in Article 2 Paragraph 1e of its Statute.²¹⁹ The Committee is composed, in accordance with Article 3, of the Deputy Prime Minister, as chairperson, as well as the Minister of Foreign Affairs, Minister of Interior, Justice Minister, Finance Minister, Defense Minister, Transportation Minister and the Local Development Minister. Here lies a potential weakness of the institution:

It is rather questionable whether such a committee, which is to examine the draft bills proposed by the government, should exclusively include high-ranking members of the cabinet.²²⁰ The optional inclusion of an expert group with an advisory role cannot clear up doubts in regards to the impending conflict of interest. The comparison with South Korea in particular, a pioneer in the field of *CIA*, reinforces these doubts. There, the monitoring of the *CIA* rests with the *Korea Independent Commission against Corruption*, which is led by nine independent commissioners.²²¹ Potential conflicts of interest are therefore ruled out.

The material scope of the *CIA* is very broad. To begin with, the process is a mandatory part of any legislative process. Exceptions exist only for constitutional amendments or additions, in emergency situations, for drafts of the state budget, as well as the mere adjustment of parameters in the case of already existing laws (such as tax rates).²²² If an evaluation is necessary, the process can be applied also on existing laws. Should a suspicion of corruption exist, strategies and guidelines of non-legislative nature can also be examined, as far as such documents significantly influence the activity of a certain body.²²³

A two-stage procedure applies in this case, however, in order to ensure an efficient legislation and to avoid unnecessary bureaucratic expenditure. Only a 'small' *CIA* is carried out at first. An in-depth examination involving higher efforts is conducted only if suspicions are thus reinforced.²²⁴

The 'small-scale solution' involves an overview of the institutions affected by the draft bill, as well as of the already well-known cases of corruption or other unlawful acts in the field. The assessment then determines the corruption risks

²¹⁶ *ibid.*, p. 18.

²¹⁷ *ibid.*, p. 19.

²¹⁸ *ibid.*, p. 20.

²¹⁹ See Statute of the Government Anti-Corruption Committee, available at: <http://www.vlada.cz/assets/ppov/boj-s-korupci/STATUTE-OF-THE-GOVERNMENT-ANTI-CORRUPTION-COMMITTEE.pdf> (accessed on 19.07.2013)

²²⁰ This applies particularly in view of the fact that most draft bills are introduced by the government.

²²¹ See <http://www.icac.org.hk/news/issue18eng/button2.htm>; (accessed on 19.07.2013) <http://www.acrc.go.kr/eng/board.do?command=searchDetail&method=searchList&menuId=020302>. (accessed on 19.07.2013)

²²² See footnote 205205

²²³ *ibid.*, p. 21.

²²⁴ *ibid.*, p. 22.

associated with the new legal solution.²²⁵ If the preliminary investigations reveal an increased risk of corruption, or that core values such as transparency and freedom of information are possibly impaired, a comprehensive analysis is carried out.

The need for a certain legislative amendment, as well as the effects and connections to other pieces of legislation and underlying political decisions must be justified in detail, in the course of further examinations.²²⁶ A compatibility check of the existing legal framework with the approved objectives of the hypothetical situation is also undertaken, in order to determine the best possible solution in terms of corruption.²²⁷

This process should be run openly and transparently. Experts, the “nonprofessional” general public, but especially ‘watchdog’ organizations such as *Transparency International* can be included in the process. This participatory approach aims at ensuring a broader pool of knowledge, as well as at opening new perspectives towards existing interests and threats, if necessary.²²⁸

Proposals on reducing the risk of corruption are then derived from the evaluations. In most cases, these aim at improving control and enforcement mechanisms, increasing the transparency of the legislative process, as well as at implementing the ‘open data’ principle in the new legislation.²²⁹ Should the *Government Anti-Corruption Committee* find these additions to be inadequate or impossible, the whole draft legislation is returned to the government for revision.

Therefore, the *CIA* is not an actual anti-corruption mechanism; but it does serve as a means of countering this phenomenon through prevention. The analyses favor a consistent and transparent legislation, which can have a hindering effect on corruption. At the same time, an instrument for assessing the risk of corruption based on knowledge and suggestions from the public and private sector is set up.²³⁰ However, the structure of the Anti-Corruption Committee, where only cabinet members have the ultimate power of decision, still raises concerns.

