



**SIGMA**

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## **STRUCTURAL ELEMENTS FOR IMPROVING HORIZONTAL PUBLIC GOVERNANCE**

### **SYSTEMS IN EU CANDIDATE STATES:**

### **SIGMA ASSESSMENT BASELINES**

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## INTRODUCTION

1. The topic of this paper is crucial first to understand or snapshot the status quo of important parts of the governance system in a country, namely the so-called horizontal administrative systems-- and second to identify which are the areas or issues that mostly need reforming. This in turn is indispensable for governments to establish strategies and reform priorities, allocate budgetary resources for the reforms and get off the dynamics of the reform.

2. Legislation and how it is enforced or implemented in practice basically shape the public governance and administration in a country. Both legislation and its enforcement are instruments to create gradually a culture where respect of the rule of law, citizens' rights, integrity and accountability of civil servants and public officials gain prominence as a societal value. Creating such a culture is crucial to make a state a reliable partner within the European Union, which is an endeavour based on mutual loyalty and trust among Member States. This is so, *inter alia*, because national administrations are the administrations called to enforce and implement EU Law within the national territory.

3. If we want to understand the public governance system in a given country, we would need to analyse, among other cultural and sociopolitical factors, a number of pieces of legislation and a number of institutions in charge of applying legislation and others in charge of supervision:

- To analyse and evaluate legislation we need to resort on a conceptual framework composed of a number of fundamental principles, which in EU Member States have been created and refined in the course of time and subsequently have been endorsed by the European Court of Justice, and compare these principles with the legislation we want to analyse or evaluate.
- To analyse institutions or organizations in practice we need to look at a number of management-type issues. The first one is the existence or not of certain institutions, their strategies, role and mandate, resources made available, staff numbers and qualification, their enforcement record and managerial capacities and so forth. Especially important is to gauge how well an institution fits in the administrative culture of a country.

4. In all these exercises we obviously cannot escape from our nearest cultural environment and this environment is Europe and what we call the European Administrative Space<sup>1</sup>. Therefore we will look into the democratic governance principles that EU Member States share and EU candidate countries shall adhere to in order to improve their horizontal administrative and management systems and the defense of the public integrity in institutions and individuals participating in the public life.

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<sup>1</sup> A detailed account of the administrative law principles that shape the European Administrative Space can be found in Sigma Paper no. 27, "European Principles for Public Administration", OECD, Paris, 1998. See also Sigma Paper no. 23, "Preparing Public Administrations for the European Administrative Space", OECD, Paris, 1998. Both publications are available at [www.sigmaweb.org](http://www.sigmaweb.org).

5. This paper aims at creating an abridged conceptual basis for firstly understanding the complexities occurring in any effort to reform horizontal administrative systems, especially where these reforms are experienced as a foreign encroachment in national suzerainty imposing an obligation, which is bereft of clear-cut standards against which to measure the progress of the reforms and secondly for creating an instrument to stocktaking, analyse and evaluate the existing situation in a country.

6. The fact is that, although each country has total liberty to decide on the ways and means of achieving the results foreseen in the EU Treaties, shared means and principles have developed within the Union. This situation is particularly visible in the area of administrative law principles. It is less visible, however, in administrative and organisational arrangements and structures because of the great variety of institutional settings across the various member countries.

7. Whatever the case may be, EU candidate countries have to ensure that their administrations and courts have the capacity to work in, defend, and safeguard the common interests of the European Union resulting from “structural subsidiarity” and from the duty of “loyal co-operation”, as laid down in the Treaties and in the jurisprudence of the European Court of Justice.

8. This is the reason why the administrative systems of candidate countries are assessed by scrutinising the extent to which those administrative law principles are applied in practice. This assessment does not only concern the formal legal arrangements but increasingly the daily practice of public authorities and civil servants. This includes the soundness of policy-making and coordination, financial control and external audit, reliability of the public administration, accountability of public authorities and civil servants, the impartiality and transparency of administrative decision making and adequate structures and procedures for challenging them through redress and appeal as well the institutional mechanisms that exist to protect integrity.