2.5.3.2. Other strategic measures

Apart from the preventive approach of the *CIA*, the anti-corruption strategy seeks to depoliticize the police and to establish an independent inspection authority for all security agencies, such as the police, customs authorities and penitentiary administration. The broad immunities of the Members of Parliament have been restricted.²³¹ A further important part of the anti-corruption strategy refers to the regulation on handling conflicts of interest.²³² This has a very broad scope, including politicians, cabinet members and public servants.²³³ The following extensive constraints apply to the mentioned groups: the starting point is the general interdiction to use one’s position – in any manner whatsoever – for gaining personal advantages. Moreover, it is forbidden to refer to one’s public position in purely private matters.²³⁴ Reporting obligations exist, should a conflict of interest arise during the performance of one’s duties. The declaration obligations apply once the income (excluding the salary) or an outstanding financial debt – a loan, for example – exceeds the materiality level of CZK 100,000 (approx. € 400).²³⁵

²²⁵ *ibid.*, p. 25.

²²⁶ *ibid.*, p. 27.

²²⁷ *ibid.*, p. 28.

²²⁸ *ibid.*, p. 30 et seq.

²²⁹ *ibid.*, p. 32.

²³⁰ *ibid.*, p. 36.

²³¹ See footnote 200, p. 3.

²³² Act on Conflicts of interest and incompatibility of certain functions, Act No 159/2006 Journal of Laws.

²³³ See Conflict of interest in the Czech Republic, p. 8 et seq.; available at: https://www.mvr.bg/NR/rdonlyres/F450DFC0-C4C1-437E-8558-3B2C63BB92CA/0/10_presentation_Czech_republic.pps (accessed on 19.9.2013).

²³⁴ *ibid.*, p. 12.

²³⁵ *ibid.*, p. 23.

The registers where the relevant files are stored are accessible to all citizens after registration and may be processed and used to identify potential conflicts of interest, but cannot be readily published.²³⁶ This gives citizens the possibility to inform the relevant registration authority as to the suspicion of incomplete or false information. The registration authority may apply penalties for this violation. The maximum penalty amounts, however, to merely CZK 50,000 (around € 200), a rather low sum if we consider the potential interests of persons concealing their income.

2.5.4. ASSESSMENT

The anti-corruption strategies provide a good basis for successful fight against corruption in the Czech Republic. The approaches towards a closer regulation of conflicts of interest, the restriction of parliamentary privilege and the depoliticization of law enforcement and security authorities also point in the right direction. The concept of the *Corruption Impact Assessments* is very promising, but its effectiveness and actual implementation cannot be evaluated at this point. In view of the deeply rooted mistrust among the population, it seems however questionable in what respect the specified measures could change people's perception and win the necessary support. The questionable structure of the Anti-Corruption Committee and the relatively mild penalties for non-compliance with disclosure requirements have a rather hindering than beneficial effect.

Nevertheless, the government is making clear efforts to permanently and sustainably reduce the level of corruption. To extent to which these will come to fruition in the future significantly depends on the political will for effective implementation.

²³⁶ *ibid.*, p. 24 et seq.



2.6. AUSTRIA

2.6.1. OVERVIEW

The Republic of Austria, with an area of 83,879 km² and a population of 8.5 million, is the 14th largest and the 15th most populous country in the European Union, which it joined in 1995. The nominal GDP of Austria amounted to € 320.2 billion in 2011. Austria thus ranks 29th in an international comparison.²³⁷

In the *Human Development Index*, Austria ranks 18th in the world.²³⁸ Despite the economic crisis of the European Union, Austria has so far been spared from a lingering recession.

2.6.2. CORRUPTION

According to *Transparency International* (2012), Austria ranks 25th in the world (among 176 countries), with 69 points, in the *Corruption Perception Index*.²³⁹

In the anti-corruption report of the European Union (2012), 80% of respondents considered corruption to be a serious problem in Austria (weighted average from a total of 1,001 interviews of EU nationals over the age of 15, residing in Austria). Compared to the previous report from 2009, this means an increase by 19%.²⁴⁰ This surge can be traced back to major political corruption scandals during the survey period. As a matter of fact, it is the most significant rise compared to the rest of Europe. The value is slightly above the EU average, which was indicated by the report at 74% (2009: 78%).²⁴¹

2.6.3. FIGHT AGAINST CORRUPTION IN AUSTRIA

The Republic of Austria has joined several international conventions against corruption, being thus bound under international law.

Austria signed the *Council of Europe Civil Law Convention on Corruption* on 13.10.2000, and ratified it on 30.08.2006

Austria signed the *Council of Europe Criminal Law Convention on Corruption* on 13.10.2000, but has not ratified it yet. Austria did not sign the *Additional Protocol to the Council of Europe Criminal Law Convention on Corruption* (as in the case of: Estonia, the Czech Republic, Monaco). The *UN Convention against Corruption* was signed on 09.12.2003 and

²³⁷ International Monetary Fund, World Economic Outlook Database (as of April 2013); available at: <http://www.imf.org/external/pubs/ft/weo/2013/01/weodata/index.aspx> (accessed on 19.07.2013)

²³⁸ United Nations Development Programme, Human Development Index; available at: <http://hdrstats.undp.org/en/countries/profiles/AUT.html> (accessed on 19.07.2013).

²³⁹ Transparency International, Corruption Perceptions Index 2012; available at: <http://cpi.transparency.org/cpi2012/results/> (accessed on 19.07.2013).

²⁴⁰ Eurobarometer, Special Eurobarometer 374 "Corruption" 2012, p. 12; available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 19.07.2013) (EU average only 74%).

²⁴¹ *ibid.*

was ratified on 07.12.2005. The *UN Convention against Transnational Organized Crime* was signed on 12.12.2000 and was ratified on 15.09.2005.

Since 2010, The *Federal Bureau of Anti-Corruption (BAK)* has been publishing annual reports, which examine the fight against corruption.²⁴² These include a summary of the activities of the *BAK*, as well as a detailed description of the investigation proceedings that were carried out. Altogether, there were 1,673 investigation proceedings initiated by the *BAK* in 2012. Of these, 53 were not relevant under the criminal law.²⁴³ Cases that are not relevant under criminal law include investigations that ultimately do not identify any criminal offence, as a result of subsequent investigations. As far as the 406 'other cases' are concerned (administrative and judicial assistance, 387 information requests according to Article 26 of the Data Protection Act - DSG), no criminal acts were determined.²⁴⁴ Criminal acts are all offences that fall within *BAK's* area of responsibility, being listed in the statistics of the *BAK*. In 2012, the former 60 criminal offences were merged into 25 clusters.²⁴⁵

Investigation cases:

2012	Completed	Pending on 31.12.2012	Total
	1405	268	1673
2011	Completed	Pending on 31.12.2011	Total
	1058	377	1435
2010	Completed	Pending on 31.12.2010	Total
	1010	326	1336

Source: *BAK Annual Report*

In a proceeding for multiple offences, the conviction is associated with a felony, which is decisive for the penalty rate ('main offence').²⁴⁶

In 1,214 investigated cases, a main criminal offence could be identified. 29% of the investigations dealt with reported cases of ill-treatment (2011: 28%) and 22% concerned procedural irregularities (2011: 20%), such as the denial of access to files, biased proceedings etc. These two groups of circumstances have invariably been at the top ever since the *BAK* was established (2010).²⁴⁷

Proceedings and investigations regarding:	2012	2011	2010
Accusations of ill-treatment	357	365	434
Procedural irregularities	268	269	147
Data retrieval, transfer of data	85	102	116
Collateral offences	95	29	16
Infrastructure	64	63	49
Initiation of procedure	81	79	92
Human resources	12	22	17
Other	252	383	465
Total	1214	1312	1336

Source: *BAK Annual Report 2012*

²⁴² http://www.bak.gv.at/cms/BAK_en/service/downloads/start.aspx (accessed on 19.07.2013)

²⁴³ BAK, Annual Report 2012, available at: http://www.bak.gv.at/cms/BAK_dt/service/downloads/files/Jahresberichte/BAK_Jahresbericht_2012.pdf (accessed on 19.07.2013), p. 27.