9. At the same time we have to avoid simplistic checklist-type approaches. A check list approach assumes that assessing horizontal governance systems is a rather mechanical exercise (e.g. a sort of ticking the box), which may be useful sometimes, but in general it is exceedingly reductionist when evaluating social systems (or subsystems) --as the public administration is--, which are extremely complex and are not easy to reduce to an itemized list. For the same token such a list is liable in turn to produce a mechanical approach to public administration reform in the mindset of those ruling governments and institutions.

10. The check list approach may undermine genuine reforms, as general experience—and in particular that of SIGMA over the last 15 years-- shows that it is an incentive to façade reforms or mere window-dressing. As a consequence, an assessment exercise carried out by following check lists would simply be promoting the unintended side effect of simply phony or unauthentic reforms taking place in the countries and therefore hampering genuine reforms and reducing the chances of committed reformers.

## I. CONCEPTUAL AND POLICY FRAMEWORK FOR ASSESSING GOVERNANCE AND INTEGRITY

11. A wide consensus on key principles of good administration and politics has developed among EU States. Originally, these principles were defined and refined through the jurisprudence of national courts and, subsequently, by the jurisprudence of the European Court of Justice. They can be grouped into the following four categories:

**Democratic Rule of law**, i.e. legal certainty and predictability of administrative actions and decisions, which refers to the principle of legality as opposing arbitrariness in public decision making and to the need of respecting legitimate expectations of individuals.

**Openness and transparency** aimed at securing sound scrutiny of administrative processes and their outcome as well as their consistency with pre-established rules and social sensibility.

**Accountability** lines and mechanisms of politicians and public servants to other administrative, legislative or judicial authorities, aimed at ensuring compliance with the rule of law and the correctness of public behaviour.

**Efficiency** in the use of public resources and

**Effectiveness** in accomplishing the policy goals established in legislation and in enforcing legislation.

12. As far as these principles are shared among EU Member States, we can speak about a common “European Administrative Space” (EAS)<sup>2</sup>. The EAS leads to a set of standards for action of political bodies and public administration, which are defined by law and enforced in practice through relevant procedures and accountability mechanisms. Good administration is impossible if policies and politics are bad.

13. In many EU Member States those fundamental principles are usually established by the constitution, and further specified by a set of laws governing politics and administration, such as civil service laws; administrative procedures acts; administrative judicial review acts; organic laws on budgeting; on public procurement; regulations on accountability mechanisms such as internal control, external audit and ombudsmen; penal codes and criminal proceedings acts; laws on organization of the government and administration; laws on political parties and elections, laws on access to public information, personal data protection and state secrets. Legislation on incompatibilities and conflict of interests also may play a considerable role in the materialization of those principles mentioned above.

14. Many of those principles have been defined and adapted by courts to specific real life situations. The European Court of Justice plays a major role in shaping common democratic administrative law principles within the European Union. Indeed, there is a common *acquis* of legal principles developed by

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<sup>2</sup> A detailed account of these administrative law principles in connection to the European Administrative Space can be found in SIGMA Papers No. 27: “*European Principles for Public Administration*”, OECD, Paris, 1998. See also SIGMA Paper No. 23, “*Preparing Public Administrations for the European Administrative Space*”, OECD, Paris, 1998. Both papers are available at [www.sigmaweb.org](http://www.sigmaweb.org)

the European Court of Justice. There still are significant differences amongst EU Member States. It is because of the problems raised by these differences that to the traditional issue of democracy new issues have been added concerning the enlargement of the EU. The administrative capacity and reliability of candidates have been given a high prominence in the current and other future possible enlargement processes.

15. If we look into the EU accession criteria, as defined by the Council of the European Union, with a direct influence over political and administrative systems, we can see that beneath such requirements are the principles of administrative law, and also regarding the practice of politics, that prevail in EU member States. Compliance with those principles serves to assess the trustworthiness of a candidate to become a reliable partner within the EU:

1. Copenhagen 1993: Stability of institutions guaranteeing democracy, rule of law and human rights.
2. Madrid 1995: Administrative and judicial structures adjusted so as to be able to transpose EC Law and effectively implement it.
3. Luxembourg 1997: Institutions strengthened and improved and made dependable.
4. Helsinki 1999: Candidate must share the values and objectives of the European Union as set out in the Treaties.