²⁴⁴ *ibid.*

²⁴⁵ *ibid.*, p. 43.

²⁴⁶ *ibid.*, p. 29

²⁴⁷ *ibid.*, p. 28.

The list of the most common alleged offences shows that, since the establishment of the Federal Bureau, cases of abuse of official authority according to Article 302 of the Austrian Criminal Code, rank first, with 52% of all proceedings (2011: 53%), followed by various criminal offences due to the abuse of an official position, with 34% (2011: 31%). There were only slight changes with regard to the frequency of different criminal offences in the period 2010-2012.

Main offences under investigation according to the Austrian Criminal Code		2012	2011	2010
Art. 302	Abuse of official authority (felony)	628	701	586
Art. 313	Criminal offence by misuse of position	412	397	503
Art. 310	Breach of official secrecy (offence)	23	22	43
Art. 83	Battery (offence)	12	18	7
Art. 127	Larceny (offence)	8	14	15
Art. 153	Breach of trust	23	14	11
Art. 304	Corruptibility	14	13	24
Art. 107	Dangerous threat (offence)	9	11	8
Art. 307	Bribery (offence)	8	9	10
Art. 303	Negligent breach of personal liberty or property rights	4	8	12
	Other	73	105	117
	Total	1214	1312	1336

Source: BAK Annual Report 2012

Of the total number of 1673 investigation proceedings, there were 1096 cases of malpractice in office in 2012, which makes up 66% of all procedures (2011: 81%) and 66 cases less than in 2011. The most important cases of malpractice in office were, as in previous years, the abuse of official authority, with 57 %²⁴⁸ (2011: 60%), and the breach of official secrecy, with 2% of the cases (2011: 2%), whereby offences according to Article 302 of the Austrian Criminal Code dropped by 73 cases, but increased by 15 cases for complaints based on Article 313 of the Austrian Criminal Code.

Main offences under investigation according to the Austrian Criminal Code		2012	2011	2010
Art. 302	Abuse of official authority (felony)	628	701	586
Art. 313	Criminal offence under misuse of position	412	397	503
Art. 310	Breach of official secrecy (offence)	23	22	43
Art. 83	Battery (offence)	12	18	7
Art. 127	Larceny (offence)	8	14	15
Art. 153	Breach of trust	23	14	11
Art. 304	Corruptibility	14	13	24
Art. 107	Dangerous threat (offence)	9	11	8
Art. 307	Bribery (offence)	8	9	10
Art. 303	Negligent breach of personal liberty or property rights	4	8	12
	Other	73	105	117
	Total	1214	1312	1336

Source: BAK Annual Report 2012

The tourism sector was indicated as the most affected field in terms of number of offences in 2012.²⁴⁹ Between 2010 and 2012, most offences were reported in the private sector, in the areas of trade/handcraft, industry, transport/traffic and tourism.²⁵⁰

²⁴⁸ Definition of the abuse of authority according to Article 302 of the Austrian Criminal Code: intent of a civil servant to deliberately misuse his/her power, while acting on behalf of the federation, a Land, a municipality or any another entity of public law, in order to breach the rights of another individual.

Article 310, Paragraph 1, Austrian Criminal Code: A civil servant or a former civil servant who reveals or uses a secret that he/she has received access to or which has become accessible while in office, and whose revelation or use is liable to hurt a public or a private interest, is punished by law with up to three years imprisonment, subject to a stricter penalty under other provisions.

²⁴⁹ Answers to the Questionnaire Austria No 2, p. 1.

²⁵⁰ *ibid.*

2.6.3.1. Federal Bureau of Anti-Corruption (BAK)

With the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G), which entered into force on January 1, 2010, Austria fulfills, according to its own admission,²⁵¹ the international standards or obligations with regard to the establishment of independent national institutions for the prevention of and fight against corruption. The UN Convention against Corruption in particular, ratified by Austria on January 11, 2006, requires States Parties to create such authorities (Austrian interpretation of Articles 6 and 36).²⁵² The *BAK* is thus both a prevention body in accordance with Article 6, and a 'law enforcement' institution, according to Article 36 of the *UNCAC*.

From an organizational point of view, the *BAK* was established outside of the Directorate-General for Public Security of the Austrian Federal Ministry of the Interior. It has a staff of 110 employees (as of 01.01.2012).²⁵³

In general terms, the *BAK* is responsible for prevention of and fight against corruption. The *BAK* is responsible for the entire public sector, and has a comprehensive mandate, especially in regards to the analysis and prevention of corruption.²⁵⁴ Moreover, it has a close cooperation with the Public Prosecutor's Office for White-Collar Crime and Corruption (*WKStA*). The *BAK* has no civil service or disciplinary expertise.²⁵⁵ Furthermore, the *BAK* works on investigations in the area of security police and criminal police cooperation with foreign and international anti-corruption institutions.²⁵⁶

The *BAK* is responsible for investigations concerning the following criminal offences in accordance with the Austrian Criminal Code (StGB):²⁵⁷

- Abuse of official authority (Article 302 StGB)
- Corruption offences (Articles 304-308 StGB)
- Illicit intervention (Article 308 StGB)
- Breach of trust due to abuse of an official function or due to involvement of an office holder (Article 153 Paragraph 2 second case, Article 313, or in connection with Article 74 Paragraph 1 Line 4a StGB)
- Acceptance of gifts by persons holding an official position (Article 153a StGB)
- Agreements restricting competition in procurement procedures (Article 168 b StGB)
- Acceptance of gifts and bribery by employees or agents (Article 309 Paragraph 2 StGB)
- Money laundering (Article 165 StGB)
- Acts punishable pursuant to the StGB and supplementary laws, provided that they are related to the offences 1 to 13 and must be prosecuted by the *BAK* by written order of a court or a public prosecutor's office
- Acts incriminated by the StGB and complementary laws, which are committed by public employees of the Federal Ministry of the Interior, provided that they must be prosecuted by written order of a court or a public prosecutor's office.

²⁵¹ http://www.bak.gv.at/cms/BAK_en/general/legal_bases/start.aspx (accessed on 19.07.2013)

²⁵² *ibid.*

²⁵³ See footnote 243, p. 15

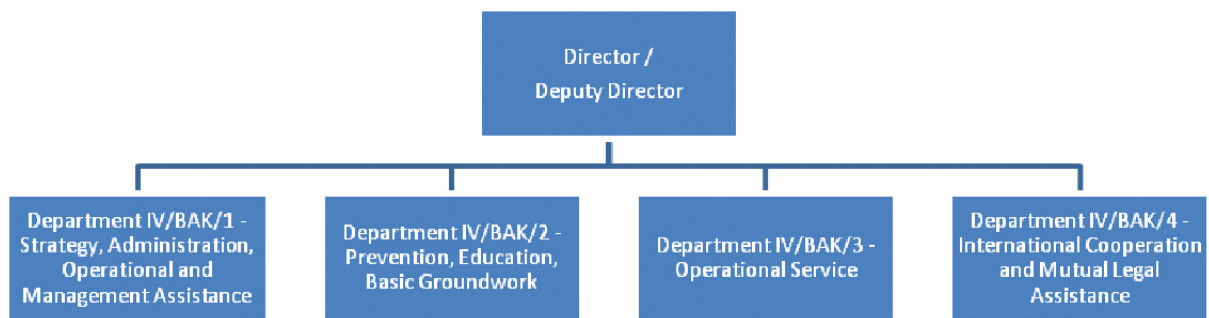
²⁵⁴ See Article 1 of the Austrian Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G).

²⁵⁵ Article 9, Paragraph 6 of the BAK-G.

²⁵⁶ According to Article 4, Paragraph 2 of the BAK-G, *BAK* has jurisdiction over investigations within the framework of international police cooperation and administrative assistance as well as for cooperation with the corresponding institutions of the European Union and the investigating authorities of the EU Member States in the cases mentioned in Paragraph 1. Regarding international police cooperation in the cases under Paragraph 1, Lines 1 to 13, the Bureau acts as a national point of contact for OLAF, Interpol, Europol and other comparable international institutions. Article 4, Paragraph 1 of the Federal Law on the Establishment and Organization of the *BAK*, BGBl. I no. 22/2002 shall remain unaffected.