16. As it can be inferred from the said above, a good administration is a pre-conditions for EU Membership. This is severely hindered if corruption is widespread and anti-corruption policies are weak. Corruption is fundamentally a political problem, which affects the public administration and also the wider governance system in a country and it cannot be fought exclusively with administrative remedies. More specifically, fighting corruption implies getting involved in politics and adopting specific concomitant good policies.

17. Other societal actors may contribute to an anti-corruption effort, but the bulk of responsibility lies in public institutions, especially in governments, as they should take the lead in policy-making and in enforcing legislation. Bad policies are not corrected with ethics and public involvement, but principally with good policies, which are a fundamental responsibility of governments. Corruption is the outcome of a given public policy, which is in place either by action or omission.

18. International experience shows that administrative corruption is almost impossible to eradicate or even to reduce if corruption is not eradicated or reduced in public life in general and in politics in particular. In other words, petty corruption will stay and remain unless grand corruption is tamed first or at least is fought in parallel.

19. Certain legal, administrative and institutional arrangements may either underpin or undermine integrity in public life. Instruments and mechanisms should be in place to preserve integrity in the behaviour of public actors whose powers and prerogatives are directly or indirectly set down in constitutional provisions: parliaments, governments (in their European continental meaning, i.e. the Council of Ministers as a Constitutional body), political parties and their fund-raising practices, electoral campaigns, the judiciary and public administration arrangements should be thoroughly analysed and evaluated.

20. In addition to those, other two elements –which are located mainly in the area of policy-making against corruption--, should also be the object of assessment. One is domestically driven and should analyse the focus, quality and effectiveness of national strategies or measures in fighting corrupt behaviour

and practices, including in the private sector. The other is internationally driven, and is made of international instruments for harmonising anti-corruption policies and cooperation across countries, a decisive instrument indispensable for combating trans-national organised criminality, which is a main source and focus of corruption.

21. The overall integrity framework in a country should also include certain elements of the society at large, in particular, businesses, the Media and NGOs, but we will not address here the manifold ways and means in which civil society organisations and instruments may interact and influence –for the best as well as for the worst-- the development and effectiveness of integrity instruments in public life.

## II- TRACKING AND ASSESSING EU ACCESSION REQUIREMENTS

22. The presence of accession requirements affecting the horizontal administrative systems can be traced by looking at a number of elements such as:

1. The strength of the principle of legality, of the democratic rule of law, in the internal legal order of countries.
2. The legal arrangements for accountability of public officials and to protect impartiality and integrity of civil servants as basic components of their professional independence.
3. The legal arrangements to take administrative decisions according to sound mechanisms established in law in order to ensure predictability of public decision making and facilitate judicial review of administrative decisions and actions, as well as their public scrutiny.
4. The legal arrangements for the management of and control over public funds and whether or not they work in favour of transparency and accountability.
5. The overall strength of the administrative and judiciary systems to apply and enforce the above legal arrangements.
6. The transparency of the democratic political processes and the effectiveness of the supervision and control mechanisms that are in place.
7. The consistency of the policy cycle from policy preparation to implementation.

A number of reference points serve as baselines to assess and make a diagnosis of the really existing situation of a country willing to accede to EU membership:

### A) **Basic Reference Points to Assess Key Elements of the Horizontal Governance Systems**

23. These reference points refer to the horizontal systems of public administration. These points are very basic and represent the baselines defining acceptable administrative arrangements, which work in favor of the integrity of the whole system. In addition to them, one would also need to look into specifically designed administrative bodies such the police, tax administration, customs administration and

so forth in order to complete the whole picture within the administration. Amongst others, the analysis of the following reference points is particularly revealing.