²⁵⁷ See Art. 4 of the BAK-G;
<http://RIS.BKA.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006390> (accessed on 19.07.2013)

The *BAK* is divided into four departments:



Source: *BAK*.

The *BAK* follows a 4-pillar approach in its anti-corruption activity: prevention, education, law enforcement and cooperation.²⁵⁸

In the view of the *BAK*, the prevention of corruption includes all measures meant to hinder corruption. The field of **prevention** includes, inter alia, the analysis of corruption phenomena. Furthermore, preventive measures are developed on the basis of empirical and theoretical knowledge, and are put into practice.²⁵⁹

Education is ensured through information transfer, education and awareness raising campaigns. This is done through courses, seminars and lectures on the subject of corruption and abuse of official authority, for internal and external participants. National conferences and events (e.g. Austrian Anti-Corruption Day) are also organized.²⁶⁰ This is illustrated through the training course 'Corruption prevention and control'.²⁶¹

The *BAK* training course 'Corruption prevention and control' takes place twice a year for a period of two weeks. The target group consists of interested officials of all salary or level groups of the *Federal Ministry of the Interior*. The course aims at providing in-depth and useful knowledge on the subject of corruption and the fight against it. The background and mechanisms of corruption, as well as the problems and risks brought about by corruption – in particular in the area of public administration – are addressed in the course.

Concrete measures in the fight against and prevention of corruption are also presented. The training course includes the following topics:

- Theoretical understanding of the issue of corruption
- Presentation and discussion of current corruption indexes and statistics
- International instruments in the prevention of and fight against corruption
- Professional ethics
- Psychological background of corruption
- Code of conduct of the *Federal Ministry of the Interior*
- Legal and theoretical basis of investigation in corruption cases (in particular, relevant provisions of the Criminal Code, the Code of Criminal Procedure, as well as data protection and service/disciplinary law)
- Characteristics of investigative work
- Presentation of the *BAK* (tasks, objectives, legal framework etc.)

²⁵⁸ http://www.bak.gv.at/cms/BAK_en/general/start.aspx, (accessed on 19.07.2013).

²⁵⁹ See footnote 243, p. 47.

²⁶⁰ *ibid.*, p. 54 et seq.

²⁶¹ *ibid.*, p. 57/8

Seminars are organized on the topic of 'Corruption prevention and control', as part of the education and training opportunities, and in the training centers of the Security Academy of the *Federal Ministry of the Interior*, as part of the basic training.²⁶² Employees of the *Federal Bureau of Anti-Corruption* hold lectures for all employees of the Federal Ministry of the Interior, as well as for any other institution of the public administration.

The seminars generally consist of eight classes dedicated to the theoretical introduction to the problem areas and the various forms of corruption, as well as an overview of various prevention and control measures. In addition, the Federal Office for Anti-Corruption is also presented. The seminar is divided into:

- Overview of the current knowledge on corruption
- Presentation and discussion of current corruption indexes and statistics
- International instruments of corruption prevention and fight against corruption
- Presentation of topic related films
- Presentation of the *BAK* (tasks, objectives, organization etc.)
- Legal framework
- Group discussions and group work

Law enforcement must be interpreted in the sense of security and criminal police investigations. The members of the Legal Protection Commission are independent and are not bound by any instructions in the performance of their tasks.

Cooperation refers to working together with national and international institutions that are active in the area of corruption prevention and the fight against it. Noteworthy is the cooperation between the *BAK* and the Public Prosecutor's Office.²⁶³ This includes, among other things, the exchange and the joint development of so-called 'best practices'.

2.6.3.2. European Anti-Corruption Training

The *European Anti-Corruption Training (EACT)* illustrates the international cooperation of the *BAK*. The *International Anti-Corruption Summer School (IACSS)*, a pioneer in the field, was organized between 2007 and 2011 under the heading 'Practice meets Science'.