*a) Constitutions: Whether they clearly and explicitly establish:*

- The **rule of law** as a principle governing the State as a whole
- The **equality** before the law and the promotion of basic human rights as a constitutional principle
- The **subjection** of public authorities to the law
- A clear separation between the **public and the private** spheres (or state and individuals` interests)
- A clear separation between **politics and administration** in the state's institutional design, while the hierarchical subordination of the administration to the elected government
- The constitutional acknowledgement of the principles of **transparency and objectivity** or impartiality as well as **accountability** in the performance of public authorities
- The **judicial redress** of grievances inflicted to citizens by public authorities
- The obligation for the State to **compensate** citizens for damages or loss of property caused by unlawful public decisions and actions
- The prohibition of confiscation of private property and compensation in case of expropriation
- The acknowledgement as **constitutional institutions** of those having to do with ensuring legality and accountability, in particular the judiciary, prosecutor general, ombudsmen, and external audit, and what their constitutional powers are.

*b) Civil Service*

- Scope: Clear separation between political and civil service positions
- **Selection**: recruitment and promotion based on **merit and competition** as a basis for professionalism
- **Hierarchical subordination** vs. external control of legality: their relative importance to secure accountability (ability for civil servants to withstand against unlawful orders)
- Regulation of **duties and rights**, in particular the duties of impartiality and integrity and the system of incompatibilities and conflict of interests
- The handling of **grievances** has an effective regulation
- **Performance appraisal** regulation is fair and with sufficient guarantees
- **Salary system** : is fixed by law, transparent and the degree of managerial discretion in assigning salary components to individual civil servants is low
- **Managerial arrangements** to ensure that common standards are applied across all public administration settings: whether or not a central capacity exists sufficiently empowered to do so.

### *c) Administrative Procedures*

- Legal competence or **jurisdiction** of public authorities: clarity in defining its remit and limits
- Whether **essential procedural steps** are defined or not in legislation
- Whether **proportionality** of public decisions and actions is a preoccupation in legislation and legal criteria exist to limit the use of administrative discretion
- Established deadlines for public actions and decisions (**timeliness**)
- Rules for a public official to withdraw from the administrative decision-making procedure when impartiality may be at risk
- **Motivation** of public decisions (statement of factual and legal reasons in administrative resolutions)
- **Disclosure** of relevant administrative documents to interested parties
- Standing rights of interested parties (**hearing**) before adopting administrative decisions
- Guarantees for **giving notice** of administrative decisions and cases where **interim relief** is allowed
- Whether an indication on ways and means of **redress** is mandatory in administrative acts
- Whether or not the general conditions for an administrative act being **radically void** are explicit in legislation
- A general Law on administrative procedures sets the limits and patterns for special procedures and these latter are limited to a minimum.
- Whether the freedom of access to public information is soundly balanced with confidentiality and protection of state secrets and personal data and privacy (i.e. transparency vs. confidentiality)
- How the legal conditions are for the enforcement of administrative decisions and for revoking or withdrawing firm administrative acts

### *d) Administrative Justice*

- Whether judicial review of administrative decisions is accessible and easy for individuals
- Whether the scope of judicial review is large enough as to include any action and decision adopted by any public authority, including faits accomplis and excluding laws passed by parliament.
- Whether a second judicial instance exist to hear appeals against ruling of the first instance, especially in cases involving human rights or significant economic interests
- Whether specialised administrative courts exist
- Whether public authorities respect and implement judicial rulings in administrative matters

### *e) Public Internal Financial Control*

- Whether there is a coherent and comprehensive statutory basis defining the systems, principles and functioning of financial control in place
- Whether relevant management control systems and procedures are in place, such as accounting and reporting standards or regulations, accounting and Treasury systems, adequate ex ante controls of commitments and payments and a defined audit trail (showing the flow of funds from the national budget/the EU and the roles and responsibilities of the different national entities involved, including solutions to National Funds and Paying Agencies)
- Whether functionally independent internal audit arrangements with relevant functions, remit and scope are in place?
- Whether systems and procedures are in place to prevent and take action against mistakes and irregularities and to recover any amounts lost as a result of irregularity or negligence?
- Whether the capacity of the country is reliable to bring Public Internal Financial Control into line with EU good practice?

### *f) External Audit*

- Does the SAI have clear authority to satisfactorily audit all public and statutory funds and resources, bodies and entities, including EU resources?
- Does the type of audit work carried out cover the full range of regularity and performance audit set out in INTOSAI auditing standards?
- Does the SAI have the necessary operational and functional independence required to fulfil its tasks?
- Are the SAIs annual and other reports prepared in a fair, factual and timely manner?
- Is the work of the SAI effectively considered by parliament e.g. by a designated committee that also reports on its own findings?
- Has the SAI adopted internationally and generally recognised auditing standards compatible with EU requirements, and how far have they been implemented?
- Is the SAI appropriately aware of the requirements of the EU accession process and specifically has the SAI made arrangements for the collaboration and involvement in the audit of EU resources?
- Is the capacity of the country reliable to bring External Audit into line with EU good practice?

### ***g) Budgeting and Public Expenditure Management***

- Are there clearly defined budget principles set out in the Constitution, an Organic Budget Law (OBL) and/or related laws?
- Is the role of Parliament in the budget formulation and budget execution process well defined, especially for approving budget, supplementary appropriations, and the financial statement?
- Are all revenues and expenditures, including pre-accession EU funds integrated in the national Budget and in the event of the existence extra budgetary funds are these efficiently managed (comprehensiveness)?
- Are deficit and Government debt monitored?
- Is there a medium-term expenditure framework (MTEF) which projects aggregate revenue and expenditure targets over a three year time horizon, consistent with the macroeconomic targets and complies with methodological principles and standards?
- Regarding budget process
  - Is there a well defined, and widely understood, sequence of steps in the budget process, allowing sufficient time for each step to be implemented efficiently?
  - Does the Ministry of Finance provide through an annual budget circular or regulation the main budget policy priorities, a clear set of rules for the budget process and the main forms to be used by spending units in making estimates submissions?
  - What is the role for the Ministry of Finance in analysing and assessing estimates submissions, established rules and practices to guide the Ministry's negotiations with the line ministries and other spending units, and mechanisms for arbitration and conflict resolution?
  - Does the Ministry of Finance – and the budget and finance departments of line ministries -- have sufficient human resources, skills, training, computer systems, etc. to do this?
- Does the government have the capacity to present multi-annual public investment programmes involving careful co-ordination between partners at different levels of government, well designed co-financing procedures and sound technical and economic appraisal of such programmes?
- How does the Minister of Finance control and monitor the budget execution?
- Do the budget, accounting and reporting systems at the national level facilitate policy analysis and promote accountability?
- Is the capacity of the country reliable to bring its budget law and public expenditure management procedures Audit into line with EU good practice?

## ***h) Public Procurement***

1. There should be clearly defined principles set out in a public procurement law and related laws. These principles should provide a clear delineation of the decision-making authority at the national, regional and local levels and a clear and comprehensive definition of the spending entities and sources of public money to which public procurement is applicable.
2. There should be a clear legal basis for the establishment of a Public Procurement Office with overall responsibility for the design and implementation of public procurement policy.
3. The capacity of the staff dealing with procurement should be acceptably developed through a competitive merit-based recruitment mechanism, adequate training and exposure to international practices on procurement and the staff number should be adequate.
4. There should be well defined, and widely understood, procedures for the control and audit of procurement transactions including anti-fraud and anti-corruption measures.
5. There should be methods of appeal from decisions of award of contract or other complaints arising during the procurement process.
6. The capacity for up-grading the public procurement system should also be assessed on the basis of analysing a number of factors or indicators starting by the political willingness to change and the support for changing the system among key actors (parliament, private sector companies, etc.) and the general public.