Since 2011, the *EACT* project focuses on the international and European activities of the *BAK*. The practical orientation of the project is reflected in its motto, 'Practice meets Practice'.²⁶⁴

Representatives of anti-corruption authorities, the police, public prosecutor's offices of the Member States of the European Union, of the enlarged Schengen area, as well as from South-Eastern EU candidate states and other countries of the Western Balkans participate in *EACT*. The project is led by the *BAK*; project partners are the Slovak Anti-Corruption Authority (*National Criminal Agency NACA*), the Slovenian Commission for the Prevention of Corruption (*KPK*) and the Slovenian Investigation Bureau (*Ministry of the Interior's National Investigation Bureau, NPU*). The project is financed by the EU: 'ISEC - Prevention of and Fight against Crime'.

EACT consists of a kick-off meeting (September 2011), five working group meetings on the three subjects of 'Investigation and prosecution', 'Prevention' and 'International cooperation', as well as the final conference at the end of 2013. While the *BAK* was responsible for the former part, the second and third parts are organized by the partner authorities from Slovenia and Slovakia.

²⁶² *ibid.*, p. 55.

²⁶³ Answers to the Questionnaire Austria No.3,4, p. 2.

²⁶⁴ *ibid.*, p. 62.

The aim of the project is the creation and presentation of a practical guide with achieved results that should act as 'best practices'.²⁶⁵

After the kick-off conference in the fall of 2011 in Baden and Laxenburg, a series of working group meetings on the three core areas was organized.

The working group meetings organized by the *BAK* on 'Investigation and prosecution' took place in Baden and Vienna. Investigators and prosecutors met to work on best practices together with the project staff and the experts invited. At the meetings in January, April and September 2012, the topics included, among others, 'Tactical Methods and Possibilities Concerning Investigation', 'Basic Legal Concepts for Investigation Matters', 'Joint Investigation Teams/Cooperation in Investigation', 'Internal/External Problems and Needs during Investigation', 'Seizure, Analysis and Storage of Data; Search Engines for Investigation' and 'Security Management in the Field of Anti-Corruption: Recruitment of Personnel, Need-To-Know Principle, Access Control, Protection against System Failure'.²⁶⁶

The Slovenian-led working group on prevention met in March, June and October 2012, and addressed topics such as 'Advanced Use of Information Technologies for Analyzing Data, Accessing, Using and Linking of Existing Official Databases', 'Conflicts of Interest Including Codes of Conduct', 'Preventive Measures', as well as 'Whistleblower Protection'.²⁶⁷

The working group on international cooperation, which was headed by Slovakia, organized two meetings in May and September 2012 with a focus on diverse aspects of *Joint Investigation Teams (JITs)*, such as structures and working methods, legal assistance (*MLA - Mutual Legal Assistance*) and international cooperation with third-party countries. The fourth meeting of the working group on prevention was held under *EACT* between the 22nd and 25th of April 2013 in Ljubljana, Slovenia. The working group addressed the main topic of anti-corruption training for children and young people.²⁶⁸

2.6.4. ASSESSMENT:

The anti-corruption measures are the result of a well thought-out overall concept. National corruption scandals were adequately addressed based on the holistic approach of the *BAK*. The establishment of the *BAK* can be regarded as a necessary response to the fundamental problem of corruption within the Republic of Austria. Whether the *BAK* will be able to win back the public's confidence remains to be seen, for example in the next anti-corruption report of the European Union, among others. So far, a change of trend is not visible. The establishment and the range of activities of the *BAK* show, however, a serious will to effectively fight against corruption. The comprehensive training courses and national and international cooperation efforts are to be welcomed. It is questionable how or whether the successful results of the *EACT* could be measured.

²⁶⁵ *ibid.*, p. 63.

²⁶⁶ http://www.bak.gv.at/cms/bak_en/eact/ (accessed on 19.07.2013)

²⁶⁷ http://www.bak.gv.at/cms/BAK_en/eact/progress/start.aspx (accessed on 19.07.2013)

²⁶⁸ *ibid.*

CONCLUSION AND OUTLOOK

Corruption is not confined to individual countries. In its various manifestations, corruption affects all nations of the world, leading to extremely high, transnational negative effects.