## ***i) Policy Making Systems Need to Include***

- A structure at the centre of the government is capable of coordinating the policy-making process
- Policy-making procedures are well defined so as to include:
  - A robust intra and outside government consultation process
  - Sufficient capacities exist to prepare good quality legislation and carry out ex ante and ex post impact assessment of legislation
  - Ex ante impact assessment is done as well as ex post policy evaluation
- Policy preparation and policy advice are professionalized
- There is awareness and practical efforts to keep administrative burdens on citizens and business at an indispensable minimum

## **B) Basic Reference Points to Evaluate Elements of the Integrity System in Key Constitutional Institutions and in the Political Process**

### ***a) Parliament: Whether the following issues are well regulated and abided by***

- Parliamentary immunity is well defined and applied
- Incompatibilities and conflict of interest prevention regulations, in particular asset declaration, of parliamentarians are well regulated and transparently applied, including post-office employment restrictions.
- Parliament has a developed role in law-making, in particular on corruption impact assessment of future and present legislation.
- Parliament has a developed role in controlling the government effectively.
- Parliamentary activity is sufficiently protected from lobbies and vested interests and dealings are disclosed.

### ***b) Government***

- Incompatibilities and conflict of interest (asset declarations) of government members and high officials are well regulated and transparently applied, including post-office employment restrictions.
- Organizational arrangements provide for sufficient internal mechanisms within the administration as to ensure adequate inspection of and checks and balances to governmental and administrative decisions

### ***c) The Judiciary***

- Well designed personnel management rules are in place (recruitment, promotion, performance appraisal, salary levels, and disciplinary arrangements) as to guarantee judicial independence as well as the accountability of judges
- Institutional management of the judiciary is independent of the government and parliament (Supreme Judicial Council or similar)
- Sufficient number of judges and prosecutors exist trained/specialized on economic and organized criminality
- The Penal Code describes clearly corruption-related actions and behaviors of public officials and private citizens
- The Criminal Proceedings Law allows for a reasonably length of pre-trial procedures while preserving the guarantees of the investigated or prosecuted person.

#### ***d) Political Parties and Electoral Campaign Financing***

- Legislation clearly establishes licit sources of funds for parties and for campaigning
- Transparent state budget funding to parties is established
- Anonymous donations to parties and candidates are forbidden
- Campaign expenditures are capped
- Financial reporting obligations of political parties and election candidates are clearly spelled out in legislation, including in-kind donations, as well as the penalties for non compliance
- Independent institution exists empowered to check and audit financial reports of political parties and election candidates
- Parties' financial reports are standardized and their audit reports are public

### **III. INSTITUTIONALISATION OF THE ANTI-CORRUPTION EFFORT**

24. Diagnosis is an important but only a first step in treatment. Corruption is such a complex phenomenon that more harm than good can be done by pursuing simplistic, “silver bullet”, approaches. Corruption will be reduced by steadily and firmly upgrading all the essential elements of the integrity system in at both political and administrative levels and in both the public and private sectors, and both on the preventive and in the repressive side. To delineate the “integrity framework”, we have drawn on concepts provided by OECD<sup>3</sup>, Council of Europe<sup>4</sup> and the European Commission<sup>5</sup>.

25. Combating corruption is a multifaceted endeavour. All major international treaties recognise this multi-dimensional feature of the phenomenon. The 2003 UN Convention against corruption is a good example of the multiplicity of aspects and fields that are to be addressed in order to make any anticorruption effort both credible and workable. The same complexity is observable in the Council of Europe two Conventions –Criminal and Civil—against corruption. A single institution concentrating all or the majority of powers is unlikely to cope effectively with all these aspects.

26. Concentrating all anti-corruption efforts in a single (especially if it is new) institution could jeopardise the anti-corruption effort and facilitate capture of the anti-corruption effort itself. A plurality of institutions acting in several fields (parliament, government, judiciary, public administration, and local governments) could contribute better to the anticorruption struggle as a whole provided that they are adequately institutionalised, resourced and networked.

27. The realization that institutions are interrelated and that reforms must often be coordinated has also led to an expansion of the meaning of "institution" and of the list of institutions commonly included in

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<sup>3</sup> e.g. from OECD: Public Sector Integrity: A Framework for Assessment (2005); Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences (2003); Trust in Government: Ethics Measures in OECD Countries (2000); Ethics in the Public Service: Current Issues and Practice (1996)

<sup>4</sup> Twenty Guiding Principles for the Fight against Corruption, Resolution (97)24 of the Committee of Ministers of the Council of Europe of 6/11/97

<sup>5</sup> The Ten Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries which are contained in the Annex to the Communication of 28 May 2003 of the European Commission to the Council of the European Union and European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption

anti-corruption strategies. As a consequence, a central institution able to coordinate the collection of information on anticorruption, drafting strategies and improving public awareness and disseminating information could be helpful, provided that the decision-making powers remain in the hands of the government, parliament and judiciary on their respective fields of competencies.

28. While much of the focus remains on key elements of public administration, including financial agencies, the court system, prosecutorial law enforcement and other criminal justice agencies, as well as bodies that deal with public service staffing and the procurement of goods and services, it is now understood that other institutions of government and civil society require attention as well.

29. Key public-sector groups that must usually be included in such strategies are the parliament, government and public administration at the national, regional and local levels; the judiciary and its supporting institutions; key "watchdog" agencies, such as auditors or inspectors; and law enforcement agencies and other elements of criminal justice systems. Any credible strategy should always include local self-governments and financing of political parties and electoral campaigns.

30. International experience around the world shows that centralised agencies on the corruption-prevention side have achieved some success only in countries where governance is generally good. Australia, Singapore, Hong-Kong and Chile have been often cited as success stories. In the majority of OECD countries, however, the anti-corruption effort and the implementation of pro-integrity policies are not monopolized by a single agency or institution. A plurality of institutions and mechanisms are in place, which have been assigned different responsibilities and roles in that effort and that usually are able to check each other while networking among them.

31. Among the most generalized institutions on the corruption-repression side, especially among those OECD countries that are also members of the EU, there are the prosecution offices specialized in investigating and prosecuting economic and organized crime both domestically and cross-border through international agreements. They are called Anti-corruption Prosecutors or similar. They exist with different names, staff numbers, and degrees of specialization, remit and location, in the majority of pre-2004 EU Member States. They also show different degrees of success and of social trust.

32. In order to minimally succeed, Anti-corruption Prosecution Offices usually require at least the following conditions: firstly, their own specialization in grand criminality by leaving petty corruption to the regular prosecution; secondly, close cooperation of a police unit highly specialized in complex economic and financial criminality as well as easy availability of other technical expertise and international cooperation; thirdly, judging magistrates need to have an equivalent degree of specialization to that of prosecutors; fourthly, the jurisdiction of the office as well as that of specialized judges needs to be national and cover the whole territory without restrictions; fifthly, the description of criminal corruption-related actions in the penal code have to be clear and unambiguous and the legislation on criminal proceedings needs to be rational; sixthly, the accountability lines of specialized anti-corruption prosecutors towards the General Prosecutor need to be clear and effective, while their professional independence is sufficiently protected by legislation.

33. Many European former communist countries have set up specialised bodies as the main institutional basis for combating corruption. The justification has often been a particular interpretation of article 20 of the Council of Europe Criminal Convention against Corruption of 27 January 1999. This conventional provision calls for a strong specialisation and reinforced independence of judges, prosecutors and police units against corruption. In other words, on the repressive side of anti-corruption the key words are specialisation, independence and expertise. The provision does not urge signatories to necessarily create any institution, as the ways and means to ensure specialisation, independence and sufficient expertise are left to national decision-makers.

34. In weak governance environments, anti-corruption agencies have been created, usually upon external pressure, and they often lack credibility and may even extort rents. Often they have been captured by vested –either licit or illicit or both-- interests. In general they are ineffective. In general, in European

transition countries, calls for the establishment of an independent anti-corruption institution are often the symptom of deeper ills, namely a dramatic inability of existing public governance institutions to perform adequately and to effectively curb corruption. Initiated in response to particular scandals or under pressure from international institutions, and/or civil society groups these specialised single bodies aim at prevention, education and training, but rarely at investigation.