Although the core causes of corruption are similar worldwide, looking at individual countries makes it clear that numerous country-specific features exist in the Danube Region based on its diversity.

Since corruption is shaped not only by the legal framework, in the form of laws and law enforcement, but also by social and cultural aspects, such as the attitude of the population and the public perception, a universal solution for the fight against corruption cannot exist.

The examined approaches to the fight against corruption are as diverse as the causes of corruption. While, for example, Romania tends to place a stronger emphasis on repressive measures, the Bulgarian and Hungarian approaches have a particularly preventive nature. This can provide a valuable basis for further action, contributing to a sustainable fight against corruption.

A positive aspect is that all the countries involved in the study are making serious efforts to tackle the problem of corruption in an effective and sustainable manner. The help and support of the European Union is of great importance in this respect. Although most of the countries studied still show a relatively high level of corruption, the developments fuel hopes that a positive trend is in sight in the anti-corruption fight. Nevertheless, the fight against corruption remains a long-term endeavor, as results can often be properly assessed only after some time has passed.

Despite the visible differences, many similarities exist in the countries examined, namely in terms of legal framework, the perception of the population, as well as the areas typically affected by corruption.

This makes it possible for the countries examined to be compared to a certain degree and with due care, which can in turn provide the advantage of a much valued knowledge and experience exchange. Under similar circumstances, a look at the neighbouring countries' 'best practices' could provide new ideas and solutions.

In a dynamic exchange and learning process, countries can benefit from the experience of other states and can apply their findings to their particular situation.

This is of utmost importance against the backdrop of corruption, as an extremely dynamic and manifold phenomenon. Since new corrupt practices are developing, constantly finding ways to adapt to the changing circumstances, a swift reaction can prove to be extremely important. Therefore, it is useful not to develop all possible ideas or approaches, but to mutually benefit from the success of neighbouring countries.

The core aim of this study is the promotion and improvement of knowledge exchanges. The anti-corruption fight in the Danube Region could be significantly accelerated and improved by close cooperation and the exchange of promising measures. As the study presents and analyzes promising 'best practices' in the Danube Region, it provides a valuable and thorough overview of measures, which can also be of interest for the neighbouring countries, thus creating a basis for further cooperation.

ANNEX

Questionnaire concerning Corruption Prevention and Control

Who is the contact person in the internal affairs ministry responsible for corruption control?

Before answering the following in-depth questions, we would be very glad if you could send us the name and the relevant contact details of this person, so we can get back to you in case of any questions and comments.

What sectors in your country are particularly affected by corruption?

Please be as specific as possible. Try to outline what problems in particular are encountered in the relevant sector. What are your solutions for overcoming these issues? (approximately ~600-800 words)

Which anti-corruption approach/instrument in your country do you deem to be a "best practice"?

In this context, "best practice" is a method or technique that has consistently shown results superior to those achieved by other means. If there are several promising approaches, please list all of them. It would be helpful if you could focus particularly on the problematic areas of (a) conflicts of interest, (b) asset recovery and (c) the connection between organized crime and corruption.

Again, a specific answer will be appreciated. For example, please include the relevant provisions in statutes and other legislation. (approximately ~600-800 words)

Why is that? Are there any supporting positive results or forecasts?

Please include any relevant findings, studies or reports if possible. If the approach is rather new, please try to support your positive forecasts.

To what extent have these "best practices" been influenced or inspired by other national or international solutions?

To what extent is there an efficient cooperation concerning the anti-corruption efforts on a national and international level?

Is there any cooperation with the civil society in the anti-corruption work?

How do you approach corruption control and prevention in general?

What mechanisms and solution are relevant for your anti-corruption work apart from the aforementioned "best practices"?

Are there any other sources or reports concerning that matter which we could include in our study?

If you have any additional documents that you consider relevant for us, please attach them to the study.

First of all, we very much appreciate your time and support in answering the questionnaire. As it will form the essential basis of study, we rely on the accuracy and elaborateness of your answers. Thus, we would be very glad if you could return the filled questionnaire within two weeks.

If you have any question or suggestions, please do not hesitate to contact us!