35. In those countries where the specialised single bodies may carry out investigation the relevant body has generally focused mainly on petty administrative corruption and disregarded grand corruption mainly because of political interference. Besides, certain of these bodies have attempted “empire building” practices that have led to their social disrepute.

36. Unfortunately, specialised anti-corruption bodies have overall not met expectations in European countries in transition (except to an extent for the Lithuanian SIS<sup>6</sup> and the Romanian National Anticorruption Directorate). The causes of failure are varied and country-specific, but spread common causes are: lack of political will, lack of focus, inadequate legal framework and resources, limited public trust and independence, lack of the necessary socio political climate, lack of know-how on combating economic and organised criminality and lack of basic societal and individual ethical values<sup>7</sup>.

37. In other words, a poor embedment of these bodies in the broader political and administrative institutional landscape is the main cause for failure. The primary lesson to be drawn from this generalised failure is that the priority should be to concentrate reform efforts on strengthening all the democratic governance systems of the country, the more important of them we have shown above. Without this prior groundwork on the key governance components, any special institution is likely to fail.

38. Several strategies are needed and should concur in any pro-integrity policy because the anti-corruption war has to be waged in several fronts. The role of the government in preventing and fighting corruption is crucial if it enforces existing legislation effectively, reviews it and proposes amendments to fill gaps and loopholes and if it is committed to reforming those governance systems listed in this paper in order to make them function effectively.

39. International cooperation is valuable provided that international organisations or bilateral cooperation do not impose any specific institutional or organisational solutions. Policy dialogue should concentrate principally on governance principles to be guaranteed and outcomes to be produced rather than on the ways and means to achieve them. This is crucial to prevent cultural rejection of foreign imposed models presented as having universal application.

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<sup>6</sup> SIS stands for Special Investigation Service, operational since June 2000.

<sup>7</sup> See Tomasz Anusiewicz “*Fighting Corruption in Post-Communist Countries: Where are we now? Where do we go from here?*” UNDP, 2003.

## CONCLUSIONS

1. There is an *acquis communautaire* made up of democratic administrative law principles that shape standards of good governance in EU Member States. Integrity is an essential component of good governance.
2. “Good administration” is not possible in environments lacking “good and relatively corruption-free politics”, i.e. where governance is poor.
3. Those standards in the public sector are strongly connected with the extent to which administrative law principles are transposed into legislative frameworks and are upheld in real practice by politicians and civil servants alike.
4. In Europe, politicians, civil servants and public employees in general have a legal obligation, and not only a moral one, to be committed to such principles. This forms part of the EU accession criteria for candidate countries. Effective penalties for non-compliance should be stated in legislation.
5. An issue is to soundly combine and balance the legal guarantees for citizens and for the public interest. A balance needs to be struck between the principle of legality and the values of efficiency, effectiveness and economy in public decision-making and performance.
6. The endeavour towards building a robust public integrity system in a country is manifold and multifaceted and requires the sustained commitment and convergence of many sectoral efforts and strategies. A single institution concentrating all anti-corruption powers is likely either to fail or to represent an obstacle if it is captured by illicit undertakings.
7. Any strategies will need to combine actions on the preventive (institutional capacity building, training, working procedures, policy evaluation, etc.) side and repressive side.
8. The legality, rightfulness, transparency, effectiveness and efficiency of public action are nowadays the pillars upon which the legitimacy of public bodies is founded in democratic societies. To live up to these expectations represents a big present-day challenge for policymakers, public managers and civil servants, and in general for all those holding responsibilities in the public sphere.
9. International organisations should review their approaches to conditionality when it comes to combat corruption and cease imposing specific approaches. The policy dialogue with countries should focus on principles and results. Countries should be free to find their own institutional and organisational solutions, even if advice may and should be provided to assist genuinely committed local reformers. Otherwise any imposed institutional solution is likely to be rejected as alien to the local culture.